

Recommendation Report for

REF NO: LU/126/22/PD

LOCATION: 43 High Street
Littlehampton
BN17 5EJ

PROPOSAL: Prior notification under Schedule 2, Part 3, Class MA for the change of use from shop (use class E) to dwelling (use class C3) on first floor.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION The application seeks confirmation of whether prior approval is required for Class MA for the change of use from commercial, business & service (Class E) to 1no. dwelling house (Class C3) to the first floor. The proposed dwelling incorporates a lounge with rear window and door, a bedroom with front facing window, a connecting lobby, kitchen and an external staircase. The proposed dwelling unit would be 39.1sqm in size.

SITE CHARACTERISTICS The site consists of a 3 storey building, with a shop unit at ground floor of with office at first floor and another residential unit above. The site is in the Built-Up Area Boundary of Littlehampton Town Centre and in Flood Zones 2.

CHARACTER OF LOCALITY The area is mixed character with both residential uses and commercial units within Littlehampton Town Centre and a variety of terraced buildings mainly 3 storey properties of different ages and architectural styles on this part of the High Street.

No relevant history was noted.

REPRESENTATIONS

Littlehampton Town Council
Littlehampton Town Council have no objection to the application.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted and relevant issues raised addressed in the report below.

CONSULTATIONS**CONSULTATION RESPONSES RECEIVED:**

West Sussex County Council Highways - Advice only
- The site does not benefit in highway access, there are a number of public car parks surrounding the site.

- The location is sustainable, close proximity of local shops, bus services and a train station.
- the proposed development would not result in an increase over the potential traffic generated through the current use.
- Suggested cycle provision could be conditioned.

Environment Agency

No Comment.

Private Sector Housing, Environmental health - Comments

A number of recommendations have been made;

- Appropriate fire precaution facilities and equipment must be provided of such type, number and location as are considered necessary. Guidance on fire safety is contained in the LACORS guidance document - "Housing - Fire Safety, Guidance on fire safety precautions for certain types of existing housing.
- The external staircases serving each flat are the means of escape from these flats down to ground level, therefore each must be protected from the effects of fire along each length. The sensitive area is 1.8m horizontally, therefore any windows in this region should be of fire resisting construction and fixed shut. Any doors in the sensitive area must be fire resisting and self-closing.
- A room where the only escape route is through another room is termed an "inner room" and poses a risk to its occupiers if a fire starts unnoticed in the outer room. The proposals suggest an inner, inner room due to a lobby area separating the bedroom and lounge areas. The escape route from the bedroom of the first floor flat is via the kitchen and lounge which are high risk areas. This can be overcome by relocating the flat entrance door to the designated window opening that lies in the lobby area between the lounge and the bedroom, to the side of the property on the first floor. Alternative options may include ensuring that the window in the bedroom meets the requirements of an escape window, with a 30 minute fire door separating the bedroom and lounge area and interlinked smoke detection serving the lounge, and the bedroom. The lobby should be removed because as per LACoRS guidance for inner rooms "nobody should have to pass through more than one inner room while making their escape". However, this option is less desirable and consideration must also be given to the external escape route when exiting from the bedroom window and passing the lobby window situated between the lounge and bedroom areas; this is likely to be required as fire-resisting and be fixed shut.
- There should be adequate fire separation between the commercial unit on the ground floor and the residential flats above. If a minimum of 60 minutes fire resistance cannot be guaranteed between each storey, the fire alarm and detection system must extend to each storey (ground, first and second) to ensure sufficient early warning can be given in the event of a fire occurring. Please note, the fire alarm specification below assumes 60 minutes fire-resisting separation between each storey. A suitable and sufficient fire risk assessment, in addition to consultation with Arun District Council's Building Control and Planning departments must be undertaken to determine the most appropriate fire safety precautions for this building.
- A Grade D, LD2/3 fire alarm and detection system (dependent on internal escape route provision),
 - interlinked mains wired smoke alarms with integral battery back-up located throughout the escape route.
 - Interlinked heat alarms with integral battery back-up are recommended for the kitchen area.
- Room sizes should meet the minimum standards if the flats are intended to be rented.
- The floor to ceiling height must be at least 2.1 metres from floor to ceiling over at least 50% of the floor area when measured at a height of 1.5metres from the floor and provide sufficient useable space.
- Any bathrooms and kitchens without windows for natural ventilation must have adequate mechanical ventilation.
- All habitable rooms must have an opening window, equivalent to 1/20th of the floor area, to the outside air to provide adequate ventilation. French or patio doors that have no separate openable casements, or where there is no alternative openable casement within the room, are not considered acceptable in bedrooms.

- Must meet the requirements of the Housing Act 2004 and be free of Category 1 and significant Category 2 Hazards;
- Must meet the requirements of any other associated Housing and/or Houses in Multiple Occupation legislation or regulations if applicable to the property/site.

COMMENTS ON CONSULTATION RESPONSES:

The proposed development's impact on highway is considered acceptable, given the sites sustainable location the provision of secure cycle parking should sufficiently provide for the transportation needs of future occupiers.

Comments from Environmental Health relate to the technical details of the build and as such would be dealt with through the submission of a Building Regulations application.

POLICY CONTEXT

Designation applicable to site:

Built-up Area Boundary.

Flood Zones 2.

Economic Growth Area.

2km Buffer SSSI.

Town Centre Growth Area.

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, The South Inshore & South Offshore Marine Plan 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 MA 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 from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

CLASS MA TESTS -

Condition MA.1 - Development is not permitted by Class MA -

(a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;

OFFICER COMMENT:

The planning statement confirms the building has been vacant more than 3 months.

(b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

OFFICER COMMENT:

No evidence to the contrary has been found. The site has been a shop for many years, there is no reason not to believe that the first floor accommodation has not been office, used in conjunction with the shop, for the same period.

(c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres.

OFFICER COMMENT:

The proposed site is approx. 39.1sqm which is small than 1500sqm.

d) if land covered by, or within the curtilage of, the building;

- (i) is or forms part of a site of special scientific interest;
- (ii) is or forms part of a listed building or land within its curtilage;
- (iii) is or forms part of a scheduled monument or land within its curtilage;
- (iv) is or forms part of a safety hazard area; or
- (v) is or forms part of a military explosives storage area;

OFFICER COMMENT:

The site does not fall under any of the designations set out above, meets criteria.

(e) if the building is within;

- (i) an area of outstanding natural beauty;
- (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;
- (iii) the Broads;
- (iv) a National Park; or
- (v) a World Heritage Site;

OFFICER COMMENT:

The site does not fall under any of the designations set out above, meets criteria.

(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

OFFICER COMMENT:

N/A

(g) before 1 August 2022,

- (i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
- (ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

OFFICER COMMENT:

The site does not form part of any article 4(1) land.

CONDITIONS MA.2

(1) Development under Class MA is permitted subject to the following conditions.

(2) Before beginning development under Class MA, 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 impacts of the development, particularly to ensure safe site access;

(b) contamination risks in relation to the building;

(c) flooding risks in relation to the building;

(d) impacts of noise from commercial premises on the intended occupiers of the development;

(e) where;

(i) the building is located in a Conservation Area, and

(ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;

(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;

OFFICER COMMENT:

Criteria (a) - (g) will be assessed below in the Conclusions section of the report.

(h) where the development involves the loss of services provided by;

(i) a registered nursery, or

(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost.

OFFICER COMMENT:

N/A in this case.

(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

N/A in this case as building is not 7 storeys or more nor 18m in height.

(3) An application for prior approval for development under Class MA may not be made before 1 August 2021.

OFFICER COMMENT:

Meets criteria - application made March 2022.

(4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if -

(a) for paragraph (e) of sub-paragraph (2) there were substituted (e) where-

(i) sub-paragraph (6) requires the Environment Agency to be consulted, a site-specific flood risk assessment;

(ii) sub-paragraph (6A) requires the Health and Safety Executive to be consulted, a statement about the

fire safety design principles, concepts and standards that have been applied to the development,";

(b) in the introductory words in sub-paragraph (5), for "and highways impacts of the development" there were substituted impacts of the development, particularly to ensure safe site access";

(c) after sub-paragraph (6) there were inserted

(6A)Where the application relates to prior approval as to fire safety impacts, on receipt of the application, the local planning authority must consult the Health and Safety Executive.;

(d) in sub-paragraph (7) for "(5) and (6)" there were substituted "(5), (6) and (6A);

OFFICER COMMENT:

N/A.

MA.3 (5) Development must be completed within a period of 3 years starting with the prior approval date.

(5) Development must be completed within a period of 3 years starting with the prior approval date.

(6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

OFFICER COMMENTS -

(5) and (6) are compliance only Environmental Health were consulted and have provided comments.

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 prior approval was submitted after 6th April 2021 and compliance with space standards will be addressed in the conclusions section of the report.

PRIOR APPROVAL PROCEDURE -

The GPDO 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 issues (a-g) 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

There are no other material considerations to be weighed in the balance with the Development Plan.

CONCLUSIONS

TRANSPORT & HIGHWAYS IMPACTS:

WSCC Local Highways Authority have provided comments. Given the site is in a sustainable location, well served by local shops, busses and a train station and by reason of the fact that there is no road access on to site, they see no material increase in traffic resulting in the proposed development.

They have requested a condition relating to secure cycle provision, which is noted and will be included within this permission.

CONTAMINATION:

The site is not a contaminated land and is an existing building with shop and offices above. Environmental Health Officers have raised no objection on contamination grounds, but recommended conditions (fire safety, room sizes, ventilation). Therefore, subject to planning conditions, the application

would comply with this requirement of para. M.2 of Class MA.

FLOODING:

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.

Policy W DM2: Flood Risk of the Arun District Council states;

"Development in areas at risk from flooding, identified on the latest Environment Agency flood risk maps and the Council's Strategic Flood Risk Assessment (SFRA), will only be permitted where all of the following criteria have been satisfied:

- a. The sequential test in accordance with the National Planning Policy Guidance has been met.
- b. A site specific Flood Risk Assessment demonstrates that the development will be safe, including access and egress, without increasing flood risk elsewhere and reduce flood risk overall.
- c. The sustainability benefits to the wider community are clearly identified.
- d. The scheme identifies adaptation and mitigation measures.
- e. Appropriate flood warning and evacuation plans are in place; and
- f. New site drainage systems are designed to take account of events which exceed the normal design standard i.e. consideration of flood flow routing and utilising temporary storage areas.

The site falls in Flood Zone 2 classified as Medium Probability of flooding. The Environment Agency raised no objections to this planning application. It is also noted that as a conversion of a first-floor unit, the level of increased risk of flooding would be minimal. As noted within the FRA, only egress of the building in an emergency situation is of real relevance. A Flood Management Plan has been submitted with the application, this shows escape towards the north. On flooding grounds this proposal is acceptable.

PROVISION OF ADEQUATE NATURAL LIGHT TO ALL HABITABLE ROOMS:

The proposed floor plan indicates the dimensions and use of each living space (living room, bedroom, kitchen area and separate shower room), the fenestration and dimensions of windows, doors and walls demonstrate the provision of adequate natural light to all habitable rooms (i.e. living areas of studio). Therefore, the application would comply with requirement of paragraph M.2 of Class MA.

SUITABILITY OF SITE AND SUSTAINABILITY OF LOCAL SERVICES:

The application site is in close proximity to Littlehampton Town Centre which comprises of retail use at ground floor and residential/commercial uses above. The shopping area provides key services to local residents, visitors and tourists. It is proposed to retain the retail unit on the ground floor thus this proposal will not have undesirable impact on the vitality, viability and 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 MA.

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 dwelling where the gross internal floor area would be more than 37sqm in size, at

around 39sqm. As such, it would comply with amended Article 3 of the GPDO (2021) in relation to space standards.

SUMMARY:

The application would comply with criteria set out in paragraph M.2 of Class MA of the GPDO for change of use from office space to residential in the following respects:- transport and highways impacts of the development, contamination 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 and is approved with the following conditions.

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

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

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 Prior to occupation of the flat hereby approved, the following items relating to ventilation shall be submitted and approved in writing by the Local Authority;
(this condition is to be read in conjunction with the consultee comments from Environmental Health (Private Housing Sector))

- Details of the openable areas of windows to habitable rooms provide the equivalent to 1/20th of the floor area, to the outside air to provide adequate ventilation.

Reason: To protect the amenity of occupiers in accordance with Policy QE SP1 of the Arun Local Plan.

- 3 Prior to occupation of the flat hereby approved, the following items relating to fire risk/spread shall be submitted and approved in writing by the Local Authority;
(this condition is to be read in conjunction with the consultee comments from Environmental Health (Private Housing Sector))

- A summary of the appropriate fire precaution facilities and equipment must be provided of such type, number and location as are considered necessary. Guidance on fire safety is contained in the LACORS guidance document - "Housing - Fire Safety, Guidance on fire safety precautions for certain types of existing housing"
- Measures to protect any 'sensitive' areas within 1.8m (horizontally) of the external staircases serving the flat, i.e. openings.
- Details to overcome an 'inner inner room' situation, either the repositioning of the entry door or provision of a Means of Escape (MOE) from the bedroom.
- Details of the fire separation details between the retail unit and the flat hereby approved. A minimum of 60 minutes fire resistance is required or an appropriate alarm system.
- A Grade D, LD2/3 fire alarm and detection system (dependent on internal escape route provision),
 - interlinked mains wired smoke alarms with integral battery back-up located throughout the escape route.
 - Interlinked heat alarms with integral battery back-up are recommended for the kitchen area.

Reason: To protect the amenity of occupiers in accordance with Policy QE SP1 of the Arun Local Plan.

- 4 No part of the development shall be first occupied until details of the secure cycle parking provision have been submitted and approved in writing by the Local Planning Authority, and have been provided on site in accordance with plans and details submitted to and approved by the Local Planning Authority. For details of cycle parking provision please consult the Supplementary Planning Document for Parking Standards.

Reason: To provide alternative travel options to the use of the car in accordance with policies T SP1 of the Arun Local Plan.

- 5 The development hereby approved shall be carried out in accordance with the following approved plans:

- Location 2021-29-05
- Proposed First Floor Plan 2021-29-06
- Existing/Proposed Elevations 2021-29-03

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policy D DM1 of the Arun Local Plan.