

Recommendation Report for Prior Notification

REF NO: LU/247/25/PD

LOCATION: 78 A High Street
Littlehampton
BN17 5DX

PROPOSAL: Prior approval under Schedule 2, Part 3, Class MA for the change of use from a business (Class E) to 1 No flat (C3).

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION This application is a prior notification under the Town and Country Planning Act (General Permitted Development) Order 2015 Part 3 Class MA to determine whether the Local Planning Authority have any objections with the conversion of commercial, business, or service uses to dwellinghouses.

SITE CHARACTERISTICS The site is currently occupied by a first-floor flat within the Littlehampton High Street. To ground floor is an empty retail space.

CHARACTER OF LOCALITY The area is dominated by retail/commercial uses with a significant number featuring first-floor offices and dwellings.

REPRESENTATIONS

Littlehampton Town Council provided no objection - Members suggested that the shop front retail space should be exempt from further permitted development in future.

No representation received from nearby occupiers.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted.

CONSULTATIONS**CONSULTATION RESPONSES RECEIVED:**

WSCC Highways - No objection

Environmental Health - No objection subject to conditions regarding noise.

Environment Agency - Object. The application requires submission of a Flood Risk Assessment.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted

POLICY CONTEXT

Article 4
 Built-Up Area Boundary
 Economic Growth Area
 Town Centre Retail Boundary
 Prone to Groundwater Flooding >75%
 Flood Zone 2 and 3
 At risk of Flooding from Climate Change

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 is 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) - Revoked.

(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:

From review of historical imaging and the submitted information, the application site has accommodated a relevant use class identified by Class MA for more than 2 years. Additionally, the application form confirms the use remained within a relevant Use Class for the last 2 years.

(c) - Revoked.

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;

(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.

(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:

N/A.

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;
- (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:

Criteria (a), (c), (d) and (f) will be assessed below in the Conclusions section of the report. Following consultation responses and review of the site, criteria (b), (e), (g), and (h) are not of relevance to this site or proposal.

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

OFFICER COMMENT:

This criteria is not applicable in this case as the 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 after August 2021.

(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:

The site is located within Flood Zone 2 and 3. A Site-Specific Flood Risk Assessment has been submitted and the Environment Agency have been consulted. This is discussed further below.

The building does not meet the fire safety condition and as such, no fire safety statement was required nor was the Health and Safety Executive consulted.

MA.3

(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 for compliance purposes only and a requirement of the development post determination.

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.

(9B) The reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it.

OFFICER COMMENT:

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:

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 2012, 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, 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, and

(ii)if they determine that the site will be contaminated land, refuse to give prior approval.

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

KEY ISSUES FOR CONSIDERATION

Condition MA.2 of Class MA states

(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;

(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:

As outlined in the Development Plan Background section, criteria (b), (e), (g), and (h) are not of relevance to this site or proposal. The remaining sections are reviewed below.

TRANSPORT IMPACTS AND SITE ACCESS

- (a) transport impacts of the development, particularly to ensure safe site access;

OFFICER COMMENT:

The site is in a sustainable location and within walking/cycle distance of local services, amenities and public transport links. The site does not benefit from a dedicated vehicular access, nor parking provisions.

WSCC Highways have raised no objections to the proposal, and identify that the proposal would have no detrimental highway safety impact, nor lead to a parking capacity issue. Any car parking for intended occupiers would need to be accommodated on public highways in the area. Otherwise, the occupiers would need to make use of the numerous public transport alternatives within the area. The site is in close proximity to Littlehampton Railway Station.

The development would not have an unacceptable impact on the surrounding highways in compliance with test (a) of Condition MA.2 of Class MA.

FLOODING RISKS

- (c) flooding risks in relation to the building;

Prior approval applications must be assessed with due consideration of the National Planning Policy Framework (NPPF) as far as it is applicable to the subject matter of the application as outlined in Paragraph W (Procedure for applications for prior approval under Part 3). As such, relevant flood risk policies outlined within the NPPF should be given due consideration. Change of use applications are exempt from the requirements of the Sequential & Exception Tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 63.

Paragraph 170 of the NPPF states 'Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.'

Paragraph 181 of the NPPF states 'When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and

e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.'

OFFICER COMMENT:

The Environment Agency raised an objection in the absence of a Flood Risk Assessment. The property is located within Flood Zone 3a and the proposal consists of a residential development at ground floor, where the occupiers would have difficulty reaching safe refuge within the building and an FRA had not been supplied. An FRA was submitted following their comment however no further comment has been received from the Environment Agency.

The FRA does state that safe refuge can be achieved by walking 1 minute to the east, to an area outside of the flood risk zone. However Arun Mapping shows that this area remains within Flood Zone 3. It does not appear to have sufficiently identified how safe refuge would be achieved in a flooding event.

It cannot be confirmed that the dwelling would be safe from flood risk.

IMPACTS OF NOISE

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

OFFICER COMMENT:

Environmental Health were consulted and advised that conditions should be applied for details to be submitted as to how the dwelling will be protected from noise. As the dwelling would be sited to the rear of an existing, albeit currently empty shop and directly on Littlehampton High Street, the dwelling may be subject to noise from the surrounding area.

Subject to condition, the proposal would comply with the requirement.

NATURAL LIGHT TO HABITABLE ROOMS

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

OFFICER COMMENT

The plans demonstrate that the bedroom would have a window and there would be one window serving the open plan kitchen, living, dining room. Whilst this may not provide much natural light within the main living space, it does nonetheless comply with the requirements.

The application complies with the requirement of test (f) of Condition MA.2 of Class MA.

INTERNAL SPACE STANDARDS

Regulation 3 of the Town and Country Planning (General Permitted Development (England) (Amendment) Regulations 2020 amends article 3 of the GPDO, meaning that for any application for prior approval made after 6th April 2021 that relates to Class MA development, for new dwellinghouses, the gross internal floor area must be 37sqm or more and must comply with nationally described space standards (NDSS).

The unit provides 37.5sqm of floor space and the proposal complies with this requirement.

SUMMARY

The proposal would be located in Flood Zone 3a, and at a high risk of flooding. With an outstanding objection from the Environment Agency, this conflicts with paragraph 2(c) of the Town and Country Planning Act (General Permitted Development) Order 2015, Schedule 2, Part 3 Class MA, MA.2, and is therefore recommended for refusal.

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.

CIL DETAILS

This application is CIL liable, therefore, developer contributions towards infrastructure will be required (dependent on any exemptions or relief that may apply).

RECOMMENDATION

OBJECTION

- 1 The proposal fails to demonstrate that the property and its occupiers would not be at unacceptable risk of flooding, as a result of the site being in Flood Zone 3a. This is contrary to the requirements of both W DM2 of the Arun Local Plan and the NPPF. As such, the proposals fail to comply with Schedule 2, Part 3, Class MA, paragraph MA.2 2(c) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). It is recommended that Prior Approval is withheld and the application refused on this basis.