

Recommendation Report for

REF NO: LU/18/22/PD

LOCATION: 10 Bayford Road
Littlehampton
BN17 5HL

PROPOSAL: Notification for prior approval under Schedule 2, Part 3, Class MA for the change of use from commercial, business & service (Class E) to 1 No dwelling house (Class C3).

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). The proposed dwelling incorporates a bedroom with rear and side windows and door, a living room with front facing window, entrance passage, kitchen, stair well and storage. The proposed dwelling unit would be 41sqm in size.
SITE CHARACTERISTICS	The site consists of a shop unit at ground floor of a residential unit three storey mid-terrace property. The site is in the Built-Up Area Boundary of Littlehampton Town Centre and in Flood Zones 2 & 3.
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 Bayford Road.

RELEVANT SITE HISTORY

LU/40/22/PL	Replacement of shopfront with UPVC windows and new front door to front elevation in addition to installation of new UPVC to rear elevation. This application is in CIL Zone 4 and is not CIL liable as other development.	
LU/467/03/	Change of use from taxi office to cafe	ApproveConditionally 11-02-04
CIC/LU/13/03/	Alleged unauthorised change of use	

LU/40/22/PL

Replacement of shopfront with UPVC windows and new front door to front elevation in addition to installation of new UPVC to rear elevation.

Pending

Other relevant planning history are noted.

REPRESENTATIONS

Littlehampton Town Council have no objection to the application, subject to receipt of a satisfactory flood risk assessment as requested by the Environment Agency.

COMMENTS ON REPRESENTATIONS RECEIVED:

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

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

West Sussex County Council (Highways)

WSCC commented that it is not consider that highway safety would be detrimentally affected through the proposed nil car parking provision. The LHA anticipate that the level of traffic generated by the proposed dwelling would be of a similar nature to the existing use.

In principle, the current GPDO gives limited ability to consider wider highway and transport impacts beyond those set out. The prior approval is therefore considered acceptable in highway terms. If the Local Planning Authority is minded to approve the application, they may wish to condition cycle parking.

Environment Agency

Environment Agency commented that on the basis of the absence of an acceptable flood risk assessment (FRA), the Agency objects to this application and recommend that planning permission is refused.

Environment Health

Environmental Health has no objection in principle to the proposed scheme. However, the Environment Health recommended conditions (sound insulation scheme and construction hours).

COMMENTS ON CONSULTATION RESPONSES:

The proposed development's impact on highway is considered acceptable whilst cycle provision is secured. This is necessary because of potential traffic and parking demands to be generated. This application was supported with a FRA which has been deemed unacceptable by the Environment Agency. Due to application site's location within Flood Zone 2 and 3, the surface water drainage assessment requires acceptable flood risk assessment to adequately assess the proposal's impacts on surface water drainage.

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 relevant policies in the Littlehampton Neighbourhood Plan have been taken into account 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 2004, planning permission was granted at 10 Bayford Road for change of use from taxi office to cafe' (Ref. LU/467/03/) on 11/02/2004. No evidence has been submitted by the applicant to demonstrate that on 20th March 2013 but the unit's use was as a cafe as evidenced in the planning approval (LU/467/03). As such, the application has demonstrated 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 been granted (LU/467/03/) only by this Part.

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

OFFICER COMMENT:

The proposed change of use would not exceed 150 sqm (approx. 41sqm).

(d) the development (together with any previous development under Class M) would result in more than 150 sqm 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 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

OFFICER COMMENT:

The proposed change of use does not include any demolition.

(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 conclusion 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 sqm 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 more than 41sqm in size. As such, it would 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:

WSCC Local Highways Authority have provided comments. WSCC 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. WSCC 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. WSCC 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, but recommended conditions (sound insulation scheme and construction hours). Therefore, subject to planning conditions, the application would comply with this requirement of paragraph M.2 of Class M.

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.

Arun District Council has a policy regarding Flood Risk within their July 2018 Adopted Local Plan. Policy W DM2: Flood Risk 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 and 3 and is at a high to medium risk of flooding. The Environment Agency considered the submitted FRA and was considered unacceptable. Hence, the Environment Agency raised an objection to this planning application in the absence of an acceptable FRA and requested the submission of an acceptable FRA. It is considered that future users of the development will be placed in danger from flood hazards and given the risk and nature of proposals, mitigation measures are required in this case. Therefore, the proposal would likely lead to flood risk to the building or elsewhere and the application which would not comply with this requirement in paragraph M.2 of Class M.

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 this requirement of paragraph M.2 of Class M.

SUITABILITY OF SITE AND SUSTAINABILITY OF LOCAL SERVICES:

The site is in close proximity to Littlehampton Town 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 retail unit is not considered to 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 M.

DESIGN AND EXTERNAL APPEARANCE:

This application includes some minor alterations to the frontage. The shopfront windows, door and signage would be removed and replaced with smaller uPVC door and windows. 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 external alteration will bring the proposal in keeping with the residential appearance and enables 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 more than 37sqm in size, at around 41sqm. 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 M of the GPDO for change of use from cafe to 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 the condition Class M.2.(1)(c) that flooding risks in relation to the building. 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.2.(1)(c) flooding risks in relation to the building. 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).