

Recommendation Report for Planning Permission

REF NO: EP/3/22/PL

LOCATION: 2 The Street
East Preston
BN16 1JJ

PROPOSAL: Change of use of temporary outside seating area to the rear of the restaurant to be a permanent seating area for the consumption of food and beverages for our customers to use all year round. This application is in CIL Zone 4 (Zero Rated) as other development.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	This application seeks planning permission for change of use of temporary outside seating area to the rear of the restaurant to be a permanent seating area for the consumption of food and beverages for our customers to use all year round. The proposal incorporates new dining area, flower beds, BBQ and pizza oven and canopy with lighting elements at rear.
SITE AREA	320 sq.m.
TOPOGRAPHY	Predominantly flat.
BOUNDARY TREATMENT	2 metre close boarded fence.
SITE CHARACTERISTICS	A detached single storey restaurant building on a small plot of land which is currently used for 4 parking spaces and a service area for use by the restaurant.
CHARACTER OF LOCALITY	Village centre with some residential properties in the area.

RELEVANT SITE HISTORY

EP/20/21/PL	Removal of condition 1 imposed under EP/160/20/PL to remove only condition and the seating area to be permanent. This application may affect the setting of a listed building.	ApproveConditionally 28-04-21
EP/60/20/PL	Convert part of current car park area to the rear & side of restaurant into an outside seating area with preparation space for woodfired pizza oven & bbq area. This application may affect the setting of a listed building.	ApproveConditionally 12-08-20

REPRESENTATIONS

East Preston Parish Council

East Preston Parish Council unanimously has no objection to this application. The Parish Council had received one expression of concern from a member of the public but the committee did not feel this was sufficient for it to object to this application.

12 responses were received from neighbours. 10 neighbours objected to this application based on noise, lighting and view grounds, disturbance, continued impact on daily quality of lives, detrimental impact on my mental health and wellbeing, detrimental to the village environment, previous temporary planning permission was granted under special circumstances, reduce the value of properties and the condition attached to previous approval.

2 neighbours have expressed concerns about noise level but are prepared to tolerate the existing arrangement as there are a minimum of tables at the rear.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

ADC Environmental Health

The Environmental Health Officer objected to this application and recommend refusal based on odours, noise and potential lighting issues affecting nearby residential properties. However, the Environmental Health Officer advised that should a planning permission be granted then previously suggested operation hours condition should be attached.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Designation applicable to site:

Within built-up area boundary.

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
HERDM1	HER DM1 Listed Buildings
QEDM1	QE DM1 Noise Pollution
QEDM3	QE DM3 Air Pollution
TSP1	T SP1 Transport and Development

[East Preston Neighbourhood Plan 2014 Policy 1](#)

Housing - General Principles

East Preston Neighbourhood Plan 2014 Policy 4

Design in Character Area Three

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

SUPPLEMENTARY POLICY GUIDANCE:

SPD11	Arun Parking Standards 2020
-------	-----------------------------

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.

Polices 1 and 4 of the East Preston Neighbourhood Plan are considered relevant to 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 existing use of land was considered to comply with relevant Development Plan policies in that special circumstances as it applied to the COVID 19 pandemic at that point in time. The existing use of land was assessed by neighbours and the Council over a period of time with regard to objections of noise and pollution. The existing temporary use had the benefit of providing social distancing at the restaurant giving it a chance to stay open as a viable concern and therefore remain as an established and valuable village facility.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to be weighed in the balance with the Development Plan.

CONCLUSIONS**PRINCIPLE**

This application seeks planning permission for change of use of temporary outside seating area to the rear of the restaurant to be a permanent seating area for the consumption of food and beverages to use all year round. The key policies are D DM1 and D DM4 of the Arun Local Plan.

Policy D DM1 sets out 13 design aspects of which applications should be assessed against. These include: Character, Appearance, Impact, Innovation, Adaptability, Crime Prevention, Trees, Public realm, Layout, Public Art, Density and Scale.

Policy D SP1 - Design requires that development proposals should reflect the characteristics of the local

area by amongst other things in terms of its character and design.

Policy HER DM1 requires that regard be had to development that could potentially affect the setting on a nearby Listed Building.

Policies QE DM1 and QE DM3 of the Arun Local Plan seek to control noise and odour pollution from proposed development to acceptable levels

Policy 1 of the East Preston Neighbourhood Development Plan sets out general principles for development within the Parish. Part (i) relates to the scale, density, massing, height, landscape design, layout and materials of development proposals, and how proposals must reflect and enhance the established character of the area.

Policy 4 of the East Preston Neighbourhood Development Plan sets out the criteria for development within Character Area Three. This supports proposals which would sustain and enhance the historic character of the area and employ building materials that harmonise with those used in existing buildings.

NPPF para 92 c) & d) states that to provide social recreational and cultural facilities and services planning decisions should guard against the unnecessary loss of valued facilities and services and ensure that established shops, facilities and services are able to develop and modernise.

The principle of the proposed development has been established under planning permission (EP/20/21/PL) within the built-up area boundary under special circumstances, subject to material considerations and policies D DM1 and HER DM1, of the Arun Local Plan which will not be acceptable in the present circumstance.

VISUAL AND RESIDENTIAL AMENITY

The proposed change of use has been in existing on temporary extant planning permission and will not be readily visible in the street scene. The appearance of the area would not be significantly affected as the change of use would not be prominently sited being below the level of the boundary fence, tables chairs, pizza oven etc. and is associated with a complimentary established restaurant use on the site. Due to the existing use of land and the scale of the proposed change of use, it is not considered that the proposed change of use will result in significant impacts on visual amenity of the area.

It is important to note that there was a need for this type of development due to the COVID 19 outbreak and the need for social distancing between restaurant tables. These had affected the ability of restaurants to remain viable and open. The prevailing COVID 19 public health arrangement has changed significantly in recent times. Therefore, this proposal will not be assessed under that special circumstances under the extant planning permission was granted.

However, the primary impact is the outdoor noise and odours caused by the pizza oven and the use of outdoor space by customers. There are residential properties which abut the site at the rear. The Environmental Health Officer has commented that the impact would be unacceptable, objected to this application and recommended a refusal based on odours, noise, potential lighting issues and recent complaints from nearby residential properties. Similarly, there have been objections from neighbours based on noise, lighting and view grounds, disturbance, continued impact on daily quality of lives, detrimental impact on my mental health and wellbeing, detrimental to the village environment, previous temporary planning permission was granted under special circumstances, reduce the value of properties and the condition attached to previous approval. Whilst the East Preston Parish Council acknowledged an objection from a member of the public but do not object to the application.

The application seeks the continual use of land as external eating and seating area following the expiration of planning permission (EP/20/21/PL) through a change of use from a temporary use to permanent use. The proposed change of use temporary to permanent use will significantly adversely affect the residential amenities of neighbouring occupiers and has the potential to further exacerbate their residential amenities.

However, there are objections which have been substantiated by the Environmental Health Officer that noise and odour have been problems. Planning permission, EP/20/21/PL, was granted to assess whether a problems would ensue and therefore an opportunity to reassess when it needs renewing. This amounts to special circumstances to allow a 6 month permission to be granted in this case so that the use of the site can be monitored before the Summer months of 2021.

Due to the noise and disturbance that has been generated as evidenced by the Environmental Health officer a permanent use of land as proposed will result in continued significant adverse harm on residential amenities. It is considered that the proposed development will result in significant adverse harm to the residential amenities of neighbouring occupiers to justify a refusal in this circumstance. The proposal is not in accordance with D DM1, D DM4, QE DM1 (Noise Pollution) and QE DM3 (Air Pollution) of the Arun Local Plan.

HERITAGE

Para. 189 of the National Planning Policy Framework (NPPF) requires that a heritage statement be supplied in the event of an application affecting heritage assets which the applicants have not done. The application falls to be assessed against para 130 of the NPPF. The scheme is considered to minimise conflict between the Listed Buildings and the site as the development would be hidden behind a fence to the rear of the road frontages of the site.

There is no comments from the Conservation Officer. I refer to the Conservation Officer's comments on extant planning permission (EP/60/20/PL) that the development would not cause harm to the significance of the setting of the heritage asset. Under para 197 of the NPPF. It is considered on balance that the scheme would not cause any harm or loss to Listed Buildings.

The development is considered to protect the setting of the listed building in accordance with policy HER DM1 of the Arun Local Plan.

PARKING

The proposed development is not considered to generate significant increase in traffic and parking demand to exacerbate the existing traffic and parking condition. No additional parking is proposed. However, this is not considered reason for refusal given that this is likely to be an evening use when more on-street parking would be available. The proposal is therefore considered to accord with Policy T SP1 of the Arun Local Plan.

CONCLUSION

Due to the existing noise and odour issues, the proposed change of use to permanent use of land is not deemed to accord with relevant development plan policies, it is recommended that the application be refused based on this reason.

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

REFUSE

- 1 The proposed development will result in significant and permanent adverse harm to the residential amenities of neighbouring occupiers by way of noise and odour in conflict with policies D DM1 and D DM4 of the Arun Local Plan.
- 2 **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 with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The Local Planning Authority is willing to meet with the Applicant to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development.