

Recommendation Report for

REF NO: FP/90/21/PD

LOCATION: 23a Felpham Road
Felpham
PO22 7DA

PROPOSAL: Notification of Prior Approval under Schedule 2, Part 3, Class M of the Town & Country (General Permitted Development (England) Order (as amended) for the change of use from shop (A1) to residential (C3).

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	The application seeks confirmation of whether prior approval is required for the conversion of a shop (A1) to a studio dwelling (C3). The new studio would be 24sqm in size.
SITE CHARACTERISTICS	The site consists of a shop unit ('Village Vape') within a single storey front extension to a two storey semi-detached property, with residential properties to the side/rear/above. The site is in the Built-Up Area Boundary of Felpham and in Flood Zones 2 & 3.
CHARACTER OF LOCALITY	The area is mixed character with both residential uses and commercial units in Felpham and a variety of detached/semi-detached and terraced mainly 2 storey properties of different ages and architectural styles.

FP/180/20/PD

Notification of Prior Approval under Schedule 2, Part 3, Class M of the Town & Country (General Permitted Development (England) Order (as amended) for the change of use from shop (A1) to residential (C3). Objection/refused 30/11/2020

Reason for refusal: Due to lack of Flood Risk Assessment and Sequential Test.

REPRESENTATIONS

Felpham Parish Council provided an objection (to previous Prior Approval application FP/180/20/PD) as follows:

- Size not compliant with national standards. Government announced PD homes should comply
- Parking issues

2 letters of objection were received as follows:

- No Right of Way for 23A Felpham Road through the alleyway and it is narrow, so entrance to new studio in alleyway is not possible, and there is no space or provision for refuse bins. An alternative location would be for the new studio entrance to be located on Felpham Road instead.
- Given size of studio unit, single occupancy should be a condition.
- Concerns about construction noise.
- Concerns about fire safety provisions i.e. fire separation between new studio's kitchen and living area of

flat above.

- Extraction of new studio kitchen odours, noise and vibration.
- Concerns around structural stability.

COMMENTS ON REPRESENTATIONS RECEIVED:

- Waste provision cannot be considered as part of a Prior Approval request as it is not included in the impact tests of Class M of the GPDO.
- Construction noise would be for a limited time period for a development of this scale and the requirement for a Construction Management Plan would not be appropriate for a development of this scale and nature. Standard construction working hours would be imposed by condition.
- Fire safety and structural stability would be assessed at Building Control stage.
- Noise and odour impacts cannot be considered as part of a Prior Approval request as it is not included in the impact tests of Class M of the GPDO. Notwithstanding this, a development of this scale is not likely to generate any significant noise and odour impacts from cooking etc. in any event.

Other comments addressed in Conclusions section of report.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

WSCC HIGHWAYS:

No vehicular access or parking is associated with this proposal, and this seems to be the existing arrangement. No evidence to suggest the existing arrangement is operating unsafely or the proposal would exacerbate an existing highways safety concern. The change of use is not anticipated to result in a material intensification of use. WSCC Car Parking Calculator would expect 1 car parking space provision. No parking provision is proposed. Although on-street parking in vicinity is limited there are comprehensive parking restrictions prohibiting vehicles from parking in places that would be detrimental to highways safety, so consider highways safety would not be detrimentally impacted by the proposal. LPA may wish to consider impacts on on-street parking. No objection to proposals, although request a condition relating to cycle parking.

ENVIRONMENTAL HEALTH:

Request planning conditions relating to sound insulation, construction and asbestos.

ENVIRONMENT AGENCY:

Comments to previous Prior Approval application (FP/180/20/PD) -

In the absence of a Flood Risk Assessment we object to the application. The site lies in Flood Zone 2 and 3 which has a high to medium risk of flooding. Flood risk information was then submitted by the applicant and the EA were re-consulted. Additional comments 24.11.20 - We maintain our objection in the absence of a full FRA. The application does not fall under Flood Risk standing advice as it is for a change of use not for a householder application. As it involves an increase in vulnerability within Flood Zone 3 a full FRA is required.

Comments on current Prior Approval application (FP/90/21/PD) -

Consulted (including on Flood Risk Assessment) on 29/04/2021. No comments received.

COMMENTS ON CONSULTATION RESPONSES:

Comments addressed in Conclusions section of report.

POLICY CONTEXT

Designation applicable to site:

Built-up Area Boundary

Flood Zones 2 & 3

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 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 policies contained within the Felpham Neighbourhood Plan 2 2019-2031 (made March 2021) are also relevant in the determination of this application.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

This application falls to be determined under the provisions of Schedule 2, Part 3, Class M 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 from (a) (i) a use falling within Class A1 (shops) of the Schedule of the Use Classes Order to a use in Class C3 (dwellinghouses) of that Schedule.

From 1st August 2021, Class MA of the Town and Country Planning (General Permitted Development) (England) Order (2021) will partially replace Class M of the GPDO 2015 (as amended), in respect of former A1 uses, given the change to E Class Use under the revised Use Class Order 2020. However, for the purposes of this application it will be determined against the current Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which remains in force until 31st July 2021.

Amendments were made to Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), adding consideration of the provision of adequate natural light (this test came into force 1st August 2020) and the need to meet national internal space standards (this test came into force 6th April 2021).

Class M allows for the change of use (and building operations reasonably necessary to convert the building) from (a) (i) a use falling within Class A1 (shops) of the Schedule of the Use Classes Order to a use in Class C3 (dwellinghouses) of that Schedule, but states that development is not permitted if:

CLASS M TESTS -

(a) the building was not used for one of the uses referred to in Class M(a)-

- (i) on 20th March 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;

OFFICER COMMENT:

In 1987, planning permission was granted at 23 Felpham Road for 'alterations and extension to form 2 no flats and small shop unit' (ref. FP/39/87) on 30/03/1987.

Google street view imagery shows that in May 2012 the unit was in use as a carpet shop (A1 use), but in May 2015 it is in use as a massage clinic (D1/sui generis use). The latest imagery from April 2019 shows it is in use as a vape shop (A1 use). However, what is unclear is its use in March 2013.

No evidence has been submitted by the applicants to demonstrate that on 20th March 2013 the units use was as a shop (A1 use).

As such, there has been a failure to demonstrate that this test (a) of the legislation is met.

- (b) permission to use the building for a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule of the Use Classes Order has been granted only by this Part;

OFFICER COMMENT:

Permission to use the building for a use falling within Class A1 (shops) of the Schedule of the Use Classes Order has not been granted only by this Part.

- (c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres;

OFFICER COMMENT:

The proposed change of use would not exceed 150 square metres (approx. 24msq).

- (d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M;

OFFICER COMMENT:

No other development under Class M has been carried out on this property.

- (e) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

OFFICER COMMENT:

No extensions are being proposed. Therefore, the external dimensions of the building would not extend beyond the external dimensions of the existing building at any given point.

- (f) the development consists of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order); or

- (g) the building is-

- (i) on article 2(3) land;

- (ii) in a site of special scientific interest;
- (iii) in a safety hazard area;
- (iv) in a military explosives storage area;
- (v) a listed building; or
- (vi) a scheduled monument.

OFFICER COMMENT:

The proposed change of use complies with the above criteria.

Class M (paragraph M.2) states that an application must be made to determine whether or not the prior approval of the Council will be required in respect of:

- (a) transport and highways impacts of the development,
- (b) contamination risks in relation to the building,
- (c) flooding risks in relation to the building,
- (d) the provision of adequate natural light in all habitable rooms of dwellinghouses (test added on 01/08/2020)
- (e) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use.
- (f) an adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or where the building is located in a key shopping area, on the sustainability of that shopping area, and
- (g) the design or external appearance of the building

OFFICER COMMENT :

- Criteria (a) - (g) will be assessed below in the CONCLUSIONS section below.

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 approval was submitted after 6th April 2021 and the proposed change of use would result in a new dwellinghouse where the gross internal floor area would be less than 37sqm in size. As such, it would fail to comply with amended Article 3 of the GPDO with relation to space standards.

PRIOR APPROVAL PROCEDURE -

The GPDO 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 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 5 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 and deemed consent is bestowed.

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 & HIGHWAYS IMPACTS:

WSSC Local Highways Authority have provided comments. WSSC Car Parking Calculator would expect 1 car parking space provision for a studio dwelling. ADC Parking SPD (2020) standards would require 2 car parking spaces for a 1 bed unit with 1-3 habitable rooms for a site in Parking Behaviour Zone 2. No parking provision is proposed with this application. WSSC LHA have confirmed that, although on-street parking in the vicinity is limited there are comprehensive parking restrictions prohibiting vehicles from parking in places that would be detrimental to highways safety, so they consider highways safety would not be detrimentally impacted by the proposal and they raise no objection to the application. The proposal is not anticipated to result in a material increase or change in the character of traffic. Consequently, there are no transport or highway concerns. WSSC LHA have requested a planning condition to secure cycle parking which will encourage sustainable modes of transport. Subject to planning condition, the application would comply with this requirement of paragraph M.2 of Class M.

CONTAMINATION:

The site is not considered to be contaminated land and is an existing building with shop and residential uses at ground floor. Environmental Health Officers have raised no objection on contamination grounds, and only request a pre-cautionary, standard planning condition for potential presence of asbestos. Therefore, subject to planning condition, the application would comply with this requirement of paragraph M.2 of Class M.

FLOODING:

The site falls in Flood Zone 2 and 3 and is at a high to medium risk of flooding. Under application FP/180/20/PD)the Environment Agency requested the submission of a full FRA and objected to the previous, which was then refused on this basis.

The NPPF/NPPG confirms that for development which involves changes of use i.e. commercial to residential a Sequential Test (to review if there are reasonably available alternative sites for development in lower flood risk areas) is not required. However, it is still important to review whether the vulnerability classification of the development has changed. If so, the applicant will need to show in their FRA that future users of the development will not be placed in danger from flood hazards throughout its lifetime. Depending on the risk, mitigation measures may be required.

A FRA has been submitted with this application (prepared by JBA Consulting, dated March 2021). The FRA concludes that the risk from all sources of flooding, including tidal in defended scenario is very low - medium. It states the existing floor level is 450mm above ground level and the floor level of the existing building is approx. 3.29 OAD. In a defended tidal flood scenario it is assumed that there is adequate freeboard provided by the existing floor level being 450mm above site level and tidal flood risk is low. The FRA states that, given the nature of the proposal (conversion of existing building with no extensions), there are design limitations in terms of mitigation measures that can be implemented e.g. raising floor levels. It is concluded that flood mitigation measures are not considered necessary, given the building is not shown to be at risk of tidal flooding in the defended scenario allowing for climate change. The conclusions of the FRA are accepted and the EA have not raised an objection. The vulnerability classification of the development would be changed from this 'less vulnerable' shop to 'more vulnerable' dwelling. However, it is accepted their FRA shows that future users of the development will not be placed in danger from flood hazards and given the risk and nature of proposals mitigation measures are not required in this case.

Therefore, the proposals would not lead to flood risk to the building or elsewhere and the application would comply with this requirement in paragraph M.2 of Class M.

PROVISION OF ADEQUATE NATURAL LIGHT TO ALL HABITABLE ROOMS:

Submitted drawings indicating the dimensions and use of each room (studio living/bedroom/kitchen area and separate shower room), the position and dimensions of windows, doors and walls (2 front windows and 1 side door) show the provision of adequate natural light to all habitable rooms (i.e. living areas of studio). Therefore, the application would comply with this requirement of paragraph M.2 of Class M.

SUITABILITY OF SITE AND SUSTAINABILITY OF LOCAL SERVICES:

The site is in close proximity to Felpham centre which comprises retail/office uses at ground floor and residential/commercial uses above. The shopping area provides key services to local residents, visitors and tourists. There are many retail business units in the locality and as such the loss of this unit is not considered to have an undesirable impact on the sustainability of the shopping area and the provision of services would be maintained. Therefore, the application would comply with this requirement of paragraph M.2 of Class M.

DESIGN AND EXTERNAL APPEARANCE:

This application includes some minor alterations to the frontage. The shopfront windows and door would be removed and replaced with smaller white UPVC windows with white render elevations and black painted plinth. White painted timber frames would have a preferable, more traditional appearance, however, the premises is not sited within a Conservation Area, and there are many other examples of UPVC framing in the area, so its design and appearance would be acceptable within this context. The external alterations would be retained within the footprint and would not increase the external dimensions of the building. The works give the property a more residential appearance and enable the front to be used as habitable accommodation. The external alterations are not considered to have a detrimental impact upon the external appearance of the unit or area.

INTERNAL SPACE STANDARDS:

The application for prior approval was submitted after 6th April 2021 and the proposed change of use would result in a new dwellinghouse where the gross internal floor area would be less than 37sqm in size, at around 24sqm. As such, it would fail to comply with amended Article 3 of the GPDO (2021) with relation to space standards.

SUMMARY:

The application would comply with criteria set out in paragraph M.2 of Class M of the GPDO for change of use from A1 shop to C3 residential in the following respects; transport and highways impacts of the development, contamination risks in relation to the building, flooding risks in relation to the building, the provision of adequate natural light in all habitable rooms of dwelling houses, impact of change of use and adequate provision of retail services, and the design or external appearance of the building.

However, the application fails to demonstrate compliance with Class M (a) (i) that the building was used for one of the uses referred to in Class M(a) i.e. use as a shop on 20th March 2013. In addition, it fails to comply with amended Article 3 of the GPDO in relation to minimum internal space standards as it would fall under the minimum 37sqm. As such, the Council objects to the application and Prior Approval is 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), 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

OBJECTION

- 1 The application fails to demonstrate compliance with Class M (a) (i) that the building was used for one of the uses referred to in Class M(a) i.e. use as a shop on 20th March 2013. The application fails to demonstrate compliance with Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 2 The application fails to comply with amended Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) in relation to minimum internal space standards as it would fall under the minimum 37sqm.