

Recommendation Report for Planning Permission

REF NO: BR/77/19/PL

LOCATION: Durban Road Business Centre, Unit 8
Durban Road
Bognor Regis
PO22 9FE

PROPOSAL: Change the use from an industrial unit (B1 Business) to a fitness gym (D2 Assembly or Leisure).

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above. No external alterations are proposed.
SITE AREA	0.028ha
TOPOGRAPHY	Predominantly flat.
TREES	None affected by the development.
BOUNDARY TREATMENT	2.5m metal spiked fence, surrounding the car parking area adjacent to the site.
SITE CHARACTERISTICS	Two storey metal industrial building with shallow gable roof and parking to front. The rear of the building faces adjoins unit 5 which faces Barnham Road.
CHARACTER OF LOCALITY	The unit is in a commercial/Industrial park and is served by hard standing loading and parking area. This unit makes up one of a number of a two storey shallow gable roof units in a metal industrial building approached by access from Durban Road.

RELEVANT SITE HISTORY

BR/132/15/PL	Change of use from Warehouse (B8 Storage & Distribution) to Gymnasium (D2 Assembly & Leisure)	Refused 03-08-15 Appeal: Allowed+Conditions 24-03-16
BR/101/15/PL	Change of use from B1 (Business) to D2 (Assembly & Leisure) for use as softplay for up to 5 years but to extend the age limit for school holidays including a cafe.	
BR/287/06/	Erection of 2 no. additional units on site, light industrial.	ApproveConditionally 14-11-06

History noted.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Bognor Regis Town Council

No objection.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

Environmental Health

Economic Regeneration

CONSULTATION RESPONSES RECEIVED:

Economic Development would normally object to this type of application. The Team have been working with the applicant for some time and are fully aware of the reasons for the change of use as a requirement. Therefore to save a local business and assist with their growth the proposal is supported.

Environment Agency-

Before Environmental Health are able to issue a formal response, the following points need addressing:

The hours of opening are stated at 06.00 - 22.00 every day, including Sundays and Bank Holidays - are there any restrictions on hours of operation for the surrounding units?

Will there be any additional/different lighting inside or outside the building?

Will there be any provision for WC/showers or refreshments for staff/customers)?

Has there been any acoustic assessment produced for the proposed change of use (e.g. noise from machines, plant, dropping of weights, music, etc.)?

Has there been any thermal assessment produced for the proposed change of use?

Will the proposed change of use require any plant, such as air conditioning and/or ventilation units?

Will the proposed changes require any work to the existing external hard standing?

Comments received: 14th May 2019 (following the operators response)

No objection providing the proposals are controlled so a statutory nuisance is not created by inappropriate light or noise. The applicant has confirmed the existing lighting will not be altered, this element is no longer considered likely to be an issue.

In regard noise, would it be possible to add a condition requiring the gym operator to produce a noise management plan to demonstrate that any potential noise has been considered and will be effectively managed. This should include noise from plant (for example, air conditioning/heating/ventilation, etc.), the gym equipment/classes (for example, dropping weights/music) and customers (for example, people/vehicle noise of people arriving/leaving).

The points which are not applicable can be included as 'not applicable at this stage' or similar and a statement confirming that the operator will regularly review the plan and update it when necessary should be included. I have drafted a possible condition below and attached some guidance containing a template NMP which may be of assistance to the applicant.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted

POLICY CONTEXT

Designation applicable to site:

Within built up area boundary.

DEVELOPMENT PLAN POLICES

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

DDM1	D DM1 Aspects of form and design quality
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
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.

The relevance of the BRNDP has been considered in this report. This examines the role the plan plays in its objectives to supporting local business in order to stimulate economic development in the immediate area.

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 not to conflict with relevant Development Plan policies in that it would in a loss of a B8 (storage and distribution) unit without exceptional circumstances.

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

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.

The development involves the change of use of the unit into a fitness gymnasium and allow for the expansion of Unit 9 into Unit 8.

ENVIRONMENTAL & COMMERCIAL VIABILITY

Although the applicant applies for a change of use from B1 to D2, under permitted development rights the LPA accepts for a change of use from B8 to B1, therefore the use class could be either B1 or B8 in its current form. The floorspace is open plan and on one level with a high ceiling. The unit includes a large roller shutter door, it has one WC and shared car parking up to 6 spaces in a parking area adjacent to the site.

The NPPF para 80 states "planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development" in order to create jobs and prosperity,". It goes on to state at paragraph 81. referring to planning policies.... criteria d) "be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices ...and to enable a rapid response to changes in economic circumstances".

Policy EMP DM1 of the Local Plan "Employment Land: Development Management" 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:

"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.

Environmental Health Officers have considered the proposal and have no objection providing the proposals are controlled so that a statutory nuisance is not created by inappropriate light or noise.

The applicant confirms existing lighting will not be altered, this can be controlled by condition to limit any from being added. In regard to noise, a condition requiring the gym operator to produce a noise management plan to demonstrate potential noise has been considered and will be effectively managed. This should include noise from plant (air conditioning/heating/ventilation, etc.), gym equipment/classes (e.g. dropping weights/music) and customers (e.g. people/vehicle noise of people arriving/leaving).

A statement confirming the operator will regularly review the plan and update it when necessary should be included. Guidance in the form of an informative is added to assist the operator - this shall include a template NMP which may be of assistance to the applicant.

Understanding the context of the site and neighbouring uses is material to the planning case. Unit 9 was allowed a temporary D2 change of use (BR/132/15/PL) as the inspector felt it was acceptable for a B8 to D2 use for a temporary period of 6 years up until March 24th 2022.

The Council require evidence that the site has not been made deliberately unviable, and the marketing has been actively conducted for a reasonable period of time and that alternative employment uses have been fully explored. A statement from the agent confirms the unit as a B8 unit has been marketed at a competitive market rent for a period of 12 months. Officers are assured it has been tested against the above policy and is an unviable use as B1/B8 allows for alternative uses to be considered.

As per the inspectors decision and the NPPF opportunities to find alternative uses that bring building into use and stimulates the economy are supported by Officers.

Officers consider the view of the Economical Development team and the decision of the Inspector under (BR/132/15/PL) as a material consideration for this case and accept that the unit should be allowed a temporary permission inline with the dates approved by BR/132/15/PL.

The operator is accepting of the approved change of use based on a temporary period to enable the continued use for future business trading at the site. This approach to the provision of flexible business uses is an advantage to the local area and supports the objectives of the Bognor Regis Neighbourhood Plan in support of the Arun Local Plan.

NEIGHBOURING AMENITY

The hours of operation of the current unit are 24hr. The proposed hours are restricted from 06:00 to

22:00. On consulting Environmental Heath they ask by virtue of the nature of the use as D2 that Officers consider these hours are acceptable, and shall not impact on the amenity of neighbouring occupiers. We consider the recreational use restricted to the hours above shall mitigate any concerns over future noise generation which is also conditioned by EH requirements which shall mitigate any concerns. The site is commercial in nature therefore as the adjoining units have a 24hr use to service there B8 function the officers therefore consider the hours of operation are acceptable and would not course unforeseeable harm to the locality.

TRANSPORT, ACCESS AND PARKING:

The site is located in a self contained commercial area, it is in close reach of public transport bus stops and free on road parking as well as sufficient allocated parking. It is not considered that parking generation would lead to a highways safety issue owing to parking availability.

As such it is considered that the proposal would comply with D DM1, QE DM1, ENVDM2, T SP1 of the Arun Local Plan.

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 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 (negative, Neutral or positive) 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 is considered to have a neutral impact.

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 uses of the building hereby permitted shall be discontinued permanently and the land restored to its former use, on or before the expiration of the period ending on 24 March 2022.

Reasons: To enable the Local Planning Authority to review the special circumstances under which this permission is granted and in accordance with ENVDM1.

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

Floor Plan 14387 01

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.

- 4 Within three months from the date of this permission a noise management plan shall be submitted to and approved in writing by the Local Planning Authority, which specifies the provisions to be made for the control of noise emanating from the property. Thereafter, the use of the development shall operate in accordance with the details so approved unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenity of local residents in accordance with Policy QE DM1 of the Adoption Arun Local Plan 2011 - 2031

- 5 The hours of opening hereby approved shall be:

06.00 to 22.00 hrs.

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.

- 6 No additional lighting shall be provided externally to the unit hereby approved without the written consent of the Local Planning Authority.

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.

- 7 Notwithstanding the provisions of any Town & Country Planning General Development Order or Use Classes Order (or any Order revoking or enacting that Order), the use hereby permitted shall be restricted to - a fitness Gym (D2).

Reason: To enable the Local Planning Authority to consider the acceptability of alternative use, in accordance with Arun Local Plan policy D DM1.

- 8 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 within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.