

Name of Applicant Type of Certificate	Proposal	Map/Plan Policy	Plan Ref. Expiry Date
Mr W. Ascott 'B'	Change of use from retail shop A1 to takeaway food A5 and restaurant A3; trading to take place between 5:00 p.m. and 11:00 p.m. Monday to Sunday - 148A New Road, Bromsgrove, B60 2LE	SHOPPING	10/0397-CE 17.08.2010

**Councillors Mrs. C. M. McDonald and S. P. Shannon have requested that this application be considered by the Committee, rather than being determined under delegated powers.**

**RECOMMENDATION:** that, subject to the receipt of amended plans and additional information, and the satisfactory views of the Environmental Health Manager, permission be **GRANTED**.

### Consultations

WH	Consulted - view received 28.06.2010. No objection.
EHM	Consulted - view received 16.07.2010. Further information required on the noise levels generated by the extract fans and any refrigeration or air conditioning plant at the nearest noise sensitive property. Details of drainage and street waste bins to be required by condition. Further view received 26.07.2010. There is a need for noise insulation on the windows of the application site which face residential properties. This is likely to increase the requirement for ventilation to the building. An alternative would be an appropriate report to indicate that the opening of the window will not affect adjacent residential properties.
EHM (Commercial Regulation)	Consulted - view received 28.06.2010. No objection. Advice provided on Food Safety and Health and Safety legislation.
Economic Development	Consulted 12.07.2010. No response received to date (expires 02.08.2010).
West Mercia Police	Consulted - view received 01.07.2010. No objection. Consideration has been given to the issues of parking and disorder. At present the other A5 and A3 premises close to this location cause no issues around disorder. Whilst complaints have been made in relation to the parking for customers of the A5 premises, it is easily resolved. The parking restrictions opposite the proposed location cease at 18:00 hours. A condition is suggested regarding opening hours to prevent late night revellers creating disorder.
Publicity	4 letters sent 25.06.2010 (expired 16.07.2010). 4 letters sent 14.07.2010 (expire 04.08.2010). 1 site notice posted 09.07.2010 (expired 28.07.2010). 8 objections received raising the following issues: <ul style="list-style-type: none"> <li>▪ There are not the two parking spaces referred to on the plans. The parking of one car would block the fire exit to numbers 148 and 148A. There is already a serious problem with insufficient parking in the area. Parking on the pavement would result in pedestrians</li> </ul>

having to walk on the road next to a very busy junction. The junction is congested throughout the day. The junction has a blind spot for cars turning left out of Stoke Road into New Road. Buses at the bus stop close to the site cause a back log of vehicles at the junction. The proposal would exacerbate these problems.

- Worcestershire County Council's change in parking standards does not relieve the lack of parking that exists or the nuisance that would be caused to local residents and retailers.
- Crowds of young people gathering outside may intimidate young children.
- Increased litter and food waste (already a concern in the area).
- A takeaway next door to a fitness centre would not be suitable or acceptable for many parents and especially their children.
- Lack of fire escape from first floor.
- Opening hours would cause a problem with local residents and business as a noise and nuisance issue. Late night customers may disturb local residents.
- The proposal may harm other takeaways in Aston Fields and food outlets in the town centre.
- Is there space for food waste containers? The passageway is shared with number 148 and is unsuitable for food waste and litter storage. The passageway is the sole emergency exit for both properties and should not be restricted at any time.
- The flue system required to prevent disruption to residential properties as a result of food odours would have to discharge at such a height as to be visually obtrusive.

### The site and its surroundings

This application relates to a two storey commercial premises located to the west side of New Road close to the junction with Stoke Road and Finstall Road. The site is attached to number 148 Finstall Road at first floor level with a communal passage separating the two properties at ground floor level. Number 148 is used as a fitness centre. To the north, Hills Court consists of 4 shops with two flats above. Immediately to the rear of the site is the back garden of 2 Stoke Road, a residential property. The application site is currently vacant and was last used as a wedding dress shop. The property is located within the designated shopping area of Aston Fields.

### Proposal

This application proposes the change of use of the property from a shop (Use Class A1) to a takeaway and restaurant (Use Classes A5 and A3). A flue is to be added to the flat roof of the property and a doorway is to be removed from the elevation facing the passageway.

### Relevant Policies

WCSP	SD.4, CTC.1, T.1, T.4, D.43
BDLP	DS13, E9M, S21, TR11, BROM24
Others	PPS1, PPS4, PPG13

## Relevant Planning History

B/2007/1285 Change of use from retail shop to takeaway food. Trading from 11:00 p.m. to 12:00 midnight Monday to Sunday inclusive. Refused 22.01.2008.

## Notes

The main issues with this application relate to the principle of the proposed development, the impact to the amenities of local residents and parking provision. Consideration will also be given to the issues raised in response to the publicity exercise. In considering the application, I am mindful that a proposal to use of the property as a takeaway was refused in 2008 on grounds of harm to highway safety, due to an increased demand for on-street parking, and harm to residential amenity.

## **Principle of the proposed use**

Policy EC10 of Planning Policy Statement 4: Planning for Sustainable Economic Growth states that local planning authorities should adopt a positive and constructive approach towards planning applications for economic development. The application site falls within an area covered by policy BROM24 of the Bromsgrove District Local Plan 2004. This policy provides support for Use Classes A1, A2 and A3. It should be noted that, following the sub-division of the A3 Use Class under the Use Classes (Amendment) Order 2005, the A3 use mentioned in policy BROM24 now includes A3 (restaurant) and A5 (takeaways). As such, the proposed restaurant and takeaway use is acceptable in principle.

Third parties have raised concern about the number of takeaways already within Aston Fields and the impact of a further establishment on the existing ones. Aston Fields currently benefits from a good range of convenience and more specialist shops and services. There are currently two takeaways, a restaurant with associated takeaway, a public house and the café area at Banners Foods. In addition, there is a currently vacant café at 148C New Road. Other uses include the Co-op and Post Office, a florists, dry cleaners, betting shop and hairdressers. The issue of the number of restaurant / takeaway uses on the vitality of a local centre in Catshill was considered at appeal in 2009. The appeal concerned the change of two vacant retail units to a restaurant with associated takeaway at the small group of shops on Golden Cross Lane (application B/2008/0514). At the time of the appeal, there were 5 existing takeaways and one restaurant in the centre (which is smaller than the centre in Aston Fields). In allowing the appeal, the Inspector considered that a small supermarket and other retail and service units in the centre met the day to day needs of the local population. The proposed loss of a retail unit was therefore not considered to be detrimental to the range of services reasonably to be expected in a local centre and no harm would be caused to its vitality. In my opinion, Aston Fields currently provides a good range of shops and services and that the loss of the existing shop will not compromise this range. In relation to the impact of the proposal on existing food establishments in Aston Fields and the town centre, I would note that it is not the role of the planning system to regulate competition.

## **Residential amenities**

As detailed above, the nearest residential properties to the application site are the flats above Hills Court and 2 Stoke Road. The main concerns regarding residential amenities relate to disturbance from the comings and goings of customers and delivery vehicles, the use of the restaurant's seating areas, the potential for cooking smells and noise from the ventilation system. I acknowledge that the proposal will cause some level of impact to residential amenities but this must be considered in relation to the existing environment in Aston Fields. The issue of cooking smells can be overcome through the use of a suitable extraction and filter system. The applicant has been asked to provide additional information to demonstrate that the noise arising from the system will fall within acceptable levels. I will update Members on the submission of such information, together with views of the Environmental Health Manager, at the meeting of the Committee.

I consider that noise and disturbance arising from the coming and going of customers and delivery vehicles can be controlled through the use of a condition restricting the opening hours of the business. Under application B/2007/1285, the applicant proposed to remain open until midnight. This was considered unacceptable to surrounding residents. Under this application, the applicant proposes to be open between 5:00 p.m. and 11:00 p.m. In my opinion, these opening hours are acceptable and will prevent any noise associated with the proposed use continuing into the night. I would also note that these hours are similar to the other three takeaways / restaurants in the area. The upstairs seating area includes a window which would directly face the side wall of the neighbouring flat. To reduce the level of noise escaping from this window, the Environmental Health Manager has suggested a condition requiring the use of noise insulation on this window.

## **Parking**

Policy TR11 of the BDLP states that the Council will require development proposals to incorporate sufficient off-street parking. Worcestershire County Council's parking standards are set out in their Highways Design Guide for New Developments. Since the refusal of application, these standards have been revised and, in relation to commercial properties, parking space standards are set as a maximum rather than the minimum they were in 2008. The use of minimum standards is in accordance with Planning Policy Guidance 13: Transport and is designed to reduce travel by private car in favour of more sustainable forms of transport. The application site is located within walking distance of a large residential catchment and the area is served by public transport. Whilst the applicant has suggested that a proposed home delivery service will mean that the number of people collecting from the premises will be low, I would note that the Council has no means of controlling this. The application site benefits from a dropped kerb access and an area of hardstanding at the front. This would not accommodate the two parking spaces the applicant has suggested and its use as one space would require a vehicle to park sideways on so to obstruct the pavement. On-street parking in the area is heavily restricted but designated spaces are available on New Road and nearby streets. Many of the maximum stay restrictions on these spaces are lifted after 6:00 p.m. I can understand the concerns regarding traffic congestion, proximity to a busy roundabout, parking and highway safety raised in response to the publicity exercise. However, both Worcestershire Highways and West Mercia Police have raised no objection. Given the absence of minimum parking standards, the nearby provision of on street parking and the potential for visitors arriving on foot, I am satisfied that the

additional parking demand created by the development will not adversely affect highway safety and does not warrant the refusal of the application.

### **Street scene**

The proposed flue will rise 1.3 metres above the flat roof to the property. It will be clearly visible from the street scene and the residential properties to the rear. I acknowledge that it will be unsightly and I have asked the applicant to consider a lower design. However, in assessing the impact of the flue on the street scene, I would draw Members attention to the flues already existing in the street scene, particularly the one above the fish and chip shop (which is similar to that proposed) and the one to Banners Foods. I will advise Members of the receipt of any amended plans at the Meeting of the Committee.

### **Other matters**

The applicant has been asked to provide details of the proposed facilities for the storage of waste. These will be reported to Members at the Meeting of the Committee.

A third party has raised concern about the absence of a fire escape from the first floor of the restaurant. The issue of fire safety would be dealt with under Building Regulations and I have been advised by the Council's Building Control Team that it would be possible to meet the Regulations with the use of extensive internal measures. Concern has also been raised about the appropriateness of having a takeaway next to a fitness centre and young children being intimidated by crowds of young people gathering outside the premises. The planning system does have a role in promoting healthy and sustainable lifestyles and fear of crime is a material consideration to a planning application. However, I do not consider that the implications of the concerns raised are such that could justify the refusal of the application.

### Conclusion

As a result of the amendments to Worcestershire County Council's car parking standards and the proposed earlier closing time of 11:00 p.m., the reasons application B/2007/1285 was refused have been overcome. In my opinion, the impact to the amenities of adjoining occupiers can be satisfactorily limited through the use of suitable conditions. I therefore recommend that planning permission be granted.

**RECOMMENDATION:** that, subject to the receipt of amended plans and additional information, and the satisfactory views of the Environmental Health Manager, permission be **GRANTED**.

1. C99
2. The premises shall only be open between the hours of 17:00 hours and 23:00 hours Monday to Sunday (including Bank Holidays). All cleaning of equipment and utensils shall have been completed within half an hour of the premise's closing time.
3. A scheme of noise insulation for the north facing window to the first floor seating area shall be submitted to and approved in writing by the Local Planning Authority and implemented prior to the commencement of any trading from the premises of the use hereby permitted.

4. Notwithstanding the submitted information, the development hereby permitted shall not be commenced until a scheme for ventilation and the control and extraction of fumes, gases, odours and other effuvia from the site has been submitted to and approved in writing by the local planning authority. All elements of the approved system shall be installed, implemented and in full working order prior to the use commencing and shall thereafter be properly maintained. Such equipment must be used at all times when cooking activities are undertaken at the premises.
5. The extraction system installed shall be regularly maintained to ensure its continued satisfactory operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the local planning authority.

### Reasons

2. - 5. To protect the amenity of nearby residential occupiers in accordance with policy SD.2 of the Worcestershire County Structure Plan 2001 and policy DS13 of the Bromsgrove District Local Plan 2004.

### Notes

The premises and business will be required to comply with Food Safety and Health and Safety legislation which will be enforced by Bromsgrove District Council. The business and premises will be subject to routine inspection to assess compliance. The business will be required to register with the Council as a food business a minimum of 28 days before commencing trading. Advice may be obtained on detailed compliance with this legislation from the Commercial Team at the Council (telephone number 01527 881434).

This decision has been taken having regard to the policies within the Worcestershire County Structure Plan (WCSP) June 2001 and the Bromsgrove District Local Plan (BDLP) January 2004 and other material considerations as summarised below:

WCSP	SD.4, CTC.1, T.1, T.4, D.43
BDLP	DS13, E9M, S21, TR11, BROM24
Others	PPS1, PPS4, PPG13

It is the Council's view that the proposed development complies with the provisions of the development plan and that, on balance, there are no justifiable reasons to refuse planning permission.