

Recommendation Report for Planning Permission

REF NO: BR/107/18/PL

LOCATION: Third Floor
8 York Road
Bognor Regis
PO21 1LW

PROPOSAL: Change of use from offices (B1 Business) to 1 No. one bedroom residential apartment (C3 Dwelling House).

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above. No external alterations are proposed.
SITE AREA	69 square metres.
RESIDENTIAL DEVELOPMENT DENSITY (NET)	145 dwellings per hectare.
TOPOGRAPHY	Flat.
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	The rear boundary of the property is formed by Heras type security fencing which is located so as to protect a separate pedestrian access to other property. The rear side boundaries of the property are open and unfenced.
SITE CHARACTERISTICS	The ground floor of the existing premises is a part of the Galleon Restaurant, which occupies the ground floors of both nos. 8 and 10. The first and second floors are occupied as flats. The application premises share a rear parking/servicing area with nos. 8 and 10.
CHARACTER OF LOCALITY	The application site is located within an area which has a commercial character. Nearby uses include offices (some of which are vacant) and retail, also the restaurant use of which the application site forms a part at ground floor level. The site is located within the Principal Shopping Area/within the town Centre Boundary. The Regis Centre is located nearby, as are the more modern seafront facing apartments to the south.

RELEVANT SITE HISTORY

BR/98/15/DOC	Application for approval of matters reserved by condition imposed under BR/284/14/PL relating to conditions 4 & 5 for details of storage of refuse & schedule of materials and finishes for external walls & velux window.	DOC Approved 14-05-15
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BR/294/14/PD	Notification of proposed change of use under Part J from Class B1(a)(offices) on First and Second floors to 2 No.flats Class C3 (Dwellingshouses).	No Objection 05-01-15
BR/284/14/PL	Change of use of existing attic space to form offices (B1 Business) including third floor dormer to rear and 4 No rooflights to front.	ApproveConditionally 05-03-15

Applicant BR/284/14/PL approved the change of use of the attic space, the subject of this application, to an office use. This permission was implemented and it is understood that the space is presently occupied as an office by the applicant. Subsequently, application BR/294/14/PD confirmed the permitted development right to convert the first & second floors to residential.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Bognor Regis Town Council

"No objection"

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

Environmental Health

Economic Regeneration

CONSULTATION RESPONSES RECEIVED:

ADC ECONOMIC DEVELOPMENT - No objection.

ADC ENVIRONMENTAL HEALTH - No response.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Designations applicable to site:

Within the Built Up Area Boundary;
Within Town Centre Boundary; and
Pagham Harbour Zone B.

DEVELOPMENT PLAN POLICES

DDM1	D DM1 Aspects of form and design quality
DDM2	D DM2 Internal space standards
ECCSP2	ECC SP2 Energy and climate change mitigation
EMPDM1	EMP DM1 Employment Land: Development Management
ENVDM1	ENV DM1 Designated Sites of Biodiversity or geographical imp
ENVDM2	ENV DM2 Pagham Harbour
HDM1	H DM1 Housing mix
HSP1	HSP1 Housing allocation the housing requirement
QEDM1	QE DM1 Noise Pollution
QESP1	QE SP1 Quality of the Environment
SDSP1	SD SP1 Sustainable Development
SDSP1A	SD SP1a Strategic Approach
SDSP2	SD SP2 Built-up Area Boundary
TSP1	T SP1 Transport and Development

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011-31, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

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.

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.

There are no relevant Bognor Regis Neighbourhood Development Plan 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 not considered to comply with relevant Development Plan policies in that it will result in

the loss of office space and does not comply with the requirements of Policy EMP DM1; and also the applicant has not been able to provide an acceptable legal agreement to secure the Pagham Harbour mitigation measures.

OTHER MATERIAL CONSIDERATIONS

In respect of non-compliance with policy EMP DM1, noting the presence of residential accommodation on the first & second floors of the building and also within adjoining buildings, it is not considered that there is any harm arising from the loss of this small two room office.

CONCLUSIONS

PRINCIPLE:

The site lies within the built up area boundary where development is acceptable in principle in accordance with policy SD SP2 of the Arun Local Plan and provided it is in accordance with other policies of the Local Plan covering such issues as loss of commercial floorspace, residential amenity, highway safety & parking and harm to the Pagham Harbour Special Protection Area (SPA).

Regard should also be had to policy SD SP1 of the ALP which states that: "When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework." It is considered that the site is in a sustainable location within walking and cycling distance of a range of shops, facilities and services including bus stops, a large food store and a railway station.

Furthermore, paragraph 118 (d) of the NPPF states that "Planning policies and decisions should: promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing"

LOSS OF COMMERCIAL:

Arun Local Plan policy EMP DM1 ("Employment Land: Development Management") states that

"Existing employment sites and premises will be protected where there remains a reasonable prospect of employment use. Excepting Permitted Development Rights or Local/Neighbourhood Development Orders, change of use from Business Class (B1-B8) or similar sui generis uses will not be permitted unless:

- a. It is demonstrated that the site is no longer required and is unlikely to be re-used or re-developed for industrial/commercial purposes. This should include clear demonstration of marketing, viability appraisal and the suitability of the site to accommodate the proposed use - using a methodology to be agreed by the District Council at pre-application advice stage; or
- b. The existing location poses insurmountable environmental harm or amenity which cannot be satisfactorily resolved.

The Council will require evidence that the site has not been made deliberately unviable, that marketing has been actively conducted for a reasonable period of time and that alternative employment uses have been fully explored."

The 3rd floor of 8 York Road is currently occupied as a small office. The application submission was not accompanied by any justification in respect of the above policy and therefore, there is conflict with policy

EMP DM1. This was put to the applicant who responded to say that:

"We can confirm that the application site has not been specifically marketed for ongoing commercial use as the planning application was submitted prior to the new Local Plan being adopted, and it was therefore not a requirement at the time of submission. However, we would reiterate that the site is on the third floor of a building that has existing residential use on both the first floor and second floor. The site also has residential use on both sides. Therefore, it would appear to be entirely sensible that the existing third floor offices are also used for residential purposes. Internal access areas are shared between the office use and the existing residential apartments, which does not make an ideal working arrangement, and this is an area that cannot be resolved. The current occupiers of the offices will be relocating soon to alternative offices elsewhere which are more easily accessible.

Whilst the specific site has not been marketed, a site on the upper floors on the opposite side of York Road has recently been marketed for commercial (office) use by Flude Commercial for approximately 18 months. This site comprised a number of different units of varying sizes, but there were no serious offers and the premises are no longer on the market. This helps to demonstrate that there is no demand for commercial (office) units of this type in this location, and that alternative uses should now be considered as there is no reasonable prospect of ongoing employment use."

It is noted that the Councils economic development officers have not raised any concerns with the loss of this office. Furthermore, it is acknowledged that the existing building already has residential uses on two floors and that therefore there is potential for conflict between residential and office occupiers. It is also noted that there are residential flats on the upper floors of both 10 and 6 York Road. It is therefore not considered that there is any harm arising to the vitality of this town centre location and that despite conflict with EMP DM1, it is not considered that refusal would be sustainable on these grounds.

RESIDENTIAL AMENITY:

Arun Local Plan 2011-2031 policy D DM1 requires that the Council have regard to certain aspects when considering new development including: (3) Impact - "Have minimal impact to users and occupiers of nearby property and land. For example, by avoiding significant loss of sunlight, privacy and outlook and unacceptable noise and disturbance."

Furthermore, policy QE SP1 states that: "The Council requires that all development contributes positively to the quality of the environment and will ensure that development does not have a significantly negative impact upon residential amenity, the natural environment or upon leisure and recreational activities enjoyed by residents and visitors to the District."

It is not considered that there will be any harm associated with the proposed use of this attic space as a residential flat. It is located at a high level such that windows will not overlook other residential windows and there is an existing flat below the space. Indeed, the flat below has a very similar layout such that there will not be any instances of living room accommodation above/below bedrooms and vice versa. This will help to reduce noise disturbance between flats.

It is therefore considered that the proposal complies with Arun Local Plan policies D DM1 and QE SP1.

INTERNAL & EXTERNAL SPACE STANDARDS:

Arun Local Plan policy D DM2 states that: "The planning authority will require internal spaces to be of an appropriate size to meet the requirements of all occupants and their changing needs. Nationally Described Space Standards will provide guidance".

It is therefore necessary to assess the proposal against the internal space standards set out in the Governments Technical Housing Standards (Nationally Described Space Standard) in order to determine whether the proposed replacement dwelling is suitable for residential use.

The requirement for a flat of this size is 50m² and the proposal is around 55m² in area therefore, there is no objection in respect of policy D DM2.

Policy D DM1 refers to the need for compliance with the Arun Design Guide. This is to replace policy D DM3 "External Space Standards" which was deleted at the request of the Local Plan Inspector. Until such time as this Design Guide is published, there is no policy within the Arun Local Plan regarding private gardens sizes. However, paragraph 127 of the NPPF states that: "Planning policies and decisions should ensure that developments: (f) 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."

There is no space within the site area for private or communal gardens but this is acceptable given how close the site is to the beach and this has been used as an argument for not requiring new private space (i.e. balconies) in respect of some of the flats in the adjacent buildings (for example BR/168/17/PL and BR/336/16/PL).

It is therefore considered that the proposal complies with Arun Local Plan policies D DM1 & D DM2 and the guidance on amenity within the NPPF.

HIGHWAYS & PARKING:

Arun Local Plan policy T SP1 seeks to ensure that development: provides safe access on to the highway network; contributes to highway improvements & promotes sustainable transport, including the use of low emission fuels, public transport improvements and the cycle, pedestrian and bridleway network. In respect of parking, it states that:

"The Council will support transport and development which: incorporates appropriate levels of parking in line with West Sussex County Council guidance on parking provision and the forthcoming Arun Design Guide taking into consideration the impact of development upon on-street parking"

Regard should also be had to paragraph 109 of the NPPF which states that: "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."

The West Sussex County Council Car Parking Demand Calculator advises that in this location the likely parking demand for the new flat would be 1 space. The proposal is unable to provide any off-street parking.

In respect of the flats within adjacent buildings (such as those approved by BR/168/17/PL), it was considered that the proposed flats would be attractive to occupiers who are not car owners who instead want to live in a town centre location and access facilities by foot, bus or cycle and that the flats may also appeal to rail commuters. It was also considered that the flats would not generate significant parking demand and was not considered that any demand of this nature would adversely affect the amenity of local roads. There is no reason to take a different view with this application and therefore, it is considered that the proposal complies with Arun Local Plan policy T SP1.

IMPACT ON PAGHAM HARBOUR

Policy ENV DM2 of the Emerging Local Plan (Publication Version) requires that all new residential developments within a 400m to 5km distance ('Zone B') of Pagham Harbour make a financial contribution towards the provision of accessible natural open green spaces to serve the area. A contribution of £1,275 per new residential unit was agreed by the Councils Cabinet on 20 July 2015. The report to Cabinet stated that:

"The access management measures identified are referred to as Strategic Access Management and Monitoring (SAMMs). As these do not include the allocation of specific land, they are not classified as physical infrastructure, and are not included under the definition of infrastructure within Section 216 of the Planning Act 2008, meaning the pooling restrictions as set out under Regulation 123 of the CIL Regulations (2010) as amended, do not apply. It is common practice by many other authorities (for example Elmbridge) that contributions towards SAMMs are gathered through S106 planning obligations. This approach has also been confirmed within Counsel advice sought by the Council. As a contribution is required to make the development acceptable in planning terms, it is therefore in compliance with the tests under Regulation 122 of the CIL Regulations (2010) as amended"

The Councils Cabinet subsequently approved a reduction in the tariff from £1,275 to £871 as of the 10th April 2017.

Paragraph 014 (Reference ID 23b-014-20160519) of the Planning Practice Guidance describes tariff style contributions. It clearly states that these consist of contributions to pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area. The Council accepts that the Pagham Harbour contribution is based on a tariff. However, the contribution is required to fund strategic access management and monitoring measures (SAMMs) which are necessary to meet the requirements of European law (transposed into English law through the Conservation of Habitats and Species Regulations 2010). Essentially this requires the Council to maintain, if not improve, the existing condition of the site.

As these SAMMs do not include the allocation of specific land, they are not classified as physical infrastructure, and are not included under the definition of infrastructure within Section 216 of the Planning Act 2008, meaning that the pooling restrictions as set out under Regulation 123 of the CIL Regulations (2010) as amended, do not apply.

Therefore, it is considered that the Council is able to seek these contributions despite the guidance in PPG Paragraph 031 (Reference ID: 23b-031-20160519009) that tariff style planning obligations should not be sought from small scale developments. This has also been tested at appeal on several occasions. For example, APP/C3810/W/16/3146804 which concerned a single dwelling in nearby Aldwick.

This contribution is now required for all new residential developments within Zone B. The applicant had provided a legal agreement to cover this contribution. However, there was found to be a mortgagee who needed to be included within the Agreement. The applicant decided that the best way of proceeding would be to pay the contribution upfront on completion of the deed. The Councils solicitor thus drafted a new agreement to this effect and sent it to the applicant on the 15th of June. However, despite regular chasing, the agreement remains unreturned. Therefore, the application is currently contrary to policy ENV DM2 of the Arun Local Plan.

SUMMARY:

This is an acceptable residential conversion scheme given it is located within a highly sustainable town centre location and will bring an existing office use into line with other residential uses within the building.

There is conflict with the Arun Local Plan in respect of policy EMP DM1 and the loss of office space. However, it is not considered that this is so harmful so as to prevent the residential use of this small office. The proposal would therefore be acceptable in all regards, however, due to the failure to agree the mitigation in respect of Pagham Harbour, the application must be refused for the following reason.

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 The application fails to make a financial contribution towards the cost of providing accessible natural open green spaces to serve the Pagham area in order to mitigate the harm arising from the additional dwelling on the Pagham Harbour Special Protection Area and as such, the proposal is therefore not in accordance with Arun Local Plan policy ENV DM2 and paragraphs 175-176 of the National Planning Policy Framework.
- 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 applicant has been unable to overcome the issues and due to the harm which has been clearly identified within the reason for the refusal, approval has not been possible.