REF. NO. F/10/67913

PLANNING APPLICATION REPORT

DESCRIPTION/ ADDRESS	-	Change of use from retail (A1) to hot food take-away (A5) 8 Nightingale Avenue Eastleigh SO50 9JA

SITE VISIT DATE – 6/10/10

ARE PLANS ACCURATE? - Yes

HAVE ALL NECESSARY NEIGHBOURS BEEN CONSULTED? - Yes

THE SITE AND ITS SURROUNDINGS

DESCRIPTION OF APPLICATION	Change of use from an A1 sandwich shop to a hot food takeaway operating between 11am and 10.30/11pm all week. The proposal includes an extraction duct running vertically up the rear of the property.
SITE AREA	93 square metres
TOPOGRAPHY	Flat
TREES	None
BOUNDARY TREATMENT	Open frontage
SITE CHARACTERISTICS	Three storey terraced block with commercial properties on the ground floor and accommodation above.
CHARACTER OF LOCALITY	Site is part of a small shopping parade within a residential area. There is a rear service alley running behind the premises.

RELEVANT PLANNING HISTORY

REFERENCE	DESCRIPTION	DECISION
Z/10002/2	Change of use to hot food takeaway (opening hours 9am to 11pm all week)	Permit 07-Jul-1995

REPRESENTATIONS RECEIVED

SOURCE	SUMMARY OF CONTENT
2 letters of objection	<u>8a Nightingale Avenue</u> - Odours from the takeaway will waft into their home everyday - Disturbance from late night activity - Vent will be an eye sore next to their window and generate noise - Concerned extraction equipment will have to be maintained and will require access from the flat roof next to their bedroom/ kitchen impacting on their privacy. <u>Golden Bamboo - 16 Nightingale Avenue</u> - Business would be in direct competition with the Golden Bamboo. - Impact on sewer network - Ventilation duct may obstruct emergency vehicles

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CONSULTATION RESPONSES

CONSULTEE	SUMMARY OF RESPONSE
Environmental Health	Objection - We understand that the residential dwellings above the proposed are unrelated to this development. As such we need to consider the residential amenity afforded to them with respect to potential nuisance. We are concerned that there could be excessive noise and disturbance from the proposed with respect to the residential, outside what would normally be considered business opening hours. Considering the fabric of the building, there is a lack of information with regard to the sound transmission between the proposed and the residential above. We consider that due to the unknown nature of the build quality with respect to noise insulation we are unable to determine whether this could be an issue. Therefore, this Service objects to the proposed development on the grounds of lack of information. If scheme is to be approved I would recommend conditioning that the duct is retained, details of noise insulation and specifying hours of construction/ demolition work
Property Services	The residential unit above the shop (8a) is let independently of the shop. It is let to First Wessex Housing and houses tenants from the Borough Councils Housing register. For your information flat 6a is also let independently of the premises below although 10a – 16a are let with the shop premises. The tenants will also need to apply to this department for a change of permitted use relating to their lease. The lease currently allows for them to operate as a cold food and hot and cold drinks takeaway.
Engineering and Transportation	No objection - The car parking is acceptable, particularly given that as a take-away is likely to have a larger share available in the evenings when it is used most, whilst freeing up spaces in the day-time compared to the sandwich bar. In regard to developer contributions, none are required as the take-away (A5) is less of a trip generator than the current A1 use - i.e. a net reduction in trips to the site should be experienced.
Crime Prevention Officer	This area does attract groups of youths and anti-social behaviour is an issue. Although there is no evidence that an additional take-away outlet would lead to further anti-social behaviour, it is commensurate with the functioning of this type of outlet that because of the close proximity to residential premises, the impact on living conditions of residents through noise and disturbance could lead to a material nuisance to occupiers of the nearby properties. The consultation response goes onto provides guidance on how the agent could control potential anti social behaviour and suggests conditions.
Planning Policy and Design	No response

POLICY CONTEXT

DESIGNATION APPLICABLE TO SITE

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POLICY CONTEXT

DESIGNATION APPLICABLE TO SITE
Within Built-up Area Boundary Within Shopping Area

DEVELOPMENT PLAN POLICIES

Eastleigh Borough Local Plan Review (2001-2011) 59.BE, 139.TC & 142.TC

PLANNING POLICY GUIDANCE / STATEMENT

PPS 4 - Economic Growth

POLICY COMMENTARY

The above policies combine to form the criteria against which this application will be assessed

COMMENT ON CONSULTATION RESPONSES

Comments are noted. The conditions suggested by the Crime Prevention Officer could not be imposed as these do not meet the 6 conditions tests as outlined in circular 11/95. Licensing considerations can not be taking into account as part of the planning application.

COMMENT ON REPRESENTATIONS RECEIVED

Issues of odour, appearance of the vents and noise and disturbance from the takeaway are covered in the assessment section.

The required access to maintain the extraction duct is likely to be very occasional and is not a material planning consideration. The duct is also unlikely to obstruct emergency vehicles. Competition between hot foot takeaways can not be controlled through the planning system. The change of use from sandwich shop to hot food takeaway is unlikely to have a significant impact on the sewerage system and is not a material planning consideration.

PLANNING OBLIGATION/CONSIDERATIONS

None

ASSESSMENT OF PROPOSAL

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Principle

Planning Policy is set up to protect A1 retail units in order to maintain the vitality and viability of local shopping areas. Policy 139.TC states proposals for the change of use of the ground floor of premises from A1 to A2, A3, A4 and A5 use, will only be permitted in local parades provided that no more than 35% of the total shopping frontage length of the centre would be given over to non A1 retail uses as a result.

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ASSESSMENT OF PROPOSAL

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

The application site is part of the Nightingale Avenue shopping parade. The proposed change of use from A1 to A5 (hot food takeaway) would result in 33% of the total shopping frontage being in a non A1 use. Therefore the principle of an A5 use is acceptable, providing the development meets the relevant development plan policies.

Residential Amenity

Policy 142. TC covers hot food takeaways and states that a change of use of existing premises to A3, A4 or A5 use will be permitted providing:

i. there are no residential units or other odour-sensitive premises which could be detrimentally affected by the proposal due to their close proximity and/or local conditions;
ii. where appropriate, the proposal makes adequate and acceptable provision for neutralising odours and controlling noise; and
iii. the proposal should make adequate provision for the disposal, storage and collection of waste.

This is further supplemented by Policy 59.BE which states that development shall be permitted providing (relevant sections)

Vii) it is an appropriate use for the locality and avoid unduly interfering, disturbing or conflicting with adjoining or nearby uses, especially in terms of noise and fumes.
x) it reduces the potential for criminal activity and anti-social behaviour by the use of appropriate design.

The application site is part of a three storey terraced block with commercial premises on the ground floor and accommodation above. The neighbouring Chinese takeaway is let with the accommodation above. Whereas the application site has independently let residential units on the floor directly above (no.8A) and adjacent (no.6A). No information has been provided in relation to how the upstairs units are sound proofed or ambient noise levels. Therefore it is fair to assume that a significant amount of internal and external noise would be heard by the upstairs residents.

The application site was previously let as a sandwich shop and as such would have operated during the day. This would have a minimal impact on the upstairs residents as they are less likely to be in the property and there would be a relatively high level of background noise. On the other hand the proposed hot food takeaway will operate in the evening and late into the night (up until 10.30/11pm). These are unsociable hours when the upstairs residents are likely to be relaxing for the evening and background noise levels tend to be lower. The A5 use is likely to have a high turnover of customers which will generate a significant amount of noise and disturbance from people moving around and gathering inside and outside the property and the associated car movements.

It is noted that the information has been provided on the extraction system and handling of waste which has been accepted by the Council's Environmental Health Team. However, this information does not address the issue of noise, nuisance and general disturbance which would be detrimental to the upstairs residents. The submission also fails to address potential anti-social behaviour which is a requirement of Policy 59.BE. As such the proposal conflicts with the development plan policy.

Visual Amenity

Both Policy 59.BE and Policy 183.LB (which covers the Aviary Estate) requires development to reflect the character of the locality. Externally the only significant visual change is the addition of an

ASSESSMENT OF PROPOSAL

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

extraction system. This extraction system involves a large and unattractive duct projecting vertically up the rear of the property. Although unsightly the duct is below ridge height and is positioned at the rear of the property where it will be less noticeable. An extraction system is also necessary for a takeaway in order to control odours and is commonly found in shopping parades within residential areas. There is a similar duct at the end of the block serving the Chinese takeaway. Therefore the LPA is unable to refuse the application on this ground.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and legislative background.

CONCLUSIONS

Recommend Refuse