

Report to: PLANNING COMMITTEE

Date of Meeting: 23 February 2022

Report from: Assistant Director of Housing and Built Environment

Application address: **39-41 Sedlescombe Road North, St Leonards-on-sea, TN37 7DA**

Proposal: **Change of use of retail (E use class) into restaurant (E use class) and takeaway (Sui Generis) including installation of extraction flue system to rear, and new shop front.**

Application No: **HS/FA/21/00824**

Recommendation: **Grant Full Planning Permission**

Ward: SILVERHILL 2018
Conservation Area: No
Listed Building: No

Applicant: ASAP BUSINESS LTD per DELTA TECH LTD
86-90 PAUL STREET LONDON EC2A 4NE

Public Consultation

Site notice:	Yes
Press advertisement:	No
Neighbour Letters:	No
People objecting:	13
Petitions of objection received:	0
People in support:	0
Petitions of support received:	0
Neutral comments received:	0

Application status: Not delegated - 5 or more letters of objection received

1. Site and surrounding area

The site is located on the eastern side of Sedlescombe Road North and consists of a three-storey middle terrace building. The ground floor of the premises is in use for A1 retail (Pharmacy) but is currently vacant and the first floor is currently used as store rooms and an office ancillary to the ground floor retail use. To the rear of the site is a large service courtyard located between two residential properties and is accessed from Strood Road. The

front portion of the application site is located within the Silverhill Shopping Area. The building is of a modern character and appearance being formed of facing brick at first floor, render at second floor and the ground floor has a shop front.

The properties along this part of Sedlescombe Road North have ground floors in commercial use and most of them have residential accommodation on the upper floors.

Constraints

Silverhill Shopping Area.

2. Proposed development

The application requires change of use of the building from a retail shop (Class E use) (formerly a pharmacy) into a restaurant (Class E use) and a hot food takeaway (Sui Generis), together with the installation of an extraction flue system to the rear elevation of the building, and the installation of a new shop front and new signs advertising the restaurant and takeaway business. This application is accompanied by an application to display the proposed shop signs ref HS/AA/21/00825. The application to display shop signs will be determined under delegated powers in accordance with the Council's Constitution once Members have decided the acceptability of the associated development which is the subject of this planning application.

The opening hours for the restaurant and takeaway will be 08:00 to 23:00 Monday to Sunday.

The application seeks permission for the following uses, as defined by the Town and Country Planning (Use Classes) (England) Order 1987 (as amended):

Class E

- E(b) Sale of food and drink for consumption (mostly) on the premises (previous A3)

Sui Generis

- Takeaways (previous A5)

Under the new Use Class Order 1987 (as amended) cafés and restaurants fall within the same use class as retail use, Class E, and this is permitted development and as such planning permission is not required to use the premises as a cafe/restaurant (with food consumption on the premises).

However, the use of the premises for hot food takeaway (Sui-Generis use) requires Planning Permission.

Delivery Service

The hot food takeaway service will be accompanied by a delivery service. The applicant advises that the delivery service will be done using scooters, bicycles, hybrid or full electric vehicles and this will be done via app based delivery companies.

The applicant advises that there will be no consumption or selling of alcohol on or off the premises.

Shop front

The existing shop front is of aluminium frames with a glass panel and the application seeks to use the same material but make changes to the design of the shop front and form two entrances.

Parking

The site currently has 5 car parking spaces within the service yard and proposes to use these spaces for the proposed development.

Employment

The proposed development will generate employment for 10 full time staff and 5 part time staff

Shop Signs

1x fascia sign and 1x projecting/hanging sign are proposed and these are dealt with under an associated application HS/AA/21/00825 under the Advertisement Regulations.

Amended drawings were received on 24 December 2021 realigning the proposed front entrance doors with the first-floor windows, and the addition of an existing first floor window front elevation window following concerns raised by Planning Officers.

The application is supported by the following documents:-

- Design and Access Statement
- Noise Impact Assessment
- Odour Management Plan – FireAway
- Odour Management Report – Peri Peri Unit

Relevant planning history

- HS/AA/21/00825 - Installation of front fascia signs and projecting signs as part of change of use and new shop front application HS/FA/21/00824 – Pending consideration.
- HS/FA/20/00268 - Roof extension to existing building and conversion of upper floors, including dormer and inset balconies, creating no. residential flats (maintaining ground floor retail unit) and erection of 1no. 1-bedroom house to the rear of site including associated parking, cycle stores and bin stores - Granted 05/08/2020.
- HS/AA/09/00516 - 1 off internally illuminated folded aluminium fascia with fret cut text & logo (only text & logo illuminate) 1 off internally illuminated folded aluminium projection sign with fret cut text & logo (only text & logo illuminate). Granted. 3.9.2009.
- HS/FA/86/00085 - Change of use of part of ground floor of shop to restaurant. Granted. 9.4.1986.
- HS/FA/78/00159 – Erection of temporary workshop building. Granted. 3.5.1978.
- HS/AA/81/00103 – Erection of 35'0" x 2'6" illuminated fascia sign. Granted. 2.3.1981.
- HS/DS/69/00882 - Erection of supermarket with store and staff rooms over. Granted. 26.9.1969.
- HS/OA/69/00542 - Site for erection of supermarket with store and staff rooms over. Granted. 11.7.1969.
- HS/FA/50/00558 - Removal of boundary wall. Concreting of whole of front forecourt.

Forecourt to be used for the sale of greengroceries and fruit. Granted. 10.10.1950.

- HS/FA/55/00143 - Alterations and change of use from dwellinghouse to shop with flat over. Granted. 12.4.1955.

National and Local Policies

Hastings Local Plan – Planning Strategy 2014

Policy FA2 - Strategic Policy for Central Area

Policy SC1 - Overall Strategy for Managing Change in a Sustainable Way

Policy E3 - Towns, Districts and Local Centres

Hastings Local Plan – Development Management Plan 2015

Policy LP1 - Considering planning applications

Policy DM1 - Design Principles

Policy DM3 - General Amenity

Policy DM4 - General Access

Policy DM6 - Pollution and hazards

Policy SA2 – Other Shopping Areas

Policy SA3 - Shops and Services outside the Shopping Areas

Policy SA4 - Drinking Establishments and Hot Food Takeaways

Other policies/guidance

National Design Guide.

Air quality and emissions mitigation guidance for Sussex (2020) .

Supplementary Planning Document: Parking Provision in New Developments (SPD).

Supplementary Planning Document (SPD) - Shopfronts and Advertisements 2007.

National Planning Policy Framework (NPPF)

Paragraph 11 of the NPPF sets out a general presumption in favour of sustainable development and states that development proposals which accord with the development plan should be approved without delay.

Paragraph 8 of the NPPF sets out the three overarching objectives of the planning system in order to achieve sustainable development. Those are: economic (by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation); social (to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being;); and environmental (to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy).

Paragraph 9 of the NPPF advises that plans and decisions need to take local circumstances into account, so they respond to the different opportunities for achieving sustainable development in different areas.

Paragraph 11 of the NPPF sets out a presumption in favour of sustainable development.

For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan

without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Paragraph 12 of the NPPF states that the development plan is the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

Paragraph 47 of the NPPF sets out that planning applications be determined in accordance with the development plan, unless material considerations indicate otherwise.

Paragraph 120 of the NPPF states, amongst other things, that decisions should promote and support the development of under utilised land and buildings, especially if this would help meet identified needs for housing where land supply is constrained and available sites could be used more effectively.

Paragraph 124 of the NPPF states that planning decisions should support development that makes efficient use of land.

Paragraph 130 of the NPPF requires that decisions should ensure developments:

- function well
- add to the overall quality of the area for the lifetime of that development
- are visually attractive in terms of
 - layout
 - architecture
 - landscaping
- are sympathetic to local character/history whilst not preventing change or innovation
- maintain a strong sense of place having regard to
 - building types
 - materials
 - arrangement of streets

in order to create attractive, welcoming and distinctive places to live, work and visit.

- optimise the potential of the site to accommodate an appropriate number and mix of development
- create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or

community cohesion and resilience

Paragraph 134 of the NPPF states that development that is not well designed should be refused but that significant weight should be given to development that reflects local design policies and government guidance on design and development of outstanding or innovative design which promotes high levels of sustainability and raises the standard of design in the area, provided they fit with the overall form and layout of their surroundings.

Paragraph 135 of the NPPF seeks to ensure that the quality of an approved development is not materially diminished between permission and completion through changes to the permitted scheme.

Paragraph 185 of the NPPF states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life; b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

3. Consultation comments

Hastings Borough Council Environmental Health Team - **No objection.**

Hastings Borough Council Licensing Team - **No objection.**

4. Representations

In respect of this application a site notice was displayed in front of the site near the bus stop and 13 letters of objection were received raising the following concerns:-

- locals are facing an obesity crisis and it should not be Council policy to encourage more unhealthy food outlets in an area such as Silverhill.
- the area needs a greater variety of shops and services and not more food outlets.
- there will be a high number of fast-food restaurants in the area and within close proximity of each other in this location.
- healthy living should be encouraged.
- the shop is reasonably sized and could be better used as community space.
- there is a lot of litter in the area as a result of fast-food outlet packaging and the proposal will make the situation worse.
- the existing food outlets have hygiene issues and situation will be exacerbated.
- additional food outlets will create more public hygiene issues including vermin on local streets.
- there is an Asda store nearby which has take-out pizza and a café to be opened soon and on Silverhill there are a number of fast-food outlets such that the proposed

development is not needed.

- more diversity and variety of retail trade and choice for shoppers should be encouraged.
- concentration of such uses in one location makes the place look unsightly especially outside normal trading hours, and such uses do not encourage foot traffic.
- concerns are raised on grounds of public hygiene, public health and public nuisance and the unnecessary increase in fast food outlets.
- Silverhill already has litter problems, illegal parking, odours, vermin, food waste disposal problems, and traffic interruption; the proposed use will exacerbate these problems.
- illegal parking is a concern around this area when customers park on pavements and forecourt etc and this puts danger on pedestrians.
- Vale Road is already busy with cars pulling up to get takeaways and allowing this use will exacerbate existing problems.
- presence of fast-food outlets has stifled local retail businesses and changed the character of the area from a thriving parade to one which is deserted in the day and becoming a takeaway city at night.

5. Determining issues

This application proposes change of use of the ground floor shop from A1 retail use (now Use Class E) to other uses. Some of the uses are permitted development and do not require planning permission.

The application seeks permission for the following uses, as defined by the Town and Country Planning (Use Classes) (England) Order 1987 (as amended):-

Class E

- E(b) Sale of food and drink for consumption (mostly) on the premises (previous A3).

Sui Generis

- Takeaways (previous A5).

The change of use from Class E(a) retail use to Class E(b) restaurant use is permitted development as the two uses fall within the same use group and as such Planning Permission is not required for this.

The change of use from Class E(a) retail use to a takeaway (Sui Generis use) requires planning permission.

Given the above, the main considerations therefore are the acceptability of the principle of the proposed takeaway use in this location, the impact on the character and appearance of the area, the impact on neighbouring residential amenities, refuse storage matters, and highway parking and safety matters.

a) Principle

Policy LP1 of the Hastings Local Plan - Development Management Plan (2015), paragraph 4.3 of the Hastings Local Plan - Planning Strategy (2014) and paragraph 11 of the NPPF set out a presumption in favour of sustainable development. The site is within a sustainable location with reasonable/good access to public transport, shops, services and facilities and as such the development is considered acceptable in principle subject to other local plan policies.

b) Layout

The application proposes to internally subdivide the shop front such that it is subdivided into two self-contained units (nos. 39 and 41), each with its own front entrance door and each door leading into a restaurant (with seating) and a takeaway area, a counter and a kitchen. The rear of the premises will remain as a utilities area where there will be customer toilets and staff rooms that will be shared by the two units. The changes to the internal layout of the premises will result in changes to the shop front to enable the insertion of two front entrance doors and subdividing the premises into two units. There is no principle objection to the proposed premises layout.

c) The principle of change of use of the premises to a hot food takeaway (Sui Generis and previously A5 use)

Members are requested to be aware that at present restaurants can deliver and provide takeaway food as part of the Covid legislation in place, and that is being extended until March 2022, with the possibility of becoming permanent at a later date. With this in mind, and the added issue of a premises being empty, resulting in an unwelcoming appearance within the streetscene, it is considered that the use of the premises is welcomed and will bring the shopfront back to life. At this time the Government is encouraging businesses to thrive in this current situation and as there are already many empty shops in the area, it is valued when a new business is open.

Policy E3 of the Hastings Local Plan - Hastings Planning Strategy (2014) advises that within the Town, District and Local Centres the vitality and viability of the Town and District Centres will be maintained and, where appropriate, enhanced. Amongst others, measures will include safeguarding the appearance, safety and environmental quality of the centre; encouraging diversity of uses within the centre and the provision of a wide range of retail, leisure, social, educational, arts, cultural, residential and commercial uses; promoting the use of vacant buildings; and maintaining and enhancing access to the centre by sustainable modes of transport and encouraging multiple purpose trips. This is reiterated by Policy FA2 of the Hastings Local Plan - Hastings Planning Strategy (2014) which amongst other things seeks to protect and enhance Silverhill as a District Centre. Given this it is considered that there is a general support for non-retail uses in these areas such as cafes, restaurants, takeaway shops as to bring back empty buildings into use and to ensure viability and vitality of Silverhill District Centre.

As such it is considered that the proposed change of use would bring a vacant unit back into a positive use that would enhance the vitality and viability of this part of Silverhill District Centre in accordance with Policy E3 and FA2 of the Hastings Local Plan - Hastings Planning Strategy (2014), and the aims and objectives of the NPPF.

In addition, the application site is located within the Silverhill shopping area and the application relates to a ground floor A1 use. Policy SA2 of the Hastings Local Plan - Hastings Planning Strategy (2014) advises that within the District, Local and neighbourhood Primary

Shopping Areas, as defined on the Policies Map, at ground floor level, proposals for Class A1, A2, A3, A4, A5 and other uses appropriate to the character of the shopping area will be permitted provided:-

- a) The area would not result in non-A1 uses exceeding the stated proportion for each of these shopping areas (Silverhill – no more than 45% non-A1 uses)
- b) The proposal will not result in the excessive concentration of non-A1 uses which would cause a significant interruption in the shopping frontage, reducing its attractiveness and thus harming the vitality and viability of the centre as a whole.

In the last Planning Application ref HS/FA/20/00268 it was agreed that whilst this shopping area has now reached or exceeded the threshold set out in criterion (a). Policy SA2 precedes the current NPPF. The NPPF considers retail centres, and places an emphasis on flexibility, the ability to “respond rapidly to change” and the changing climate of shopping habits. This advice is also reflected in the PPG. In addition, information from a range of national studies indicate that due to a long term change in shopping habits, percentage thresholds may restrict the overall vitality of town centres. The general position is that town centres must “find a focus other than retail in order to survive” (UK Parliament, 2019).

The Borough Council’s own monitoring and emerging research in respect of Hastings town centre and other shopping areas in the Borough now suggests that less weight should be attached to the criterion (a) of Policy SA2 and a more qualitative approach is needed. Furthermore, that continuing to implement a percentage threshold could have unintended consequences and become harmful to the vitality of these centres.

The aims of Policy SA2 are reiterated by Policy E3 of the of the Local Planning Strategy and the aims and objectives of the NPPF as detailed herein. It is not considered that the proposed hot takeaway use will result in an excessive concentration of non-A1 uses which would cause a significant interruption in the shopping frontage, reducing its attractiveness and thus harming the vitality and viability of the centre as a whole. Given this, a development as proposed complies with Policy E3 of the of the Local Planning Strategy (2014) and Policy SA2 of the Hastings Local Plan - Hastings Planning Strategy (2014).

Furthermore, Policy SA4 of the of the Hastings Local Plan - Development Management Plan (2015) Local Planning Strategy (2014) advises that planning permission for hot food takeaways will be granted provided that certain criteria is met:

- a) The precise nature of the proposed use (which should be specified in the planning application), including opening hours is given;
- a) The proposal would not adversely affect neighbours, for example causing excess noise or odour; (discussed in paragraph e) of the report).
- b) The proposal would not, on its own, or cumulatively with other such uses in the area, be likely to result in problems of disturbance or public disorder; (discussed in paragraph e) of the report).
- c) Suitable off-street parking is or can be provided where there is insufficient on street parking and; (discussed in paragraph f) of the report).
- d) It would not cause inconvenience or danger on the public highway as a result of the additional shopping and manoeuvring of vehicles; (discussed in paragraph f) of the report).

The precise nature of the proposed use has been detailed by the applicant and they propose to use the ground floor of the premises as a restaurant and takeaway premise. The applicant advises that the use will operate from 08:00 to 23:00 hours Monday to Sunday and that there

will be no sale of alcohol on the premises or for consumption off the premises. Provided criteria b-e of Policy SA4 of the Hastings Local Plan - Development Management Plan (2015) is met, a use as proposed may be acceptable in this location. Criteria b-e of Policy SA4 are discussed in detail herein.

A takeaway within this location would increase footfall along Sedlescombe Road and positively contribute to the vitality and viability of the Silverhill Shopping Area. This use will contribute to the aims of Policy SA4 of the Hastings Local Plan - Development Management Plan (2015) which seeks to support development that will assist the further expansion of their role of centres for leisure and business activities, will contribute to the mix and diversity of uses and the potential to enhance their attraction to locals and visitors, and improve the vitality of the area.

The Licensing Team have been consulted on this application and have stated that under the Licensing Act 2003, if the premises as a restaurant, is intending to sell alcohol for consumption on the premises by customers eating, or as the off sale of alcohol with hot food takeaway ordered meals, at any time, a full application for a premises licence will be required to authorise that licensable activity. In addition, if takeaway hot food is intended to be sold, from 23.00 hours, until any terminal time up until 05.00 hours the following day, it will require authorisation for late night refreshment under the Licensing Act 2003 by submission of an application for a premises licence. The applicant can be informed by an informative if planning permission is given for this development. In addition, the opening hours of the premises should be conditioned if planning permission is given for this development (Condition 3).

Neighbours concerns regarding antisocial behaviour are noted. Given that the applicant advises that no alcohol will be served at any time on the premises or for consumption off the premises, if planning permission is given for this development it is recommended that a condition is imposed to ensure this element is not breached (Condition 5).

d) Impact on character and appearance of the area

Policy DM1 of the Hastings Local Plan - Development Management Plan (2015) sets out that development must reach a good standard of design, which protects and enhances local character.

The application proposes alterations to the existing shop front. The Supplementary Planning Document (SPD) - Shopfronts and Advertisements SPD 2007 for shop fronts (listed herein) advises that the shop front should respect the form and character of the upper floors and should be seen as an integral part of the façade. The existing shop front is of aluminium frames with a glass panel and the application seeks to use the same material but make changes to the design of the shop front and form two entrances. The application proposes to internally subdivide the shop front such that it is subdivided into two self-contained units (nos. 39 and 41) each with its own front entrance door, and each door leading into a restaurant (with seating) and a takeaway area, a counter and a kitchen. The premises would be internally subdivided so that it operates as two units. Revised drawings were received on 24 December 2021 showing a realignment of the proposed front entrance doors with the first-floor front elevation windows of the premises following concerns raised by Planning officers. It is considered that the proposed shop front as amended respects the form and character of the upper floors and would be viewed as an integral part of the façade, thereby complying with the Supplementary Planning Document (SPD) - Shopfronts and Advertisements SPD 2007 and Policy DM1 of the Hastings Local Plan - Development Management Plan (2015).

The application also proposes the installation of an extraction flue system at the rear of the premises. The rear of the application building is visible from Strood Road and whilst the extraction flue will be visible from Strood Road, it will not be any different from other extraction flues that are found along this street serving the Silverhill Shopping Area. Given this it is not considered that an extraction flue as proposed would cause visual harm to the existing street scene, and as such it is considered that the development complies with Policy DM1 of the Hastings Local Plan - Development Management Plan (2015).

e) Impact on neighbouring residential amenities

Policy DM3 of the Hastings Local Plan - Development Management Plan (2015) requires new development to avoid any adverse impact on the amenity of neighbouring properties.

With regards to noise, nuisance and disturbance to nearby residential properties, it is considered that the site is located in a mixed-use area within a District Shopping Area and there are residential properties nearby. Given this, and that the premises can be used as a restaurant without planning permission, it is considered that any impact caused by the proposed takeaway use would not be any worse than impact caused by a restaurant use and other nearby commercial and non-retail uses.

Concerns raised by neighbours regarding odour, noise, nuisance, and litter problems that would be generated by the proposed use are noted. The use of the premise as a restaurant is already considered to be a permitted use (not requiring Planning Permission). In addition, as already discussed herein, at present restaurants can deliver and provide takeaway food as part of the Covid legislation in place, and that is being extended until March 2022, with the possibility of becoming permanent at a later date.

The applicant has submitted a Noise Impact Assessment, an Odour Management Plan – FireAway and an Odour Management Report – Peri Peri Unit to justify the proposed development. This reports answers neighbours' concerns regarding the noise impact of the proposed development on neighbouring properties. The Council's Environmental Health team have been consulted and they advise that the submitted justification is extensive and satisfactory and there is no objection to the development. However, they advise that if planning permission is given for the development the applicant is advised about food safety and health and safety requirements. To ensure that neighbour amenity is protected from noise, odour, and nuisance, it is also recommended that if planning permission is given for this development a condition is imposed requiring development to be carried out in accordance with the submitted Noise Assessment and Odour Control Scheme. (Condition 6).

In view of the above, due to the nature and scale of the proposal and its location within a mixed commercial and residential area, it is not considered the proposals will have any harmful impact upon these neighbouring sites. The proposed use as restaurant and takeaway are considered reasonably suitable and compatible within this location, notwithstanding the Use Class Order 1987 (as amended) that allows uses within business and commercial under Class E as follows:-

E(a) Shops (previous A1)

E(b) Restaurants and cafes (previous A3)

It should be noted that this site has Planning Permission under ref HS/AF/20/00268 to construct a roof extension and to convert the first and second floors of this building to 2 x two-bedroom flats. This permission has not been implemented. However, if this planning

permission is implemented there will be a need to provide an acceptable living standard for future occupants of these flats, and as such it would be necessary to noise insulate the internal floor between the ground floor and the first floor so as to minimise noise impact on future occupiers of the flats to acceptable standards.

If planning permission is given for this development, it is recommended that a condition should be imposed requiring appropriate sound insulation for the internal floor from potential noise, nuisance and disturbances from the commercial use below so as to mitigate any noise impact from the commercial use at ground floor level to acceptable standards (Condition 7).

As such it is considered that there would not be any significant harm to residential amenity as a result of the proposed development, and that the proposed use would be in line with the aims of Policy DM3 of the Hastings Local Plan - Development Management Plan (2015).

f) Highway safety/parking

The application site is located within a highly sustainable location which is readily accessible by public transport. The site has onsite parking provision for 5 vehicles at rear of the premises and there are opportunities for on street parking on nearby streets.

Given this, it is considered that the proposals will not result in harm to the existing highway network and parking situation and as such the proposed development complies with Policy DM4 of the Hastings Local Plan - Development Management Plan (2015).

g) Waste storage and collection

Policy DM3 of the Hastings Local Plan - Hastings Development Management Plan (2015) states proposed development should provide adequate space for storage of waste and the means for its removal.

Waste is to be securely and safely stored at the rear of the building until it is collected. Any lightweight materials are to be either bundled together or placed in waste sacks to prevent them from blowing away. Liquid waste such, as liquid solvents are to be stored in containers to ensure that they do not leak or escape. Any waste that can be recycled such as cardboard, wood and plastic etc is to be separated from non-recyclable waste and is to be taken to the local recycling point.

Secure collection and storing of waste should be conditioned if planning permission is given for the proposed development (condition 4).

Neighbour concerns regarding litter problems in the area are noted. Planning Officers recommend that if Planning Permission is given for the development the applicant should be informed that they should place a refuse bin for customers at front elevation of the building, and this refuse bin should be emptied regularly.

6. Conclusion

The application property is currently a vacant store and the proposed restaurant and takeaway use would bring the store back into use and will help ensure a viable use occupies the store in line with the Borough Council's Policies for commercial uses. However, it should be noted that under the new Use Class Order 1987 (as amended) cafés and restaurants fall within the same use class as retail use, Class E, and as such the proposed restaurant is permitted development and as such planning permission is not required for this. Use of the premise as a takeaway unit requires planning permission. However, at present restaurants

can deliver and provide takeaway food as part of the Covid legislation in place, and that is being extended until March 2022, with the possibility of becoming permanent at a later date. With this in mind, and the added issue of a premises being empty, resulting in an unwelcoming appearance within the streetscene, it is considered that the use of this premises is welcomed and will bring the shopfront back to life. At this time the Government is encouraging businesses to thrive in this current situation and as there are already many empty shops in the area, it is valued when a new business is open.

The site has off street parking spaces for 5 vehicles and there are opportunities for on street parking on nearby street and as such it is not considered that the proposed development would prejudice the safety of users of the highway.

Noise, odour and smells are proposed to be mitigated to acceptable levels as detailed in the submitted Noise Impact Assessment, Odour Management Plan – FireAway and an Odour Management Report – Peri Peri Unit submitted to justify the proposed development. Given this it is recommended that permission is granted subject to the imposition of conditions.

These proposals comply with the Development Plan in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which 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".

The Human Rights considerations have been taken into account fully in balancing the planning issues.

7. Recommendation

Grant Full Planning Permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

056/P/21.01; 056/P/21.02; 056/P/21.03; 056/P/21.04; 056/P/21.05;
056/P/21.06; 056/P/21.07 and 056/P/21.08.
3. The premises shall not be used except between the following hours:-

08:00 - 23:00 Monday - Sunday or Bank Holidays.

Any proposed changes to the above opening times shall be submitted and approved by the Local Planning Authority.

4. Any waste and recycling shall be securely stored within the rear service yard of the building and taken to the closest collection point on the relevant collection day.
5. There shall be no selling of alcohol for consumption on or off the premises.
6. The development hereby approved shall be carried out in accordance with the measures in the submitted Noise Impact Assessment prepared by DAAGroup and the Odour Management Plan (FireAway) and Odour Management Plan (Per Peri Unit) prepared by Delta Tech Ltd and such measures shall thereafter be maintained as approved.
7. No development shall commence before details of the sound-proofing of the internal floor between the ground floor commercial unit and the first floor of the building have been submitted to and approved in writing by the Local Planning Authority, and the sound-proofing works shall be implemented before the flats approved under planning permission ref HS/FA/20/00268 are occupied.

Reasons:

1. This condition is imposed in accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and in the interests of proper planning.
3. To ensure a satisfactory standard of development.
4. To avoid harm to local amenity from waste nuisance.
5. To ensure an acceptable form of development and in the interests of neighbour amenity.
6. To ensure that the measures considered necessary as part of the Noise Impact Assessment and Odour Management Plan are carried out as specified.
7. In the interests of the amenity of the neighbouring residential occupiers.

Notes to the Applicant

1. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
2. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraph 38 of the National Planning Policy Framework.

3. The Food Business Operator will be required to register the food establishment with Hastings Borough Council 28 days prior to opening. The registration form can be found online at http://www.hastings.gov.uk/environmentalhealth/food_safety/businesses/foodpacks/caterers/.
4. The applicant is strongly advised to contact the Hastings Borough Council's Environmental Health Division before services, fixtures and fittings etc. are installed for advice on satisfying the requirements of Health and Safety Law.
5. The Crime & Disorder Act 1998 heightens the importance of taking crime prevention into account when planning decisions are made. Section 17 of the Act places a clear duty on both police and local authorities to exercise their various functions with due regard to the likely effect on the prevention of crime and disorder. If you are planning to replace or alter any of the external openings within the store then appropriate security standards should be adopted. For further information please see www.securedbydesign.com or contact Sussex Police. Any material external alterations to the shop front will require planning permission.
6. The applicant is strongly advised that given the litter problems in the area, a refuse bin for use by customers should be placed outside the restaurant at front elevation of the building, and this refuse bin should be emptied regularly and kept in an acceptable standard.

Officer to Contact

T Zulu, Telephone 01424 783254

Background Papers

Application No: HS/FA/21/00824 including all letters and documents