

REPORT UPDATE

Application No: FP/245/16/PL

Reason for the Update / Changes

Reason for Update/Changes:

3 additional representations of support received. Supporting on the grounds of the limited impact the use has on the area and one supporting the business.

2 additional letters of objection received. Objecting on the grounds that the use is in the wrong place. Also refers to a previous application in North Way for a childcare facility that was refused on the grounds of the use being out of character with the area.

Emerging policy DDM4 should be omitted from the reason for refusal (page 76)

Officers Comment:

Issues arising dealt with in report.

Notes: Changes to recommendations, conditions and / or reasons for refusal will always be reflected in the recommendation section of the attached Officer's Report/Recommendation.

FP/245/16/PL

Recommendation Report for Planning Permission

REF NO: FP/245/16/PL

LOCATION: Olive Tree Cottage
40 Links Avenue
FELPHAM

PROPOSAL: Retention of mixed use C3 (residential) and Sui Generis/Community open house as a personal permission with existing sheds to front garden - Resubmission of FP/171/16/PL.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

The majority of the downstairs of the house is used as the community open house. Including the front garden which has a decked area, a driveway converted into a outdoor tables and seating area and sheds, some of which house animals. The application is for the use as a personal permission.

SITE AREA

0.04 hectares.

RESIDENTIAL DEVELOPMENT DENSITY

N/A

TOPOGRAPHY	Predominantly flat.
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	1.8m fence to all boundaries, garden to front and side has some mature vegetation.
SITE CHARACTERISTICS	Detached two storey property set back from the road with the main private garden to the front, and a very limited rear garden. Front door of the house faces Eastover Way.
CHARACTER OF LOCALITY	Suburban residential. Mainly detached two storey dwellings, set back from the road, most with off street parking.

RELEVANT SITE HISTORY

FP/123/14/HH	Rear & side single storey extension	ApproveConditionally 10-10-2014
FP/75/15/HH	Demolition of existing detached garage & erection of single storey side extension.	ApproveConditionally 30-06-2015
FP/171/16/PL	Retention of partial change of use from domestic dwelling (C3 Dwellinghouses) to community open house (Sui Generis).	Refused 14-09-2016

Single storey side and rear extensions granted in 2014 and 2015 respectively.

REPRESENTATIONS

Representations received:

Felpham Parish Council

Objection. The growth of this operation is not appropriate to this residential location. FPC have access & egress concerns. The volume of parking will have a serious affect on Emergency vehicles gaining access to the road. This conflicts with GEN 12 of the Arun District Local Plan. This operation also conflicts with the Felpham Neighbourhood Plan. FPC support the local residents who are being affected by this venture and stand by their previous comments, although this is a very good cause it is not suited to a quiet residential road with limited parking. The noise aspect also needs to be considered as the volume of the visitors grows.

It must be noted that 5 of the representations of support are from the applicants. These are not being considered as public representations.

216 public representations received (in some cases more than one representation from the same address and duplications of the same representation).

165 letters of support (5 attributable to the direct local area and one from a Bognor Regis Town Councillor) and 7 letters of no objection with one from a County & Ward Councillor

(Bersted). They support on the grounds of:-

- *identified community need for community house especially for disabled children and children with mental health owing to lack of Government funding and closure of other centres
- *new business and enterprise should be encouraged
- *no difference in traffic flow or parking through the surrounding roads
- *no blockage has been created for emergency vehicles
- *use of open house is not intensive enough to have a detrimental impact on neighbouring properties through noise and disturbance
- *cooking for customers is no different to cooking for a family

One representation of no objection is made by Councillor Rapnik and states:-

"Nimbyism at its best. The lady really cares about these children and yet respects her neighbours and causes no inconvenience to them"

38 objections, 34 attributable to the direct local area including one from a Councillor.

These object for the same reasons as the Parish Council but in addition object on the grounds of:-

- *Local village halls, including the Parish Hall could be used for this use not a house
- *Additional vehicle pollution from customer car trip generation
- *Predominantly residential area and this development is out of character with the uses in the surrounding roads and area

Councillor English, the Councillor (neighbouring ward of Felpham East) states:

"Very little has actually changed from the last application. The application was at last reviewed and found wanting. The functions and facilities have still expanded and continued through the process. The actual residents within the area are still being put through a great deal of stress and upsetting regards to the unsocial but now tempered parking, possibly due to the application process, but which I have very little faith will continue. The matter has come under a great amount of emotion, however, the facility has still grown out of all proportion to what was originally started and understood by Arun Planning. Although the support and use does demonstrate a need, it is totally in the wrong place. It is a fully commercial premises and now causes damage an upset in the local community.

There are eating and drinking businesses in Felpham, following the regulations and paying their way. This is a domestic property operating commercially."

Comments on Representations received:

The issues raised in the representations will be considered in the CONCLUSIONS section. It must be considered that representations from the direct local area results in 5 support and 34 objections. The additional representations are still relevant and all representations carry the same weight.

CONSULTATIONS

Environmental Health
WSCC Strategic Planning

Consultations responses received:

ENVIRONMENTAL HEALTH

Comments remain the same as for the previous application FP/171/16/PL. Therefore, should this application be granted, we suggest the following conditions:

- Operating Hours should be restricted to:
 - Wednesday - Saturday 10.00 - 16.00
 - Sunday, Monday and Tuesday - closed
- That a condition be used to restrict the type of cooking on site as outlined in the applicants supporting statement which states that they offer sandwiches, cakes, Panini's and pizza, in order to prevent cooking odours affecting neighbours. I would suggest that no frying be allowed on site.
- The applicants should also be aware that the provision of one toilet, as shown on the plans, should only serve a maximum of 20 people. I note that they have suggested that they would be happy to limit the number of visitors to a maximum of 20 and I would therefore suggest that this is conditioned.

WSSC STRATEGIC PLANNING (HIGHWAYS)

FIRST COMMENTS

The site is located on the junction of Eastover Road, North Way, Rife Way & Link Avenue, all of which are unclassified roads subject to a 30 mph speed limit. The roads are lit and served with pedestrian footways.

The site would be considered sustainably located and is within walking and cycling distance to other forms of public transport such as busses and trains which can provide travel options for visitors from locations not within walking distance of the site.

The use of the site as a community open house has been considered to be Sui Generis. The size of the proposed change of use falls below indicative thresholds which would require the applicant to provide a more detailed Transport Assessment or Travel Plan.

WSSC does not have a recognised parking standard for this particular type of use though given the application is retrospective it has allowed the applicant to provide some information with regard to the current number of visitors at present. Currently the site is experiencing an average of approximately 15 visitors per day and it would not be anticipated that all of these would have arrived by car, though it would be realistic to conclude that the use of the house as proposed is creating a small amount of on street car parking demand. The site is operating with zero off street car parking and visitor to the site by car would be required to make use of on street provisions. It is important to note that the opening times of the open house are between Wed - Sat 10am - 4pm. This would be considered to be outside the peak parking demand times for this area which is predominantly residential. It would be difficult for the Highways Authority to substantiate that the proposed use would result in a significant increase in parking demand, greater than that would be experienced in the peak times, creating a highway safety issue.

It would be advised that the applicant provide a secure and covered cycle parking facility for visitors that may wish to travel by cycle to the house. This provision should be secure and covered and can be secured via planning condition with plans and details to be submitted to and approved by the Local Planning Authority.

I have also checked the most recently available verified accident records, which reveals there have been no personal injury accidents in the vicinity of the site.

I appreciate the representation made with regard to traffic volume and increased parking demand. By their nature Sui Generis use class developments are unique and typically there is very little evidence or way of anticipating how the site will operate in the future. The applicants have identified that they would accept a personal permission so the use of the site as proposed would cease when the current occupiers leave or sell the property. This would be supported by the Highways Authority. The LPA may wish to consider a temporary planning consent so that in the future further assessment of the impact this development will have towards on street car parking and highways capacity can be undertaken.

In conclusion it would not be anticipated that continued use of the site as proposed would result in a highways safety or capacity issue.

If the LPA are minded to grant planning consent the following condition would also be advised:

Cycle parking

Within 6 months of planning consent a secure and covered cycle parking provision shall be provided in accordance with plans and details submitted to and approved by the Local Planning Authority.

Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies.

SECOND COMMENTS

We visited the above site yesterday and after review our substantive comments provided on 13/12/2016 would still be considered relevant.

With regard to local representations citing inappropriate parking I would be minded to advise that if individual residents have concerns that people will/are parking across their access points then they apply to WSCC Highways to have 'Access Protection Lines' painted to discourage parking across or within close proximity to their points of access.

Comments on Consultation responses:

Comments noted.

The Officer is of the opinion that the use generates noise and disturbance over and above what could be expected for a detached family home occupied by a large family. Whilst Environmental Health have not objected this is not, on its own a reason to accept the impact on neighbouring residents as reasonable. Planning has separate policies on the issues of noise pollution.

The Officer agrees with the assessment of WSCC that the development would not create highways safety issues to an extent that could warrant refusal of the planning application. However, the trips and visits that the does and will generate (especially in the summer months) is considered to create a significant harm to the amenities of the area.

POLICY CONTEXT

Designation applicable to site:

Built up area boundary

Tree Preservation Officer (unaffected by proposal)

DEVELOPMENT PLAN POLICIES

Arun District Local Plan 2003: GEN12
GEN2
GEN7
GEN32

Publication Version of the Local
Plan (October 2014):

Parking in New Development
Built-up Area Boundary
The Form of New Development
Noise Pollution
D DM1 Aspects of Form and Design
Quality
D DM4 Extensions and Alterations to
Existing Buildings (residential and non-
residential)
SD SP1 Sustainable Development
QE DM1 Noise Pollution
QE SP1 Quality of the Environment
SD SP2 Built-Up Area Boundary
T SP1 Transport and Development
Design of new development

Felpham Neighbourhood Plan 2014 POLICY
ESD1
Felpham Neighbourhood Plan 2014 POLICY
CLW2

Leisure facilities

PLANNING POLICY GUIDANCE

NPPF
NPPG

National Planning Policy Framework
National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun District Local Plan 2003, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

Arun District Council's Development Plans:

Paragraph 215 of the NPPF ensures that specific policies in Arun District Local Plan 2003 can carry weight. The weight afforded to the policies with Local Plan policies can be assessed according to their level of consistency of the various policies with the National Planning Policy Framework.

Paragraph 216 of the NPPF confirms that weight can be given to policies in emerging plans from the day of publication. The Council resolved that the policies and maps in the Publication Version of the Local Plan be used are material considerations in the determination of this planning application. The emerging Plan was submitted in January 2015 and the examination is currently suspended. The examination is due to re-commence in summer 2017 following publication of modifications to the Plan.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

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 and policies within them will be considered in determining planning applications. Made NDP policies will be considered alongside other development plan documents including Arun District Council's Local Plan. Whilst an NDP is under preparation it will afford little weight in the determination of planning applications. Its status will however gain more weight as a material consideration the closer it is towards it being made. Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation(Reg.14).

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; Yapton. The written Ministerial Statement of 13 December 2016 confirms that relevant policies for the supply of housing in Neighbourhood Plans should not be deemed to be out of date where all of the following circumstances arise;

- The NDP has been part of the development plan for 2 years or less or the ministerial statement is less than 2 years old
- The NDP allocates sites for housing
- The Council can demonstrate a three-year supply of deliverable housing sites

Whilst an NDP is under preparation it will be afforded limited weight in the determination of planning applications. Its status will however gain more weight as a material consideration the closer it is towards it being made. Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation(Reg.14).

Felpham NDP plan policies relevant to this application are:-

- ESD1 "Design of new development",
- CLW2 "Leisure Facilities"

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 development conflicts with relevant Development Plan policies in that it has a materially adverse effect on the established residential character of the locality and the neighbouring residential amenities of the adjoining properties by introducing a noise nuisance generating commercial use. It attracts visitors thereby creating an intensity of use at a domestic property out of keeping with the peaceful residential character of the area.

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

DIFFERENCES FROM PREVIOUS APPLICATION

The reasons for refusal on the previous application related to:-

- generation of a significant level of noise and disturbance to the residential amenities of neighbouring dwellings and the surrounding residential environment owing to its location and the nature of use,

- significant, detrimental impact to the established residential character, visual and neighbouring residential amenities of the area and surrounding dwellings

The application has changed to the following:-

- reduced opening hours:

- o Wednesday - Saturday 10.00 - 16.00

- o Sunday, Monday and Tuesday - closed,

- applying for the consent to be a personal permission. As such, if granted the development could not be retained if the applicant's were not the residents of the site.

A further change is that the existing sheds are to be retained by this application.

USE

The application is for partial change of use to a Community Open House as a personal permission. Despite the content of representations the house is open to anyone, not just families with disabled children or children with mental health problems. There are also volunteers who help at the site which increases the number of trips to the site and noise generated by the use.

The Community Open House (judging from officer site visits) is primarily used as a cafe, with other items for sale and a small petting zoo in the front gardens. Classes are also run in and outside the house in line with what may be provided by a community centre. For ease of explanation; the application is to use the majority of the downstairs of the dwelling and all of the front garden and driveway of this site as an open community centre during opening hours.

It is noted that this is a community use and there are local sites and premises available in the local area for uses of this type.

The application being made for personal permission, is not considered to overcome the current and future harm that will be created by the applicant's remaining as residents of the property.

PRINCIPLE

Saved policy GEN 7 (The Form of New Development) of the Arun District Local Plan 2003 states:-

"Development will be permitted provided it:

.....

(iv) does not have an unacceptable adverse impact on adjoining occupiers, land, uses or property and, where relevant, facilitates the development of adjoining sites;

(v) takes account of any unacceptable adverse impacts that may arise from adjoining land uses or property;

....."

Felpham Neighbourhood Development Plan Policy CLW2 states:-

"Proposals for the development of such buildings will be supported provided that their scale and design would be in keeping with the character of the location and that the impact on the amenity of surrounding properties would be acceptable."

The principle of a part dwelling, part community open house use in this residential area is not considered to be acceptable in relation to policy CLW2. The area is characterised by various types of residential dwelling. This use and scale (of up to 20 people at one time) is at odds with the residentially sensitive nature of the area. It creates undue noise & disturbance and disrupts the residential nature of the area significantly (this will be discussed later in the report).

Some built up areas consist of mixed commercial and residential uses. However, this is not an established characteristic of the Links Avenue locality. The introduction of a commercial use of this nature is considered to detract significantly from the residential environment of the area.

IMPACT ON NEIGHBOURING RESIDENTIAL AMENITY

The application has been amended to reflect the opening hours requested by Environmental Health (EH). The applicant would be likely to comply with the no frying condition and the 20 customer limit owing to potential odour pollution and Environmental health legislation.

The application and current use now complies with EH requirements, in full. However, this is not reason enough for the principle of the use to be acceptable. As stated above the nature of the use is considered to be unacceptable. The noise and disturbance created by:-

- customers & volunteer staff/carers coming and going to the site on foot,
- cars dropping customers off/pick them up,
- deliveries serving the use; over and above what a normal dwelling would expect of items for sale on the site
- up to 20 people occupying the site at one time-noise generation through outdoor activities-the main garden is to the front

...is significantly above what could be reasonably expected from a single family dwelling. Even if it were to be occupied by a large family with 6 children. It is not considered that a normal dwellinghouse would have 12 additional 'friends' or 'guests' visiting over 4 days a week (at any one time), in line with the opening hours of the current use.

The intensity of the use would create disturbance over an above the level that can be reasonably expected of a C3 dwellinghouse occupied by a large family.

HIGHWAYS AND PARKING

WSCC have not objected to the application on the grounds of on street parking generation owing to the use and loss of the properties existing driveway. Given the application is also now for reduced hours the Council does not object on the grounds of highways safety and parking.

The application is recommended for refusal for the reasons outlined below:

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 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 negative impact on the protected characteristics.

RECOMMENDATION

REFUSE

- 1 The development by reason of its siting at a prominent corner location and commercial nature with unlimited visiting customers generates an unacceptable level of noise and disturbance to the residential amenities of neighbouring dwellings and the surrounding residential environment, especially to 38 Links Avenue and nearby properties in Links Avenue, Rife Way, Eastover Way and North Way. This results in a significant, detrimental impact upon the established, quiet residential character and neighbouring residential amenities of the area and surrounding dwellings is in conflict with policy GEN7

of the Arun District Local Plan 2003, policies D DM1, SD SP1 and QE SP1 of the emerging Arun District Local Plan and policy CLW2 of the Felpham Neighbourhood Plan 2013-2029.

- 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 discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.