Recommendation Report for Planning Permission

REF NO: **BR/251/16/PL**

LOCATION: Unit 7a
Durban Road
Bognor Regis

PROPOSAL: Change of use from industrial unit (B1 Business) to Sports Gymnasium (D2 Assembly & Leisure)

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above. The applicant has confirmed that the gym will be operated as an 'extension' to the existing gym business (VK Gym) located two doors down at 8 Durban Road.
SITE AREA	665 square metres.
TOPOGRAPHY	Predominantly flat but with a slight slope up from the building entrance to the road.
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	2.4m high palisade fencing to the southern boundary with Durban House. 2.3m high chain link fence to rear (to Unit 9 Evans Place).
SITE CHARACTERISTICS	One half of a larger single storey building. Formerly occupied by Redfern Engineering (Precision Engineering) Ltd but now vacant. The other half is occupied by a courier company, Diamond Logistics. The building is part flat roofed and part shallow pitched. Materials include dark brown bricks, tan brown bricks, white render and metal cladding. Tandem parking arrangement to the front (4 spaces) and side driveway leading to rear yard area also accessed from Evans Place. Telecommunications mast within the rear yard.
CHARACTER OF LOCALITY	Part of a large industrial estate.

RELEVANT SITE HISTORY

BR/276/99/	Division of existing factory into two self contained units	ApproveConditionally 07-01-2000	
BR/132/15/PL	Change of use from Warehouse (B8 Storage & Distribution) to Gymnasium (D2 Assembly & Leisure)	Refused 03-08-2015	*Appealed*

Appeal:
Allowed+Conditions
24 03 2016

It is relevant to consider Application BR/132/15/PL which sought permission for the temporary change of use of a Class B8 warehouse building (Unit 9 Durban Business Centre, Durban Road) to a Class D2 gym. This was refused under delegated powers but the applicant submitted an appeal which was then allowed by the Planning Inspectorate.

The Inspector considered that although unit 9 had been vacant for over a year and marketed at a reasonable rent and quite widely, the period of vacancy was not unduly excessive and therefore the unit had a reasonable prospect of being used for B8 or B1 (business) uses. However, the Inspector noted that the proposal would lead to a number of jobs including employment for personal trainers. The inspector noted the policy objection under emerging Local Plan policy EMP DM1 but considered that significant weight should be placed on the National Planning Policy Framework's aims of supporting economic growth through the planning system and in respect of supporting the health & wellbeing of communities. The Inspector concluded that "Whilst there would be harm if permanent permission were granted owing to the permanent removal of a good quality B8/B1 unit from the pool of available units, the benefits of creating employment and contributing to economic growth and community health would in my view outweigh the temporary harm caused by a temporary planning permission."

The inspector imposed conditions limiting the permission to 6 years (as applied for) and requiring provision of an external secure cycle rack. Given the location of the site within an industrial area, the inspector did not consider it necessary to impose an hours of use restriction.

REPRESENTATIONS

Representations received:

Bognor Regis Town Council

"No objection"

Comments on Representations received:

Noted.

CONSULTATIONS

Environment Agency

Economic Regeneration

Consultations responses received:

ADC ECONOMIC DEVELOPMENT: "Economic Development object to this application. This is a modern industrial unit in good condition. The number of such units across the district is now few and this is particularly noticeable in the Bognor Regis area. Enquiries for units such as this is increasing and we consider that it is critical to retain a supply of accommodation for industrial purposes."

Comments on Consultation responses:

Comments noted.

POLICY CONTEXT

Designations applicable to site:

Built Up Area Boundary; and
Flood Zone 3.

DEVELOPMENT PLAN POLICIES

Arun District Local Plan 2003:	GEN2	Built-up Area Boundary
	GEN7	The Form of New Development
	GEN12	Parking in New Development
Publication Version of the Local Plan (October 2014):		EMP SP1 Employment land provision EMP DM1 Employment land: Development Management OSR DM1 Open Space, Sport and Recreation HWB SP1 Health & Wellbeing
Bognor Regis Neighbourhood Plan 2015 Policy 8i		Northern part of Durban Road Industrial Area

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.

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 in the determination of this planning application. Following 'publication' of the Local Plan a formal public consultation, examination and adoption process takes place.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The statement of representations procedure and statement of fact produced by the Council under regulation 19 explains that the consultation will take place on 30th October 2014 for six weeks.

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; and Yapton.

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 adopted Arun Local Plan and the Bognor Regis Neighbourhood Plan are both silent in respect of protecting employment land from alternative development. Therefore, it is necessary to consider the application against other material considerations.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background namely:

* The guidance contained within the National Planning Policy Framework;
* Proposed policy within the emerging Local Plan; and
* The appeal decision for application ref BR/132/15/PL as referred to above.

CONCLUSIONS

PRINCIPLE:

This site is located within the built-up area boundary where the principle of development is acceptable subject to other policies within the local plan. There are no policies in the current local plan that seek to protect employment land from alternative development. Therefore, the application would be determined in accordance with the National Planning Policy Framework (NPPF) and with regard to the Arun District Local Plan 2011-2031 (Publication Version).

POLICY DISCUSSION:

The NPPF states at paragraph 18 that: "The Government is committed to securing economic growth in order to create jobs and prosperity, ...". It goes on to state at paragraph 20 that: "To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century". Paragraph 22 then states that "Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose and that land allocations should be regularly reviewed".

Paragraph 22 also states that: "Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be

treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities." The NPPF also indicates that opportunities for sport and recreation can make an important contribution to the health and well-being of communities.

The Councils Economic Regeneration Officers have assessed the application and have raised an objection. They state that:

"This is a modern industrial unit in good condition. The number of such units across the district is now few and this is particularly noticeable in the Bognor Regis area. Enquiries for units such as this is increasing and we consider that it is critical to retain a supply of accommodation for industrial purposes."

They are clearly of the view that there is a reasonable prospect of the unit being let for commercial/industrial purposes in accordance with the guidance in the NPPF.

The emerging Local Plan (Arun District Local Plan 2011-2031 (Publication Version) (October 2014)) includes Policy EMP DM1 "Employment Land: Development Management". This sets out how existing premises will be protected and enhanced in order to maintain a supply of good quality commercial sites and premises to meet the needs of businesses and the local economy. This Policy states that:

"Existing employment sites and premises will be protected where there remains a good 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 redeveloped 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. Where acceptable to the Council, alternative land/premises or an equivalent financial contribution will be provided to enable the business uses to relocate or be replaced elsewhere; or

c. 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 applicant has stated that the property has been vacant for in excess of a year and that he purchased the freehold with the intention of expanding the gym. However, no evidence has been provided to demonstrate that the unit has been marketed for business uses. Evidence gathered by the Council suggests that the previous occupiers ceased their liability on 19th July 2016. The application was then submitted on 30 September 2016.

Notwithstanding the above, it should be noted that due to the current stage in preparing the

emerging Local Plan, its policies are considered to only attract limited weight. It is also noted that there are a number of unresolved objections to Policy EMP DM1 (paragraph 216 of the NPPF states that the weight to be afforded will also be affected by the extent to which there are unresolved objections to relevant policies).

The applicant has stated that the job creation numbers are difficult to ascertain due to the fact that Classes will be held in the new facility and personal trainers/class instructors are usually self-employed. The applicant suggests a job creation figure of around 2-4 full time equivalent staff and that this would also include a new staff member for the management of the facility.

Although there remains an objection from Economic Development and it is unclear whether the unit has been marketed for any length of time, it is considered that regard should be had to the previous appeal decision for application BR/132/15/PL. The appeal was granted on the basis that the benefits of creating employment and contributing to economic growth and community health would outweigh the temporary harm caused by a temporary planning permission. It is not considered that there is any reason to follow a different approach in respect of the current application.

THE NEIGHBOURHOOD PLAN:

Bognor Regis Neighbourhood Plan Policy 8i is relevant to applications within the Durban Road industrial estate. It states that:

"Development Proposals are encouraged that contribute to the development of this area into a demonstration project for self-build/self-commissioned low carbon working and living with a mix of uses: industrial, residential, employment, small scale workshops with high numbers of jobs to the floor area. The development should provide future access to the existing sewerage infrastructure as required by the relevant authorities."

However, this policy does not prevent applications for uses other than those listed in the policy and therefore there is no conflict with the application proposal.

FLOOD RISK:

The site lies in Flood Zone 3 which is a high risk zone. However, Environment Agency standing advice and the National Planning Practice Guidance (NPPG) defines the proposed gym use as being "Less Vulnerable" and goes on to state that such development is appropriate within Flood Zone 3. The applicant has provided a simple Flood Risk Assessment which confirm the above position. As such, it is not considered that there is any policy conflict.

HIGHWAYS, TRANSPORT AND PARKING:

The West Sussex Parking Standards (2003) set out a requirement for gym uses of 1 parking space per 22m2 of floor area. The proposed floor area is approximately 309 m2 and the parking requirement is therefore 14 spaces. The proposal has use of up to 12 parking spaces and is therefore 2 short. However, this location allows people in nearby areas to walk or cycle to the premises. A condition requiring secure cycle parking will be imposed.

SUMMARY:

It is considered that a temporary 6 year permission will ensure that there is no permanent harm to the availability of business units within this part of Bognor Regis whilst also bringing a currently empty building back into use, securing new jobs and contributing to the vitality of the existing VK Gym business. It is therefore recommended that permission be granted subject to the following conditions.

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) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval 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

APPROVE CONDITIONALLY

1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

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

2 The use hereby permitted shall be carried on only for a limited period being a period not exceeding 6 years from the date of this decision letter.

Reason: In accordance with the National Planning Policy Framework and on the grounds that harm would arise if permanent permission were granted owing to the permanent removal of a good quality B8/B1 unit from the pool of available units.

3 The development hereby approved shall be carried out in accordance with the following approved plans:

1:1250 Site Plan;
1:200 Block Plan;
1:100 "Existing Plan for 7A Durban Road PO22 9Q7"; and
1:100 "Proposed Plan for 7A Durban Road PO22 9Q7".

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policy GEN7 of the Arun District Local Plan.

4 The use hereby permitted shall not be carried on until a cycle rack has been installed outside the premises. The cycle rack shall thereafter be retained for as long as the use hereby permitted takes place at the premises.

Reason: To ensure that adequate and satisfactory provision is made for the parking of bicycles in accordance with policies GEN7 and GEN12 of the Arun District Local Plan.

5 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 assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.