

25th March 2020

Planning and Building Control
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

RE: 82 FLANSHAM LANE, FLANSHAM, BOGNOR REGIS, PO22 6AH

Murray Planning Associates has been instructed by Jason Van Biene to prepare and submit a lawful development certificate of proposed use for the above-referenced site. The lawful development certificate application seeks to provide evidence to demonstrate that a proposed development of the ground floor of the site constitutes a change of use of the ground floor of the property from class A1 (retail) to A2 (professional services).

The lawful certificate application also seeks to confirm that the proposed change of use constitutes permitted development.

The following information is submitted in support of the application:

- ¿ Application forms;
- ¿ Site Location Plan;
- ¿ Existing and Proposed Ground Floor Plan;

Site Description

The ground floor of 82 Flansham Lane is an existing A1 retail business, currently operating as a shop providing security systems, such as locks and CCTV systems to the public. The site also provides facilities such as key cutting. The existing business has a website (<http://www.transvac-security.co.uk/>) providing further detail on the business operations that operates from the site.

The site lies in predominantly urban surroundings with most of the surroundings being residential. The site is the only retail use within the wider area.

The main entrance to the retail unit lies on the north-western corner of the site, close to the junction of Flansham Lane and Summerhill Drive. The entrance leads to a shop/retail area that spans across the ground floor of the site. To the rear of the main shop area, there is a small kitchen and WC, together with an office and some areas for storage.



View of the principal elevation of the site, showing the retail use of the property (courtesy google street view dated April 2019)

Externally, the property is relatively non-descript in design and appearance. The ground floor has clearly been in retail use for some considerable time, taking account

of the external layout and the somewhat dated appearance of the advertising display within the shop window. An entrance to the side (off Summerhill Drive) leads to the residential use above the retail unit on the ground floor. There is a parking area to the rear of the site.

Relevant Planning History

There have been three planning applications at the site. An advertisement consent for 3 internally illuminated wall signs and 2 non illuminated window advertisements was approved in February 1995 (Council reference FP/137/94/A). This application demonstrates the retail use of the site back to the 1990s.

A further advertisement consent application was submitted in 2006 (Council reference FP/58/06/A) for an internally illuminated single sided freestanding display unit. The application was refused in April 2006, and dismissed at appeal in August 2006.

An application was made in December 2007 (Council reference FP/280/07) for the change of use of the ground floor from a retail shop unit to offices. The application was refused in March 2008 as the application did not provide sufficient information to demonstrate the retail use is no longer viable.

Planning Policy Context

As this application comprises a lawful development certificate of proposed use, local planning policies contained within the Arun Local Plan (2018) are irrelevant.

Section 192 of the Town & Country Planning Act 1990, sets out the parameters relating to a certificate of lawfulness of proposed use or development. Part (1) of Section 192 advises that if any person wishes to ascertain whether any proposed use of buildings or other land; or any operations proposed to be carried out in, on, over or under land would be lawful, they may make an application to the local planning authority specifying the land and describing the use or operations in question.

Part (2) of Section 192 advises that if the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. Part (3) goes on to note that the certificate shall specify the land to which it relates, describe the use or operations in question, given the reasons for determining the use or operations to be lawful, and specify the date of the application for the certificate.

The National Planning Practice Guidance (NPPG, 2014) also provides information relevant to lawful development certificate applications. Paragraph 006 of the relevant section¹ relating to lawful development certificates makes the following point:

'In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.'

With regards the definition of development, section 55 of the Town & Country Planning Act 1990 advises at Part (1) that the meaning of development is:

'Development, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.'

Section 55, Part (2) sets out a number of operations or uses of land that shall not be taken to constitute development of the land. Criteria (a) confirms that the following does not constitute development:

'the carrying out for the maintenance, improvement or other alteration of any building of works which-

¹ <https://www.gov.uk/guidance/lawful-development-certificates>

- (i) Affect only the interior of the building, or*
- (ii) Do not materially affect the external appearance of the building.*

The Town and Country Planning (General Permitted Development) Order of 2015 is also of relevance to this application. Specifically, Schedule 2, Part 3, Class D, which relates to the change of use of shops to financial and professional services. Class D confirms that the following is permitted development:

'Development consisting of a change of use of a building within its curtilage from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order, to use falling within Class A2 (financial and professional services) of that Schedule.'

The Town and Country Planning (General Permitted Development) Order of 2016 made a minor amendment to Class D, Part 3 of Schedule 2 (as annotated above). The amendment simply added the phrase 'and any land' after building. Accordingly, the most up to date version of Class D reads as follows:

'Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order, to use falling within Class A2 (financial and professional services) of that Schedule.'

The Use Classes Order (1987) provides the definition of Class A2 (financial and professional services) as:

'Use for the provision of '
(a) financial services, or
(b) professional services (other than health or medical services), or
(c) any other services (including use as a betting office) which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.'

Assessment

The National Planning Practice Guidance makes it clear the onus is on the applicant to describe the proposal with sufficient clarity and precision, so as to allow the local authority to make a concise decision based on the evidence provided.

The proposal in this case is relatively straight forward. It is proposed to change the use of the ground floor of the site from A1 to A2 use, which comprises permitted development as determined by the General Permitted Development Order (2015), and therefore does not require planning permission. Furthermore, it is our assertion that the proposed internal alterations do not meet the definition of 'development' as defined in the Town & Country Planning Act 1990, and therefore these works do not require planning permission.

In order to provide more clarity to the proposal, it is considered that further assessment on two matters is required to demonstrate that the proposal does not require planning permission. The matters are:

1. Does the proposed change of use fall within Class A2 of the Use Classes Order?
2. Do the proposed works to the property constitute development as defined in the Town and Country Planning Act?

Proposed Use of Ground Floor of Site

It is clear from the information presented above that the ground floor of 82 Flansham Lane is currently in A1 retail use, and has been in such use since at least the mid 1990s, taking account of the planning history records relating to the site.

The applicant is now seeking to establish a new business within the premises. Specifically, the business will seek to provide professional services relating to digital marketing, business and sales marketing, and social media. The main aim of the

business is to provide consultation and advice services for customers on personal (social media promotion) and business marketing advice.

Secondary aspects of the business will be to provide technical guidance on social media, marketing and digital products. The business will also assist in the recording of audio for podcasts, and visual material for social media and video sharing platforms such as Youtube.

The premises will be open for customers to enter and speak with advisers without any sort of prior appointment having been made, whilst also catering for those who have pre-booked appointments. A total of four employees will work from the premises.

The original draft of the Use Classes Order (1987) predates the invention of the internet and related digital services. Nonetheless, it is considered that the business clearly falls within the realm of a professional service, which forms part of Class A2 of the definition of the Use Classes Order. This is especially the case as the premises will be open to members of the public/passers by, and will be staffed during opening hours to deal with general enquiries from the public.

The proposed change of use is therefore considered to be a change from existing use class A1 to proposed use class A2. This is considered to be permitted development as per the guidance set out within the General Permitted Development Order (2015).

The Proposed Alterations

The existing and proposed floorplan drawing sets out the proposed alterations to the ground floor of the property. The alterations are relatively minimal, those being the creation of a new shower room, and the creation of a new office towards the rear of the retail space. No external alterations are proposed to the building.

The Town & Country Planning Act sets out the definition of development, and also makes it clear that works which affect only the interior of the building do not meet the

definition of development. Any works that don't meet the definition of development do not require planning permission.

In this case, it is abundantly clear that the works are purely internal, and therefore don't meet the definition of development. As such, planning permission is not required to carry out the minor internal alterations as detailed on the proposed floor plan.

Conclusions

The applicant seeks a lawful development certificate of proposed use that will confirm the change of use of the ground floor of 82 Flansham Lane, Flansham, Bognor Regis, PO22 6AH and minor internal works does not require the benefit of planning permission.

The change of use of the ground floor of the premises from A1 to A2 use constitutes permitted development, as confirmed by The Town and Country Planning (General Permitted Development) Order 2015 (and 2016 amendment). The evidence presented above demonstrates that:

- ¿ The ground floor of the premises is currently in A1 use, and has been since at least the mid 1990s
- ¿ The business that intends to take over the ground floor of the premises meets the definition of a professional services business that will serve both members of the public/passers by, and those who pre-book appointments.

The evidence presented above therefore confirms that the proposed use of the premises as a digital marketing business falls within use class A2. Given the current use of the premises is A1 retail, the change of use from A1 to A2 falls outside of any planning control, taking into account the guidance set out within the Town and Country Planning (General Permitted Development) Order.

Furthermore, evidence has been provided to explain the definition of development, and how the minor internal works to the premises do not meet the definition of development. As such, planning permission is not required for the proposed internal alterations as shown on the proposed floorplan.

The evidence presented is considered to comply with the NPPG (lawful development certificate section) in being precise and unambiguous in detailing the proposed development, to the extent the local authority are clear on both what is proposed physically, and how the ground floor of the premises will be used.

It is clear that on the balance of probability, the evidence presented demonstrates that the proposed change of use and internal alterations to 82 Flansham Lane does not meet the definition of development as set out in planning legislation. On this basis, it follows that the proposed development is not subject to planning control, and is therefore lawful in the context of planning policy.

We therefore conclude there is no good reason for the Council to oppose the evidence submitted with the application and summarised in the detail above. As such, we trust the Council will issue a lawful development certificate of proposed use confirming the change of use of the ground floor of 82 Flansham Lane from use class A1 to A2 can take place without requiring any formal planning permission.

Yours Faithfully

MICHAEL BINGHAM

On Behalf of Murray Planning Associates