

Recommendation Report for

REF NO: FP/131/20/PD

LOCATION: First Floor Office
44B Summerley Lane
Felpham
PO22 7HX

PROPOSAL: Notification for Prior Approval under Class O for change of use from a use falling within Class B1(a)(offices), to a use falling within Class C3 (dwellinghouses) - change of use of the existing 1st Floor Office to a self contained Studio Apartment. This application is Not CIL Liable as flat in Zone 4.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above.
SITE AREA	32 square metres
TOPOGRAPHY	Predominantly flat
TREES	None affected by the development.
SITE CHARACTERISTICS	One and a half storey building. Ground floor commercial use (Summerley Convenience Store/Post Office - 44), residential flat, FP/40/18/CLE (44A) and office (44B) in the first floor roof space.
CHARACTER OF LOCALITY	Customer car park to the front, private parking/servicing area to rear. Set in a predominantly residential area.

RELEVANT SITE HISTORY

FP/39/20/CLE	Lawful development certificate for the existing use of self contained first floor office use within building with community store with flat above.	Approve 16-06-20
FP/40/18/CLE	Application for Lawful Development Certificate for an existing use - use of a first-floor unit known as 44a Summerley Lane as a self-contained residential flat in breach of planning permission FP/212/00	Approve 08-05-18

Relevant history noted.

REPRESENTATIONS

An objection:

- The plans do not appear to comply with Building Regulations/Standards as only 30sq - this would also set a precedence for other properties of similar small size.

COMMENTS ON REPRESENTATIONS RECEIVED:

Permitted Development applications under Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 as amended do not consider planning merits as part of their assessment, See Legislative Background section below for matters that may be considered.

CONSULTATIONS**CONSULTATION RESPONSES RECEIVED:**

West Sussex County Highways - No objection

Private Sector Housing:

Full comments are online however it should be noted that the housing standards, including room sizes and facilities must be complied with.

ADC Environmental Health - No objection (re contamination/noise impacts).

Recommend condition requiring copy of asbestos register and remedial strategy (where appropriate) must be provided in writing to the Local Planning Authority prior to the works commencing.

Recommended conditions requiring Construction Management Plan, working hours and Electric Vehicle Charging Points and Noise/ Floor-Ceiling testing above proposed commercial units

COMMENTS ON CONSULTATION RESPONSES:

Comments noted: There are considerations relating to noise from nearby commercial development.

Conversion works will be subject of a 'change of use' application under the Building Regulations and need to comply with 'Approved Document E' in relation to satisfactory sound insulation between the units. Pre-completion sound testing will need to be undertaken to justify this as and where directed by Building Control.

It is not possible to address the matters raised by Environmental Health in this determination as the Local Planning Authority is only able to assess the application in respect of certain issues.

POLICY CONTEXT

Designation applicable to site:

Built-Up Area Boundary

DEVELOPMENT PLAN POLICIES**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.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

This application falls to be determined under the provisions of Schedule 2, Part 3, Class O 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 to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order from a use falling within Class B1 (a) (offices) of that schedule.

The principle of the development is not in dispute. Class O allows for the change of use (and limited building operations) but states that development is not permitted if:

- (a) the building is on article 2(5) land and an application under para O.2(1) in respect of development is received by the local planning authority on or before 30th May 2019;
- (b) the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order
 - (i) on 29th May 2013, or
 - (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use;
- (c) the site is, or forms part of, a safety hazard area;
- (d) the site is, or forms part of, a military explosives storage area;
- (e) the building is a listed building or is within the curtilage of a listed building; or
- (f) the site is, or contains, a scheduled monument.

O.2.(1) Development under Class O is permitted subject to the condition that before beginning the development, 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 and highways impacts of the development,
- (b) contamination risks on the site,
- (c) flooding risks on the site, and
- (d) impacts of noise from commercial premises on the intended occupiers of the development, and the provisions of paragraph W (prior approval) apply in relation to that application.

(2) Development under Class O is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date.

Interpretation of Class O

O.3. For the purposes of Class O, "commercial premises" means any premises normally used for the purpose of any commercial or industrial undertaking which existed on the date of application under paragraph O.2(1), and includes any premises licensed under the Licensing Act 2003 or any other place of public entertainment.

The Order also 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 Ministry of Housing, Communities and Local Government in February, 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 4 issues 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.

OTHER MATERIAL CONSIDERATIONS

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

CONCLUSIONS

TRANSPORT AND HIGHWAY IMPACT

WSCC provided have no objection. WSCC do not consider the change to a C3 use would have a material increase or a material change on the character of traffic in the vicinity of the site. The site is in a sustainable location.

FLOOD RISK

The property is not in an area of high flood risk and as such, there is not considered to be any flood risk to consider.

NOISE AND DISTURBANCE

In respect of noise from commercial premises this is limited as there are mostly dwellings in the vicinity. The commercial premises are not known to be high noise generators and the property was previously approved as a dwelling.

CONTAMINATION

Environmental Health have provided no comment. There are no records of the site being contaminated and the proposal is considered to be acceptable on the grounds of contamination.

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.

CIL DETAILS

The application is not CIL liable as it relates to flats within Zone 4.

RECOMMENDATION

NO OBJECTION

1 For the avoidance of doubt the approved details are the following documents submitted on 31/07/2020:

Location Plan
Block Plan Plan
Proposed First Floor Plan