

Recommendation Report for

REF NO: BR/79/22/PD

LOCATION: 83 Aldwick Road
Bognor Regis
PO21 2NW

PROPOSAL: Prior Notification under Schedule 2, Part 3, Class M for the change of use from shop (Use Class E) to 1 No dwelling house (Use Class C3).

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 building is a two-storey red brick structure with gable-ended pitched roof and shop front and clock in between first floor windows. It is on the south side of Aldwick Road between the junction with Neywood Lane and Park Road. To the rear of the building is a sizeable two storey rear addition with flat roof and a link structure between the main building and the addition. The ground floor of the main property and extension is in commercial use with 5 bedrooms at first floor. There is no vehicle access to the rear of the property.
CHARACTER OF LOCALITY	Predominantly three storey terraced properties with commercial uses at ground floor and residential above or within rear extensions. Buildings are set in medium plots abutting the highway in an urban environment. To the rear residential dwellings along with some care-homes are lining Stocker Road. Aldwick Road to the West of Bognor Regis town centre accommodates a range of local businesses, services and residential uses.

RELEVANT SITE HISTORY

BR/4/22/PL	Enlargement of existing HMO (Sui Generis). Single storey rear extension, rear roof dormer, front and rear rooflights (resubmission following BR/79/21/PL).	Refused 03-03-22
BR/79/21/PL	Rear extensions and loft conversion to form enlarged HMO (Sui Generis) (resubmission following	Refused 18-05-21

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Two applications for conversion to a 16 bed HMO were refused in 2021.

REPRESENTATIONS

No representations were received.

COMMENTS ON REPRESENTATIONS RECEIVED:

None.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

WSCC HIGHWAYS

The application does not propose any parking provision or vehicular access to the dwelling. The LHA appreciate the sustainable location of the site, situated within close proximity to local shops, bus services and a train station, and consider that there are viable options for sustainable modes of transport to reduce the reliance upon the private car. A Transport Statement was carried out in March 2021, with parking stress at 74%. Whilst on-street car parking is limited in the immediate vicinity we would not consider that highway safety would be detrimentally affected through the proposed nil car parking provision. Cycle storage is proposed within the rear garden area, for at least three cycles, to further encourage sustainable transport methods.

ENVIRONMENTAL HEALTH

No objection, although the following matters must be considered regarding noise from the road and nearby commercial and residential units and construction hours.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted. The conditions relating to road noise is not necessary. The unit is set back from the road behind a commercial unit and behind that of existing residential units.

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.

The Bognor Regis Neighbourhood Development Plan was made on 11/11/15 although none of the policies are relevant to this proposal.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

This application falls to be determined under the provisions of Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), in respect of a development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

CLASS MA TESTS -

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

(a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;

OFFICER COMMENT:

The planning statement confirms the building has been vacant for more than three months.

(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:

The unit was last in use as a shop and was occupied as such continuously since at least 2009 up until the site was vacated.

(c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres.

OFFICER COMMENT:

The proposed site is smaller than 1500sqm.

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

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;

OFFICER COMMENT:

Criteria (a) - (g) will be assessed below in the Conclusions section of the report.

(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:

N/A in this case.

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

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 April 2022.

(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)";

OFFICER COMMENT:

N/A.

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

(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 compliance only.

The Town and Country Planning (General Permitted Development (England) (Amendment) Regulations 2020 provides an amendment as follows:

Regulation 3 amends article 3 of the GPDO as follows:

Amendment in relation to space standard

3. In article 3, after paragraph (9) insert

"(9A) Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouses

(a)where the gross internal floor area is less than 37 square metres in size; or

(b)that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015(3).

Part 4 transitional and saving provisions states:

(2) The amendment made by regulation 3 of these Regulations does not have effect in relation to development under

(a)Class M, N, O, P, PA or Q of Part 3 of Schedule 2; or

(b)Class A, ZA, AA, AB, AC or AD of Part 20 of Schedule 2,

where an application for prior approval is submitted before 6th April 2021.

OFFICER COMMENT:

The application for prior approval was submitted after 6th April 2021 and compliance with space standards will be addressed in the conclusions section of the report.

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. Advice has been received from the DCLG which confirms that it is not possible to refuse prior approval on the basis of an issue/impact not listed 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

It is considered that there are/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;

This application does not provide any parking provision however given its location within close proximity to the sustainable travel methods such as bus stops and a train station this is acceptable. A transport assessment was submitted which demonstrated that the parking stress was at 74%.

WSCC do not consider that highway safety would be detrimentally affected through the proposed nil car parking provision. It is anticipated that the level of traffic generated by the proposed dwelling would be of a similar nature to the existing use, with parking for the retained commercial use available within 1-hour parking bays and unrestricted parking available within nearby roads for the residential use.

Cycle provision has been shown on the plans and will be conditioned.

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 considered to be contaminated land and is an existing building with no alterations proposed.

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

FLOODING

(c) flooding risks in relation to the building;

The site is in Flood Zone 1 (lowest risk of flooding) so no Flood Risk Assessment (mitigation measures) is required. The proposals would not lead to flood risk to the building or elsewhere and the application would comply 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 located to the rear of an unoccupied commercial unit within a relatively busy local high street. There are however other residential uses surrounding the site and to the first floor of the unit and the use will not result in adverse noise impacts. The proposal would comply 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;

Non-applicable as building is not located in a conservation area. Complies with test (e) of Condition MA.2 of Class MA.

NATURAL LIGHT TO HABITABLE ROOMS:

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

The submitted 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 would comply with this requirement of test (f) of Condition MA.2 of 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.

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 relates to Class M(A) development, for new dwellinghouses, the gross internal floor area must be 37sqm or more and must comply with nationally described space standards. The space provided exceeds the minimum standards required.

DESIGN AND EXTERNAL APPEARANCE:

Under Class MA it is not possible to apply for any external changes. BR/73/22/PL has been submitted which seeks external alterations.

The change complies with the requirements under Class MA of the GDPO. However, in the absence of a signed 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) 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

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.