

Recommendation Report for

REF NO: BR/219/24/PD

LOCATION: 69 Aldwick Road
Bognor Regis
PO21 2NW

PROPOSAL: Prior notification under Schedule 2, Part 3, Class Ma for change of use to first and second floor to form 2 No 1-bed flats.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION This application is a prior notification under the Town and Country Planning Act (General Permitted Development) Order 2015 Part 3 Class MA to determine whether the Local Planning Authority have any objections with commercial, business and service uses to dwellinghouses.

SITE CHARACTERISTICS The site is occupied by a terraced three storey property with a pitched roof.

CHARACTER OF LOCALITY Predominantly three storey terraced properties with commercial uses at ground floor and residential above.

Aldwick Road is to the West of Bognor Regis town centre which accommodates a range of local businesses, services and residential uses.

None.

REPRESENTATIONS

None.

COMMENTS ON REPRESENTATIONS RECEIVED:

None.

CONSULTATIONS**CONSULTATION RESPONSES RECEIVED:**

WSCC Highways - No highway concerns are raised.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Built up area boundary.

DEVELOPMENT PLAN POLICIES

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans, The South Inshore & South Offshore Marine Plan and Made Neighbourhood Development Plans. The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

CLASS MA TESTS -

Condition MA.1 - Development is not permitted by Class MA -

(b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

OFFICER COMMENT:

From review of historical imaging, the application site has accommodated a relevant use (Class E) for more than 2 years. Additionally, the application form confirms the use remained within a relevant Use Class for the last 2 years.

- d) if land covered by, or within the curtilage of, the building;
- (i) is or forms part of a site of special scientific interest;
- (ii) is or forms part of a listed building or land within its curtilage;
- (iii) is or forms part of a scheduled monument or land within its curtilage;
- (iv) is or forms part of a safety hazard area; or
- (v) is or forms part of a military explosives storage area;

OFFICER COMMENT:

The site does not fall under any of the designations set out above, meets criteria.

- (e) if the building is within;
- (i) an area of outstanding natural beauty;
- (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;
- (iii) the Broads;
- (iv) a National Park; or
- (v) a World Heritage Site;

OFFICER COMMENT:

The site does not fall under any of the designations set out above, meets criteria.

(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

OFFICER COMMENT:

N/A .

(g) before 1 August 2022,

- (i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
- (ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

OFFICER COMMENT:

N/A.

(2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order

(a) the following classes of the Schedule as it had effect before 1st September 2020

- (i) Class A1 (shops);
- (ii) Class A2 (financial and professional services);
- (iii) Class A3 (food and drink);
- (iv) Class B1 (business);
- (v) Class D1(a) (non-residential institutions - medical or health services);
- (vi) Class D1(b) (non-residential institutions - creche, day nursery or day centre);
- (vii) Class D2(e) (assembly and leisure - indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;
- (b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

CONDITIONS MA.2

- (1) Development under Class MA is permitted subject to the following conditions.
- (2) Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to;
 - (a) transport impacts of the development, particularly to ensure safe site access;
 - (b) contamination risks in relation to the building;
 - (c) flooding risks in relation to the building;
 - (d) impacts of noise from commercial premises on the intended occupiers of the development;
 - (e) where;
 - (i) the building is located in a conservation area, and
 - (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
 - (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
 - (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;
 - (h) where the development involves the loss of services provided by-
 - (i) a registered nursery, or
 - (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost;

OFFICER COMMENT:

Criteria (a)(b)(c)(d)(f) will be assessed below in the Conclusions section of the report. Criteria (e)(g)(h) is not of relevance to this site or proposal.

- (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

OFFICER COMMENT:

N/A in this case as building is not 7 storeys or more, nor 18m in height.

(3) An application for prior approval for development under Class MA may not be made before 1 August 2021.

OFFICER COMMENT:

Meets criteria - application made after August 2021.

(4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if -

(a) for paragraph (e) of sub-paragraph (2) there were substituted

"(e) where-

(i) sub-paragraph (6) requires the Environment Agency to be consulted, a site-specific flood risk assessment;

(ii) sub-paragraph (6A) requires the Health and Safety Executive to be consulted, a statement about the fire safety design principles, concepts and standards that have been applied to the development,";

(b) in the introductory words in sub-paragraph (5), for "and highways impacts of the development" there were substituted "impacts of the development, particularly to ensure safe site access";

(c) after sub-paragraph (6) there were inserted

"(6A) Where the application relates to prior approval as to fire safety impacts, on receipt of the application, the local planning authority must consult the Health and Safety Executive.";

(d) in sub-paragraph (7) for "(5) and (6)" there were substituted "(5), (6) and (6A)";

(5) Development must be completed within a period of 3 years starting with the prior approval date.

(6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

OFFICER COMMENTS -

(5) and (6) are for compliance purposes only.

MA.3

Development meets the fire risk condition referred to in paragraph MA.2(2)(i) if the development relates to a building which will

(a) contain two or more dwellinghouses; and

(b) satisfy the height condition in paragraph (3), read with paragraph (7) of article 9A(fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

PRIOR APPROVAL PROCEDURE

The GPDO states that the provisions of Paragraph W shall apply in relation to any application and part (10) of paragraph W includes the following:

"(10) The Local Planning Authority must, when determining an application ...

(a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8);

(b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2019(a), so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and

(c) in relation to the contamination risks on the site-

(i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(b), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the

Secretary of State for the Environment, Food and Rural Affairs in April 2012(c), and (ii) if they determine that the site will be contaminated land, refuse to give prior approval." This allows the Local Planning Authority to have regard to any representations received and the NPPF but only in relation to the issues (a-g) stated above. The Local Planning Authority has 56 days to provide its comments to the applicant's agent or it is deemed that they have no objection and deemed consent is bestowed.

OTHER MATERIAL CONSIDERATIONS

There are no other material considerations to be weighed in the balance with the Development Plan.

CONCLUSIONS

KEY ISSUES FOR CONSIDERATION

Condition MA.2 of Class MA states

- (1) Development under Class MA is permitted subject to the following conditions.
- (2) Before beginning development under Class MA, the developer must apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to;

TRANSPORT IMPACTS AND SITE ACCESS

(a) transport impacts of the development, particularly to ensure safe site access; As part of the prior approval, the LHA can consider only whether the proposal is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site.

The site is located in a sustainable location within a retail setting and is in close proximity to the sea front and sustainable transport methods. WSCC Highways have no objection to the proposal.

The development would have an acceptable impact on transport and provide safe site access, in compliance with test (a) of Condition MA.2 of Class MA.

CONTAMINATION

(b) contamination risks in relation to the building;

The site is not on contaminated land and is an existing building with no alterations proposed.

Environmental Health have not provided comment although there are no concerns regarding contamination.

The application complies with this requirement of test (b) of Condition MA.2 of Class MA.

FLOODING

(c) flooding risks in relation to the building;

The site does not fall within a flood risk area. The residential uses are first and second floor level.

The application complies with this requirement of test (c) of Condition MA.2 of Class MA.

NOISE

(d) impacts of noise from commercial premises on the intended occupiers of the development;

The site is within a retail setting with surrounding residential uses at first floor and is unlikely to result in adverse noise impacts upon the wider area or upon the occupiers. Environmental Health have not

provided comment although an acoustic assessment was submitted with the application to demonstrate it would not result in adverse noise.

The proposal complies with test (d) of Condition MA.2 of Class MA.

HERITAGE

(e) where;

(i) the building is located in a Conservation Area, and

(ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the Conservation Area;

Not relevant to this site.

NATURAL LIGHT TO HABITABLE ROOMS

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouse;

The drawings indicate the use of each room and the position and dimensions of windows, doors and show the provision of adequate natural light to all habitable rooms (i.e., living rooms and bedrooms).

The application complies with this requirement of test (f) of Condition MA.2 of Class MA.

IMPACT ON INTENDED OCCUPANTS FROM USES IN AREA

(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;

The surrounding area consists retail units to the ground floor and residential units above with residential dwellings to the rear of the site also. The area is not characterised by or considered important by the LPA as an area for general/heavy industry, waste management, storage and distribution or a mix of such uses. The impact on the intended occupants of the development would be acceptable in this respect, and the application complies with test (g) of Condition MA.2 of Class MA.

The application complies with test (g) of Condition MA.2 of Class MA.

IMPACT ON HEALTH SERVICES

(h) where the development involves the loss of services provided by-

(i) a registered nursery, or

(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost;

This proposal does not result in the loss of such a service or centre.

INTERNAL SPACE STANDARDS

Regulation 3 of the Town and Country Planning (General Permitted Development (England) (Amendment) Regulations 2020 amends article 3 of the GPDO, meaning that for any application for prior approval made after 6th April 2021 that relates to Class MA development, for new dwellinghouses, the gross internal floor area must be 37sqm or more and must comply with nationally described space standards (NDSS).

The dwellings would have an internal floorspace of least 37sqm and as such meets the minimum internal floor space required for such a dwelling.

The proposal complies with the NDSS per the requirement of Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

SUMMARY

The change complies with the requirements under Class MA of the GDPO. However, emails were sent on the 5th November and 19th November to request that a S106 was completed. This was not provided until the 10th December and as such there has been insufficient time to process and complete the agreement. In the absence of a signed and complete Section 106 agreement, the application fails to make a financial contribution towards the agreed strategic access management measures to mitigate the harm to the Pagham Harbour Special Protection Area, and is to be refused.

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

OBJECTION

- 1 The application fails to make a financial contribution towards the agreed strategic access management measures to mitigate the harm to the Pagham Harbour Special Protection Area in conflict with ENV DM2 of the Arun Local Plan.