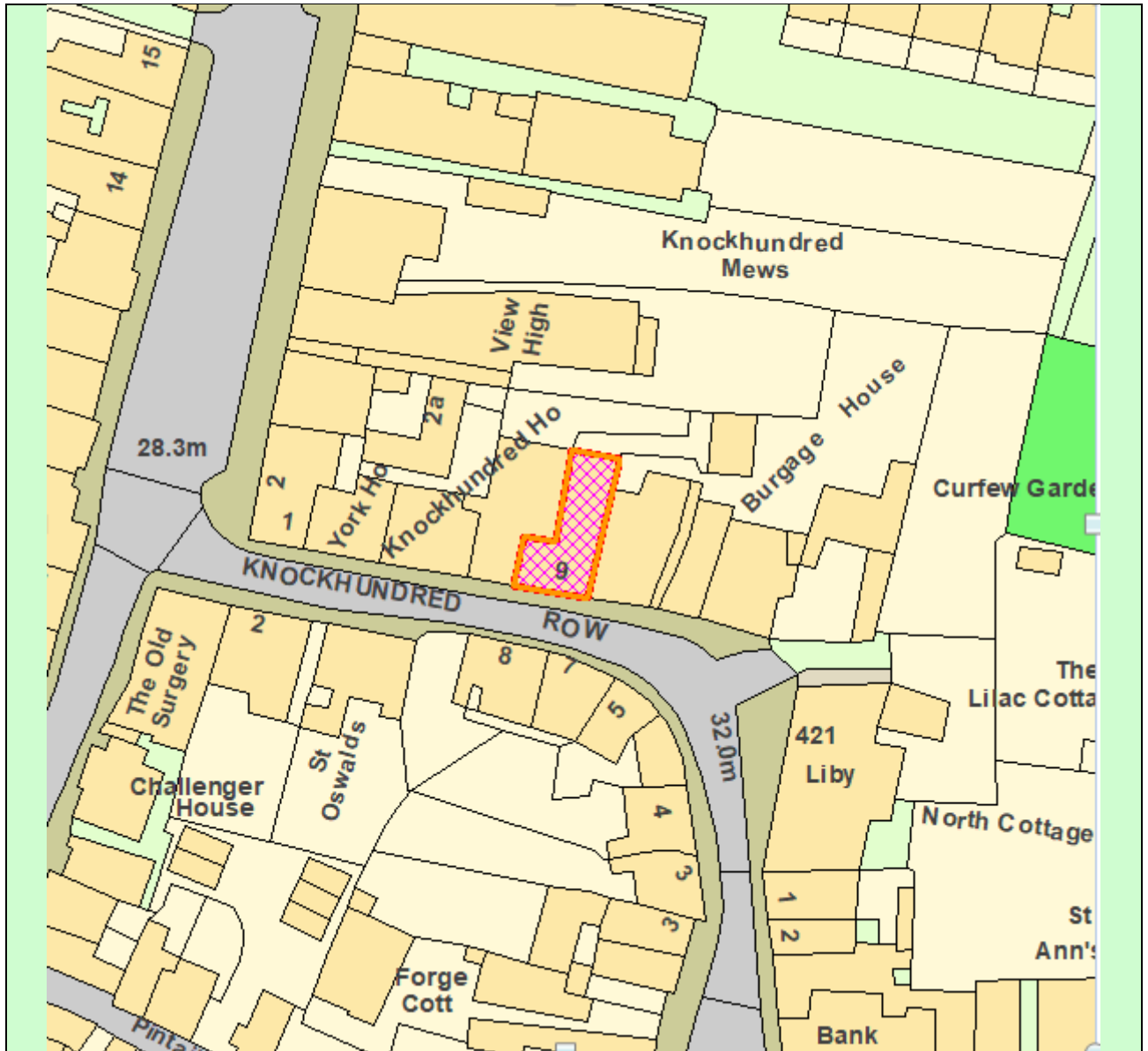


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Report to	<b>Planning Committee</b>
Date	<b>10 January 2024</b>
By	<b>Director of Planning and Environment</b>
Application Number	<b>SDNP/23/04565/FUL</b>
Applicant	<b>Mrs Elizabeth Hamilton</b>
Application	<b>Change of use of the ground floor from Flexible Use between retail (C A1) and contact centre (Sui Generis) to Use Class E (Commercial, Business and Service).</b>
Address	<b>9 Knockhundred Row Midhurst West Sussex GU29 9DQ</b>

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**Recommendation:** That the application be Approved subject to the conditions set out in paragraph 10.1 of this report.



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## **Executive Summary**

**Reason for committee Referral:** Applicant is a Member of the Council  
Parish Objection – Officer recommends Permit

The application seeks the change the use of the ground floor at 9 Knockhundred Row, Midhurst from its current use which is restricted by condition to a flexible use between retail (Class A1) and contact centre (Sui Generis) to use Class E (Commercial, Business and Service).

The property is sited within the Midhurst Settlement Boundary (SD25), the defined Primary Shopping Frontage (SD37) and the Midhurst Conservation Area.

The principle of the development is considered acceptable within the scope of policy SD37 of the SDNP LP which seeks to prevent the loss of retail units, the Town and Country Planning (Use Classes) Order 1987 (as amended) and the NPPF. The proposals are considered to allow for the continuation of the unit for retail and other flexible use, described within the new Class E use. Approval is therefore recommended.

### **I. Site Description**

1.1 The property is sited within the Midhurst Settlement Boundary (SD25), the defined Primary Shopping Frontage (SD37) and the Midhurst Conservation Area (SD15). The application site comprises the ground floor of 9 Knockhundred Row within the town centre of Midhurst. Knockhundred Row is a side street off the main road running through Midhurst (North Street) and includes a range of properties, including two clothes shops at its west end, a wine and tapas bar, a dental surgery, a solicitors, a beauty salon, the Town Council Offices, and Knockhundred Market, which includes Midhurst Museum. The application site and the neighbouring Knockhundred House are currently vacant and there are residential units at the east end of the road, as well as above the ground floor units. The building is Grade II Listed, considered of C17 origin, and listed for its group value. The ground floor shopfront surround, consisting of pilasters and fascia, dates from the C19. The large, glazed windows are of more recent, late-C20 date. The upper floor consists of coursed stone rubble and brickwork with a tiled pitched roof.

### **2. Relevant Planning History**

- 2.1 SDNP/19/03151/LIS - Various internal amendments and additions, including increasing the size of the internal raised area by the front door, enlarging step tread to the bottom step at rear of the shop and removing or reducing the weather bar on the front door threshold. – Approved
- 2.2 SDNP/19/02594/ADV - 1 no. non-illuminated fascia sign, 3 no. non- illuminated other signs, 1 no. non-illuminated hanging sign and 2 no. non-illuminated other signs. – Approved
- 2.3 SDNP/19/00775/FUL - Change of use of a building from A1 retail use to either A1 retail or contact centre 4sight vision support. – Approved
- 2.4 SDNP/17/03820/LDE - Existing lawful development certificate for the use of ground floor area as A1 shop. Withdrawn.

### **3. Proposal**

- 3.1 Change of use of the ground floor from Flexible Use between retail (Class A1) and contact centre (Sui Generis) to Use Class E (Commercial, Business and Service).

## **4. Consultations**

### **4.1 Midhurst Town Council**

The Town Council object to this application on the grounds this would potentially result in the loss of a retail unit in an area designated for shopping in the Local Plan.

### **4.2 CDC – Environmental Protection**

It is noted that the permitted uses within Class E include commercial, business and service uses. Use as a café would be included. The proposed times of use are from 9am – 5pm and it is stated that it is not intended to install any heavy plant or machinery at the premises.

In order to reduce potential impacts from noise from possible future users of the premises the following conditions are suggested to be applicable to the application:

- Hours of use of the premises shall be limited to 8am – 6pm (Monday – Sunday) – extra hour suggested to allow for servicing the premises (cleaning etc).
- No plant or machinery shall be installed at the site until a scheme which specifies the provisions to be made for the control of noise emanating from the fixed plant associated with the development has been submitted to and approved in writing by the Local Planning Authority. The noise mitigation scheme shall be implemented and maintained in accordance with the approved details and shall not be altered without the prior written approval of the Local Planning Authority.
- Prior to the installation of any extraction or ventilation plant, a scheme shall be submitted and approved in writing by the LPA specifying how odours are to be mitigated/abated.

### **4.3 Economic Development Service, Chichester District Council:**

The Economic Development Service supports this application for the following reasons:

Town centres and high streets are in transition and changing dramatically. In 2021, the National Planning Policy Framework was updated and recognises the challenges faced by town centres. Paragraph 86 says, “Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation”. Further, in 86(a) it says that town centres should, “...promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries...”.

Use Class E of the Use Classes Order 1987 (as amended) was introduced in 2020 and covers the former use classes of A1 (shops), A2 (financial and professional), A3 (restaurants and cafes) as well as some other uses and puts them all into one new use class.

We would support this change of use as it takes into account the changing nature of town centres and offers a range of activities that can be operated from the premises. Furthermore, it offers some protection against long term vacancy, and brings the property up to date with current Use Class legislation.

It is also supported by the South Downs National Park Local Plan (adopted 2nd July (2014-33)). The SDNP Local Plan also supports the retention of Class A premises within primary shopping areas. Policy SD37 says “Within the defined primary shopping frontages as shown on the Policies Map the loss of units in Use Class A will not be permitted.” As this change of use is for the new Use Class E, it broadly fits into this criterion.

## **5. Representations**

5.1 No representations received.

## **6. Planning Policy**

### **6.1 Relevant Sections of National Planning Policy Framework:**

- NPPF01 - Introduction
- NPPF02 - Achieving sustainable development.
- NPPF15 - Conserving and enhancing the natural environment.
- NPPF16 - Conserving and enhancing the historic environment.

### **6.2 Most relevant Policies of Adopted South Downs Local Plan (2014-2033) (A full list of relevant policies can be found in Appendix 1)**

- SD01 – Sustainable Development
- SD05 - Design
- SD12 – Historic Environment
- SD13 – Listed Buildings
- SD15 – Conservation Areas
- SD34 – Sustaining the Local Economy
- SD37 – Development in Town and Village Centres
- SD52 - Shopfronts

### **6.3 Relevant Policies of South Downs Management Plan (2020-2025)**

- Partnership Management Plan Policy 1
- Partnership Management Plan Policy 9

## **7. Planning Assessment**

7.1 The main issues for consideration in respect of the application are: -

- The principle of the change of use from A1 (retail) and Sui Generis use to Class E (Commercial, Business and Service) within the Primary Shopping Frontage
- Impact on the Listed Building and the Conservation Area
- Impact on the neighbouring properties
- Ecology/Eco-System Services/Biodiversity Net Gain

The principle of the change of use from A1 (retail) and Sui Generis use to Class E (Commercial, Business and Service) within the Primary Shopping Frontage

- 7.2 In 2019, planning permission was granted under application SDNP/19/00775/FUL for the change of use from retail (A1) to a flexible use between retail (A1) and a contact centre for a sight loss charity (Sui Generis). That permission was implemented, and a condition was attached to secure the use of the unit for those two uses only. The condition read:

*'Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, and the Town and Country Planning (General Permitted Development) Order 2015, or in any other statutory instrument amending, revoking and re-enacting the Order, the premises shall not be used other than as a contact centre for 4Sight Vision Support (as described in the planning application) or for purposes within A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order).*

- 7.3 This application should be assessed in light of the recent changes to the Town and Country Planning (Use Classes) Order 1987 which was updated on 1 September 2020. Of relevance is that a number of uses contained within the Order were revoked and replaced with a new Class E (the Class applied for under this planning application). Class E now more broadly covers uses previously defined in the revoked Classes A1/2/3, B1, D1(a-b) and 'indoor sport' from D2(e). The restrictive condition on the 2019 planning permission means that planning permission is required for a change of use to Class E even though it allows for the same retail use as did Class A1.
- 7.4 The primary purpose of the change to the use classes order was to allow for more flexibility in the use of premises within town centres. Policy SD37 of the SDNP LP seeks to prevent the loss of premises within Use Class A1 within the defined Primary Shopping Frontage as is the case with this site. There is therefore a tension between Policy SD37 and the revised Use Classes Order which is more flexible. However, the revised Use Classes Order still allows for the use of the premises for retail purposes (formally Class A1) and therefore if this proposal were to be permitted the premises could be used for retail purposes albeit allowing some flexibility for other uses as well. This is in line with national planning policy to allow for a range of uses in high street locations. It is considered that the proposal would accord with policy SD37 of the SDNP LP as it would allow for the retail use of the site to be maintained but would also allow for other potential uses in line with national planning policy and contributing to the vitality and viability of the town centre.

Impact on the listed building and the Conservation Area

- 7.5 Policy SD13 of the SDLP permits development affecting a listed building provided the development preserves and enhances the listed building or where any potential harm is considered to be outweighed by public benefits. Policy SD15 of the SDLP relates to development within a Conservation Area which permits development provided it preserves or enhances the conservation area.
- 7.6 This application does not propose any external or internal alterations to the premises. It is considered that there will be no significant impact on either the listed building or the conservation area from the proposed change of use.

### The impact on neighbouring amenity

- 7.7 This application is for the change of use to Class E which could include a range of uses including for example a café. The Council's Environmental Protection Team has been consulted and have recommended a number of conditions aimed at providing a degree of protection for immediate neighbours of the premises. These include an hours of use condition (8.00am – 6.00pm) and details of any plant machinery and extraction system to be submitted to and agreed by the LPA. It is considered that due to the range of uses permitted under class E that a condition limiting the uses to those that would be appropriate for the location and sensitive to the surrounding properties should form part of the recommendation.

### Ecology/Eco-System Services/Biodiversity Net Gain

- 7.8 The site is within the Sussex North Water Resource Zone; however, it is not considered that the proposals will result in an increase in the demand for water as the existing use is very similar to the proposed use. Therefore, the proposal has been screened out from requiring an Appropriate Assessment.
- 7.9 The site is within the 6.5km buffer zone of the Singleton and Cocking Tunnels SAC and the 12km buffer zone of the Ebernoe Common SAC. As such an HRA screening assessment has been carried out. This concludes that there will not be likely significant effects on the Ebernoe Common SAC nor the Singleton and Cocking Tunnels SAC as a result of the proposals.
- 7.10 SD2: Given the nature of the site and nature of the proposals, the lack of ecosystem services enhancement is considered acceptable. The proposal is purely for a change of use and not alterations to the building itself. The case officer considers the proposals meet criteria 1(j) of policy SD2 by improving opportunities for peoples' health and wellbeing.

## **8 Conclusion**

- 8.1 The principle of the development is considered acceptable within the scope of policy SD37 and the NPPF. The proposals are considered to allow for the continuation of the unit for retail and other flexible use, described within the new Class E use. Approval is therefore recommended.

## **9 Added Value**

- 9.1 Allows for the use of the site to be continued for a variety of flexible uses.

## **10 Reason for Recommendation and Conditions.**

- 10.1 It is recommended that the application be Approved for the reasons and subject to the conditions set out below.

## **Planning Conditions and Reasons**

It is recommended that the application be Approved for the reasons and subject to the conditions set out below.

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".

Reason: For the avoidance of doubt and in the interests of proper planning.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that order with or without modification), the development hereby approved shall only be used for purposes within Class E (a), (b), (c), (e) and (g)(i) and (g) (ii) and no other use as defined within Schedule 2, Part 3, Classes shall be carried out on the site.

Reason: To enable the Local Planning Authority to regulate and control the development of land.

4. The premises shall not be used except between the hours of 08.00 and 18.00 Monday to Sunday with an additional hour for staff only to allow for servicing the premises (cleaning etc.)

Reason: To safeguard the amenities of neighbouring properties.

5. No plant or machinery shall be installed at the site until a scheme which specifies the provisions to be made for the control of noise emanating from the fixed plant associated with the development has been submitted to and approved in writing by the Local Planning Authority. The noise mitigation scheme shall be implemented and maintained in accordance with the approved details and shall not be altered without the prior written approval of the Local Planning Authority.

Reason: To safeguard the amenities of neighbouring properties.

6. Prior to the installation of any extraction or ventilation plant, a scheme shall be submitted and approved in writing by the LPA specifying how odours are to be mitigated/abated.

Reason: To safeguard the amenities of neighbouring properties.



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SDNPA Consultees  
Environmental  
Protection

## **Appendix 1 – Information concerning consideration of applications before committee.**

Officers can confirm that the following have been taken into consideration when assessing the application: -

### **National Park Purposes**

The two statutory purposes of the SDNP designation are:

- To conserve and enhance the natural beauty, wildlife and cultural heritage;
- To promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.

If there is a conflict between these two purposes, greater weight shall be given to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in a National Park, whereby conservation takes precedence. There is also a duty upon the National Park Authority to foster the economic and social wellbeing of the local community in pursuit of these purposes.

### **National Planning Policy Framework and the Vision & Circular 2010**

The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. It was first published in 2012. Government policy relating to National Parks is set out in English National Parks and the Broads: UK Government Vision and Circular 2010.

The Circular and NPPF confirm that National Parks have the highest status of protection in relation to landscape and scenic beauty. The NPPF states at paragraph 182 that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks and that the conservation and enhancement of wildlife and cultural heritage are important considerations which should also be given great weight in National Parks. The scale and extent of development within the Parks should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

## **Major Development**

Paragraph 183 of the NPPF confirms that when considering applications for development within the National Parks, permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.

For the purposes of Paragraph 183 whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.

For the purposes of this application, assessment as to whether the development is defined as major for the purposes of Para 183 is undertaken in the Assessment Section of the main report.

## **The Town and Country Planning (Environmental Impact Assessment) Regulations 2017**

A screening opinion has concluded that for reasons of scale, use, character and design and environmental considerations associated with the site, the proposals are not EIA development within the meaning of the relevant 2017 legislation. Therefore, an EIA is not required.

## **The Conservation of Habitats and Species Regulations 2017**

Following a screening of the proposals, it is considered that a likely significant effect upon a European designated site, either alone or in combination with other proposals, would not occur given the scale, use, and location of what is proposed. Consequently, an Appropriate Assessment under a Habitats Regulation Assessment is not required.

## **Relationship of the Development Plan to the NPPF and Circular 2010**

The development plan policies listed within the reports have been assessed for their compliance with the NPPF and are considered to be compliant with it.

## **The South Downs National Park Partnership Management Plan 2019-2025**

The Environment Act 1995 requires National Parks to produce a Management Plan setting out strategic management objectives to deliver the National Park Purposes and Duty. National Planning Policy Guidance (NPPG) states that Management Plans "contribute to setting the strategic context for development" and "are material considerations in making decisions on individual planning applications." The South Downs Partnership Management Plan as amended for 2020-2025 on 19 December 2019, sets out a Vision, Outcomes, Policies and a Delivery Framework for the National Park over the next five years. Relevant Policies are listed in each report.

## **South Downs Local Plan**

The South Downs Local Plan (SDLP) was adopted by the Authority in July 2019. All development plan policies are taken into account in determining planning applications, along with other material considerations.

The Planning and Compulsory Purchase Act 2004 S38 (6) confirms that "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".

## All policies of the South Downs Local Plan which are of relevance to this application

- Core Policy SD1 - Sustainable Development
- Strategic Policy SD5 - Design
- Strategic Policy SD12 - Historic Environment
- Development Management Policy SD13 - Listed Buildings
- Development Management Policy SD15 - Conservation Areas
- Development Management Policy SD37 - Development in Town and Village Centres
- Development Management Policy SD52 - Shop Fronts

### Legislation for Heritage Assets

The Planning (Listed Buildings and Conservation Areas) Act 1990 places a series of duties on planning authorities when determining applications for planning permission that may affect Listed Buildings, Conservation Areas or their setting. Section 66 (1) states that 'in considering whether to grant planning permission for development which affects a listed building or its setting the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72 relates to conservation areas specifically, and states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. It is confirmed that, where the application relates to Listed Buildings, the setting of Listed Buildings, or sites within or adjacent to a Conservation Area, regard has been had to the above legislation.

Scheduled Ancient Monuments (SAMs) are protected by law and any physical works affecting them is likely to require Scheduled Monument Consent from Historic England (on behalf of the Secretary of State) which is separate from the statutory planning process. In regard to planning decisions, the impact of development upon the setting of a scheduled monument and its nationally important heritage significance can be a material planning consideration and will have been taken into account when assessing the proposals.

### **Human Rights Implications**

These planning applications have been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.

### **Equality Act 2010**

Due regard has been taken within this application of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010.

### **Crime and Disorder Implication**

It is considered that the proposal does not raise any crime and disorder implications.