

**Recommendation Report for Planning Permission**

**REF NO:** BE/60/17/PL

**LOCATION:** Regis Service Station  
449 Chichester Road  
Bersted

**PROPOSAL:** Application for removal of Condition 15 imposed under BE/138/06 to allow 24 hour use to accord with applications for the shop extension & ATM.

**SITE AND SURROUNDINGS**

**DESCRIPTION OF APPLICATION**

To remove condition 15 'Noise Pollution' from BE/138/06 outlined below:-

"Condition 15: Noise Pollution

Petrol pumps P5/6/7/8 and the locable bollards to restrict parking in the first four bays closest to 447 Chichester Road shall be closed between the hours of 22.00 and 0700 hours of the following day.

Reason: In the interests of amenity by ensuring a reasonable noise level outside the site in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7, GEN32 of the Arun District Local Plan."

The officer, reflecting on the consultation response from Arun District Council's EH dept, included the condition to protect residential amenities of number 447 Chichester Road. Pumps 5,6,7 and 8 were considered to potentially generate significant noise and disturbance to the amenities of No 447. As such the condition was imposed.

**SITE AREA**

0.17 hectares approx.

**TOPOGRAPHY**

Predominantly flat.

**BOUNDARY TREATMENT**

None to front and side open to forecourt. 2m fence then wall with trellis to boundary with residence at 447 Chichester Road.

**SITE CHARACTERISTICS**

Petrol Station with canopy & detached food and payment kiosk on corner plot.

**CHARACTER OF LOCALITY**

Mainly suburban residential area, main road.

**RELEVANT SITE HISTORY**

|              |                                                                                                                                                                                                                                                                                                                                                                               |                                    |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| BE/22/97     | Enclosure of existing car wash with roof and acoustic door for new car wash machine with driers. Extension of plantroom.                                                                                                                                                                                                                                                      | ApproveConditionally<br>13-05-1997 |
| BE/98/04/    | New roof and doors to enclose existing car wash                                                                                                                                                                                                                                                                                                                               | ApproveConditionally<br>16-11-2004 |
| BE/30/05/    | Accessibility upgrades - ramp to shop entrance, small extension to rear of building to create accessible wc.                                                                                                                                                                                                                                                                  | ApproveConditionally<br>17-06-2005 |
| BE/138/06/   | Demolition of existing buildings & forecourt; erection of new sales building ,canopy, garage box (storage building), replacement of underground fuel tanks, new forecourt pavings, new dispensing equipment, installation of external plant (condensers) & erection of fencing to form waste area and condenser compounds & external ATM. (Resubmission following BE/130/05/) | ApproveConditionally<br>14-03-2007 |
| BE/51/09/    | Application for variation of Condition 16 of BE/138/06/ - to permit the delivery of newspapers and magazines before 07:30 hours daily.                                                                                                                                                                                                                                        | ApproveConditionally<br>06-08-2009 |
| BE/88/12/DOC | Application for approval of details reserved by condition 4 of previously approved planning application BE/138/06                                                                                                                                                                                                                                                             | DOC Approved<br>02-07-2012         |
| BE/87/16/PL  | Retention of ATM machine housing.                                                                                                                                                                                                                                                                                                                                             | ApproveConditionally<br>28-07-2016 |
| BE/162/16/PL | Retrospective application for an extension to existing petrol filling station & ancillary shop to provide a food outlet & erection of replacement storage container & the addition of 9 CCTV cameras to the front elevation.                                                                                                                                                  | ApproveConditionally<br>08-02-2017 |
| BE/77/84     | Redevelopment of petrol service station and including car wash                                                                                                                                                                                                                                                                                                                | ApproveConditionally<br>22-08-1984 |

BE/138/06 granted permission for the current petrol and service station, initially. Various application has since been approved for the ATM and changes with extension to the main building.

**REPRESENTATIONS****Representations received:**

Bersted Parish Council

An objection.

"Un-neighbourly due to closeness to residential properties. Original condition imposed to protect residents nearby should remain."

**Comments on Representations received:**

Comments noted.

Officer agrees with the opinion of the Parish Council.

**CONSULTATIONS**

Environmental Health

WSCC Strategic Planning

Environment Agency

Engineering Services Manager

Engineers (Drainage)

**Consultations responses received:**

West Sussex County Council (Strategic Planning)

The existing hours of opening are duly noted. The extended hours will evidently give rise to the site generating vehicular traffic over an extended period. The Local Highway Authority (LHA) has reviewed data supplied to WSCC by Sussex Police over a period of the last 3 years.

There have been no recorded injury accidents at either the junction with the public highway, nor in the vicinity of the site access onto Chichester Road (B2259). There is no evidence to suggest that the junction is operating unsafely, or that the proposed removal of Condition 15 would exacerbate an existing safety concern.

However, the number of movements would not be anticipated to be particularly significant and would not be expected to exacerbate any existing issues, nor warrant an objection on the basis of safety or capacity. Whilst the Planning Authority will no doubt wish to consider matters of amenity for local residents, no highway objection would be raised.

Environmental Health (EH)

Environmental Health objects to this application. There is a history of noise and light complaints relating to this premises. Condition 15 of BE/138/06 was put in place specifically to protect the amenity of local residents, and EH do not consider the amenity of residents to be any less important in 2006 than it is now.

No Noise Impact Assessment for this site has been provided, and therefore it is not possible to have any confidence in the statement that any increase in noise would be 'minimal at worst'.

Environment Agency

According to our records we did not request this condition therefore we will not be providing comments.

**Comments on Consultation responses:**

Comments noted.

The officer agrees with the view taken by EH and will be refusing the application on the grounds of potential noise and disturbance to number 447 Chichester Road.

**POLICY CONTEXT**

Designation applicable to site:

Class A Road  
Built up area boundary

**DEVELOPMENT PLAN POLICIES**

|                                                       |              |                                          |
|-------------------------------------------------------|--------------|------------------------------------------|
| Arun District Local Plan 2003:                        | <u>GEN2</u>  | Built-up Area Boundary                   |
|                                                       | <u>GEN32</u> | Noise Pollution                          |
|                                                       | <u>GEN7</u>  | The Form of New Development              |
| Publication Version of the Local Plan (October 2014): |              | D DM1 Aspects of Form and Design Quality |
|                                                       |              | QE SP1 Quality of the Environment        |
|                                                       |              | SD SP2 Built-Up Area Boundary            |
|                                                       |              | QE DM1 Noise Pollution                   |

**PLANNING POLICY GUIDANCE**

|      |                                     |
|------|-------------------------------------|
| NPPF | National Planning Policy Framework  |
| NPPG | National Planning Practice Guidance |

**POLICY COMMENTARY**

The Development Plan consists of the Arun District Local Plan 2003, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

A new local plan is in preparation may be a material consideration when determining Planning Applications. At this stage the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and supporting documents were submitted for independent examination on 30 January 2015. The Examination into the submitted plan was commenced but is currently suspended whilst Arun District Council addresses matters raised by the Inspector.

A number of Main Modifications to the Arun District Local Plan 2011-2031 (Publication Version) October 2014 were approved by the Council on 22nd March 2017 and consultation on these is taking place 10 April 2017 to 5pm on Tuesday 30 May 2017. The Main Modifications should be read alongside the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and where there are changes the Main Modification may also be material consideration to take into account.

Arun District Council's Development Plans:

Paragraph 215 of the NPPF ensures that specific policies in Arun District Local Plan 2003 can carry weight. The weight afforded to the policies with Local Plan policies can be assessed according to their level of consistency of the various policies with the National Planning Policy Framework.

Paragraph 216 of the NPPF confirms that weight can be given to policies in emerging plans from the day of publication. The Council resolved that the policies and maps in the Publication Version of the Local Plan be used are material considerations in the determination of this planning application. The emerging Plan was submitted in January 2015 and the examination is currently suspended. The examination is due to re-commence in summer 2017 following publication of modifications to the Plan.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

### The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area and policies within them will be considered in determining planning applications. Made NDP policies will be considered alongside other development plan documents including Arun District Council's Local Plan. Whilst an NDP is under preparation it will afford little weight in the determination of planning applications. Its status will however gain more weight as a material consideration the closer it is towards it being made. Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

Made Plans in Arun District Council's Local Planning Authority Area are: Aldingbourne; Angmering; Arundel; Barnham & Eastergate; Bersted; Bognor Regis; Clymping; East Preston; Felpham; Ferring; Kingston; Littlehampton; Rustington; Walberton; Yapton. The written Ministerial Statement of 13 December 2016 confirms that relevant policies for the supply of housing in Neighbourhood Plans should not be deemed to be out of date where all of the following circumstances arise;

- The NDP has been part of the development plan for 2 years or less or the ministerial statement is less than 2 years old
- The NDP allocates sites for housing
- The Council can demonstrate a three-year supply of deliverable housing sites

Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

There are no relevant Bersted NDP policies.

### **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."

The proposal is considered to conflict with relevant Development Plan policies in that the removal of the condition would have a materially adverse effect on residential amenities of the adjoining property 447 Chichester Road, Bognor Regis.

### **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/or legislative background.

### **CONCLUSIONS**

The use of pumps 5, 6, 7 and 8 for 24 hours a day, in line with the other pumps and uses approved in the main building, is still considered to represent a potential significant harm to the residential amenities of number 447 Chichester Road.

Condition 15 was included owing to concerns that through the use of these pumps past 2200hrs. It is considered number 447 would receive a significant and unreasonable amount of noise pollution over and above the level it currently receives until 2200 and after 0700. The initial reason for imposing this condition stands now. It is considered as important for the protection of number 447's residential amenities as it was when permission was granted in 2006.

The Council understands the applicant's desire to operate all the pumps in a 24 hour use in line with the ATM and commercial building on the site. However, the use of the pumps is considered to generate a significantly higher level of noise and disturbance than the use of the ATM and commercial building. The opening of the pumps would see additional HGV and smaller vehicle visits to the pumps closest to 447 and the noisy operation of the pumps themselves after 2200.

The proposal to remove condition 15 of BE/138/06, thus allowing 24 hour use of pumps 5-8 is considered to be unacceptable. It would lead to a significant and adverse impact on the residential amenities of number 447 Chichester Road and its rear garden and is contrary to paragraph 17 of the National Planning Policy Framework, saved policy GEN7 and GEN32 of the Arun District Local Plan and emerging Arun District Local Plan policies D DM1, QE DM1 and QE SP1.

#### **HUMAN RIGHTS ACT**

Human Rights Act:

The Council in making a decision, should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (Right to respect private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of permission in this case interferes with applicant's right to respect for their private and family life and their home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of neighbours). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for refusal is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

#### **DUTY UNDER THE EQUALITIES ACT 2010**

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

**RECOMMENDATION**

**REFUSE**

- 1 Removal of condition 15 of BE/138/06 by reason of allowing the operation of fuel pumps 5, 6,7 and 8 for up to 24 hour a day, would lead to the additional generation of noise and disturbance creating a significant detrimental impact on the residential amenities of the residential dwelling 447 Chichester Road, Bognor Regis and its private rear garden contrary to paragraph 17 of the National Planning Policy Framework, saved policies GEN7 and GEN32 of the Arun District Local Plan and emerging Arun District Local Plan policies D DM1, QE DM1 and QE SP1.
- 2 **INFORMATIVE:** Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.