

Recommendation Report for Planning Permission

REF NO: BR/289/20/PL

LOCATION: 39 Bedford Street
Bognor Regis
PO21 1SH

PROPOSAL: Continuance of use without compliance with conditions 3-disposal of litter, 4-Construction Management Plan & 5-noise control imposed under BR/2/20/PL.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

This is an application under Section 73 of the Town and Country Planning Act 1990 (determination of applications to develop land without compliance with conditions previously attached). This sets out that:

"(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application."

The conditions in question are as follows:

(3) The use hereby permitted shall not commence until provision has been made within and in the vicinity of the site for the disposal of litter resulting from the use, and such provision shall be in accordance with details agreed in writing with the Local Planning Authority. The details so agreed shall be retained in perpetuity.

(4) No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters,

- the anticipated number, frequency and types of vehicles used during construction,
- the method of access and routing of vehicles during construction,
- the parking of vehicles by site operatives and visitors,
- the loading and unloading of plant, materials and waste,
- the storage of plant and materials used in construction of the development,
- the erection and maintenance of security hoarding,
- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
- details of public engagement both prior to and during construction works.

(5) No development shall commence until a scheme is submitted to and approved by the Local Planning Authority which specifies the provisions to be made for the control of noise emanating from the site. The approved scheme shall thereafter be implemented and permanently maintained.

Reason: To protect the amenities of occupiers of adjoining properties in accordance with Arun Local Plan policy QE DM1. This is required to be a pre-commencement condition because it is necessary to demonstrate that the development will not impact upon residential amenity.

SITE AREA	324.86 sqm
TOPOGRAPHY	Predominantly flat.
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	The site is open plan.
SITE CHARACTERISTICS	Flat roofed two storey brick property with a single storey side projection attached to the rear of Nos.42,44 Bedford Street Crescent surrounded with local amenities.
CHARACTER OF LOCALITY	To the rear of London Road within with a small open space and a public toilet to the front. Locally listed buildings along London Road to the north-east and the rear entrance to Morrisons and Multi-storey Car Park to the south-west.
None	

REPRESENTATIONS

Bognor Regis Town Council: No objection.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

ADC ENVIRONMENTAL HEALTH - No objections/comments to removal of condition 4 but condition 5 should be remained as this relates to the proposed use.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Designation applicable to site:

Town Centre Retail Boundary
 Within the Built Up Area Boundary
 2km Buffer for Site of Special Scientific Interest
 Pagham Harbour Zone B

DEVELOPMENT PLAN POLICIES

[Arun Local Plan 2011 - 2031:](#)

DDM1	D DM1 Aspects of form and design quality
DDM4	D DM4 Extensions&alter to exist builds(res and non-res)
DSP1	D SP1 Design
EMPDM2	EMP DM2 Enterprise Bognor Regis
ENVDM2	ENV DM2 Pagham Harbour
ENVDM5	ENV DM5 Development and biodiversity
QEDM1	QE DM1 Noise Pollution
QESP1	QE SP1 Quality of the Environment
RETDM1	RET DM1 Retail development
SDSP1	SD SP1 Sustainable Development

[Bognor Regis Neighbourhood Plan 2015 Policy 4](#) Reducing underuse of property in the town centre
 Bognor Regis Neighbourhood Plan 2015 Policy 8G Hothampton Car park site, Queensway

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 - 2031, West Sussex County Council's Waste and Minerals Plans 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.

The policy 3 "Old Town Restaurant and Cultural Quarter" and policy 4 "Reducing Underuse of Property in the Town Centre" of the Bognor Regis Neighbourhood Plan 2015 are considered to be relevant to

determination of this application.

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 partly to comply with relevant Development Plan policies in that the removal of conditions 3 and 4 imposed under BR/2/20/PL due to the scale of the proposed works and the fact that the applicant does not own any external space to the front or to the rear of the property are not required anymore but it would not comply in that that the removal of condition 5 would have an adverse impact on the amenity of occupiers of nearby properties if noise is not appropriately controlled and pose a concern.

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

BR/2/20/PL was granted subject to the imposition of conditions. The current application is to remove conditions 3,4 and 5.

Condition 3 seeks the provision for the disposal of litter resulting from use. The condition stated that:

The use hereby permitted shall not commence until provision has been made within and in the vicinity of the site for the disposal of litter resulting from the use, and such provision shall be in accordance with details agreed in writing with the Local Planning Authority. The details so agreed shall be retained in perpetuity.

Condition 4 seeks the provision of a Construction Management Plan. The condition stated that:

No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters,

- the anticipated number, frequency and types of vehicles used during construction,
- the method of access and routing of vehicles during construction,
- the parking of vehicles by site operatives and visitors,
- the loading and unloading of plant, materials and waste,
- the storage of plant and materials used in construction of the development,
- the erection and maintenance of security hoarding,
- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
- details of public engagement both prior to and during construction works.

Condition 5 seeks the provisions for the control of noise emanating from the site. The condition stated:

No development shall commence until a scheme is submitted to and approved by the Local Planning Authority which specifies the provisions to be made for the control of noise emanating from the site. The approved scheme shall thereafter be implemented and permanently maintained.

The applicant is seeking to remove the above conditions because they consider that it does not meet the tests for the imposition of conditions as set out in national planning policy guidance.

PRINCIPLE

Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

ASSESSMENT OF 6 TESTS

1. Necessary;

Condition 5 is necessary as it seeks to ensure that the amenity of occupiers of nearby properties would not be affected by noise disturbance from the proposed development. Environmental Health have objected to the removal of this condition.

2. Relevant to planning;

The proposed development is situated within Town Centre Retail Boundary where policy RET DM1 of the Arun Local Plan applies:

- c) There is no detrimental effect on the character or amenities of the area through smell, litter or noise.

3. Relevant to the development to be permitted;

The proposal is for an A3 use to a Cafe that it would be catered to children play area and seating at the ground floor and sensory play, baby groups and parties. Condition 5 was imposed due to the vicinity of residential properties along Crescent Road with rear gardens to the north-west and the fact that the proposed use could potentially cause noise disturbance. It is considered that these conditions would enable the application to fit in with the wider aims for development within this area.

4. Enforceable;

Noise can be a 'statutory nuisance' (covered by the Environmental Protection Act 1990).

The local Council use condition relating to noise to enforce a reduction in the noise.

5. precise and 6. reasonable in all other respects.

The condition 5 is reasonable in all other respects and will provide precision with details to be submitted by the applicant and to be agreed with the relevant departments within the Council.

Environmental Health recommended that condition 5 (noise) remains as this relates to the proposed use of the building.

ADC Environmental Health are satisfied that due to the scale of the proposed work condition 4 (Construction Management Plan) is not required.

It is agreed that the condition 3 is not necessary and reasonable since the applicant is not an owner of any land to the front or to the rear of the property.

Therefore it is considered that conditions 3 and 4 can be removed as they are not relevant to development permitted.

Condition 3 related to the provision for the disposal of litter resulting from the use in vicinity of the site is not reasonable since the applicant have no control of land outside of proposal building.

With regards to condition 4 related to provision of a Construction Management Plan, Environmental Health is satisfied that due to the scale of the proposed development and a low level of works, condition 4 (CMP) is not required.

CONCLUSION:

It is recommended that, having regard to, the above assessment that condition 5 of application ref. BR/2/20/PL will remain as it relate to the proposed use of the building and conditions 3 and 4 will be removed. The other conditions previously imposed in planning decision BR/2/20/PL, except conditions 3 and 4 which were approved for removal, still apply.

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 the planning permission under BR/2/20/PL (9 April 2020).

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

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

Location Plan

Proposed Ground Floor and First Floor Plans received on 20/03/2020.

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policy D DM1 of the Arun Local Plan.

- 3 No development shall commence until a scheme is submitted to and approved by the Local Planning Authority which specifies the provisions to be made for the control of noise emanating from the site. The approved scheme shall thereafter be implemented and permanently maintained.

Reason: To protect the amenities of occupiers of adjoining properties in accordance with Arun Local Plan policy QE DM1.

- 4 No commercial goods shall be loaded, unloaded, stored or otherwise handled within the application site outside the hours of 7.00 to 19.00 Monday to Friday, 8.00 to 18.00 Saturday or any time on Sunday or Public/Bank Holidays.

Reason: To protect amenity of local residents in accordance with policy QE DM1 of the Arun Local Plan.

- 5 Construction/demolition activities shall take place, other than between 08:00 to 18:00 hours (Monday to Friday) and 08:00 to 13:00 hours (Saturday) with no works taking place on Sunday or Bank Holidays unless they are not audible outside of the application site.

Reason: To protect the amenity of local residents in accordance with policies QE SP1 and QE DM1 of the Arun Local Plan

- 6 No external lighting shall be installed until details have been submitted to, and approved in writing by the Local Planning Authority prior to the commencement of the development. This submission shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles). The approved scheme shall be installed, fully assessed by a competent individual when operational to ensure no light creep/bleed, maintained and operated in accordance with the approved details unless the Local Planning Authority gives its written consent to the variation.

Reason: To protect local residents from light pollution and to control the residential amenities of the local environment in accordance with Arun Local Plan policies QE SP1, QE DM2 and D DM1.

- 7 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.

- 8 INFORMATIVE: Notwithstanding that three conditions were applied for, this permission relates

to the removal of conditions 3 and 4 of planning permission BR/2/20/PL only. The applicant is advised and reminded that the planning conditions attached to the original planning permission number BR/2/20/PL remain in force (except conditions 3 and 4) and must be complied with. This decision only relates to the removal of Conditions 3 and 4 of that planning permission.

9 INFORMATIVE: Prior to trading, it may be necessary for the applicant to apply to the Council's Licensing Team for an operative and/or premises licence to carry out the sale of alcohol. For more information, please contact the Arun District Council Licensing Team Manager at licensing@arun.gov.uk or on 01903 737755.

10 INFORMATIVE: The premises may require registration under the Food Safety Act 1990 and will need to comply with the standards contained in the relevant Food Hygiene Regulations prior to becoming operational. The applicant is advised to contact the Environmental Health Service on 01903 737755 for further information.

[www1.arun.gov.uk/officeforms/EH_FoodBusinessApplication.ofml?id='+Math.random\(\)](http://www1.arun.gov.uk/officeforms/EH_FoodBusinessApplication.ofml?id='+Math.random())