

From: Luke Carter [REDACTED]
Sent: 26 November 2021 12:41
To: Simon Davis <Simon.Davis@arun.gov.uk>
Cc: Charlotte Smith [REDACTED]
Subject: Fort Road Garage Fort Road East Wick Littlehampton BN17 7QZ Your Ref: LU/276/21/PL

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Dear Simon,

I have been asked to contact you on behalf of the applicant for the following application:

Fort Road Garage Fort Road East Wick Littlehampton BN17 7QZ Your Ref: LU/276/21/PL

Proposal: Demolition Of Existing Storage Structure, Proposed 2 Storey Commercial Building Under Class E(G) And Class B8. This Application Is In Cil Zone 4 (Zero Rated) As Other Development.

In particular, in response to your proposed condition 7 as set out below (copied from your letter of the 15th November)

7 No development hereby permitted shall commence until an acoustic assessment has been undertaken to determine the impact of noise arising from the development site and the results of the assessment and details of any mitigation measures submitted and approved in writing by the Local Planning Authority. Noise from commercial premises should be controlled, such that the noise rating level (L_{Ar}, T_r) emitted from the development does not exceed the background noise level (L_{A90}, T), by more than 3dB.

All measurements shall be defined and derived in accordance with BS 4142:2014. The noise assessment shall include the assessment of noise from future roller shutter doors.

The approved measures shall be implemented before the development is brought into use and thereafter be maintained in accordance with the approved details.

Reason: To protect the amenities of occupiers of adjoining properties in accordance with Arun Local Plan policy QE DM1. This is required to be a pre-commencement condition because it may be necessary to include noise mitigation measures in the fabric of the building.

We request that this condition is not imposed on the grant of consent for the following reasons:

Planning Practice Guidance Paragraph: 003 Reference ID: 21a-003-20190723 sets out the governments approach to the use of conditions :-

Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply. See also guidance on the use of model conditions."

In this instance it is our firm opinion that the proposed condition would not meet all 6 of the tests set out above, by reason of being "unnecessary".

The proposed development is for the erection of a new building to be used for Class E(g) Office, and Class B8 (storage). It will be a mixed use building.

The site is located adjacent to an existing Biffa Waste depot that is in active use by HGV's and other large vehicles from 05.30AM. This is a source of considerable noise and disturbance potential. The proposed use of the application site for office and storage use is not likely to give rise to any significant noise and disturbance, and Class E uses are all recognised by the Government as uses that are compatible with residential areas, as they are not considered to be noisy (noisy uses would fall in class B2, which is not what is proposed here).

The applicant's company currently operate from Unit 8 Wickham Business Centre, which is located close by. Their use of the current site has not led to any issues of noise and no condition requiring noise assessment was placed on the use of these units when planning permission was granted under LU/238/02, presumably because it was accepted at the time that light industrial uses are not noisy uses.

As this company has been operating in the area for several years, with no known issues of noise or other complaint, it is reasonable to say that they have a proven track record of use that does not cause noise nuisance to neighbours.

Furthermore, the Council has considerable powers under Noise Nuisance and Noise abatement legislation which can be used by the Environmental Heath team, should noise from the proposed operation be an issue. This is the correct regime with which to deal with noise nuisance.

Planning Practice Guidance is clear on this issue:

Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. Use of informatives to remind the applicant to obtain further planning approvals and other consents may be more appropriate.

For the reasons set out above, we respectfully request that you do not impose a pre-commencement condition requiring an acoustic assessment of the proposed activities and impact on neighbours.

We understand that your main concern is with noise from the operation of the roller shutter door. I can confirm that the proposed roller shutter door will be electrically operated and will not be noisy. If you feel that the type of roller shutter should be subject to further control by condition, perhaps a more suitable condition would be one which requires the applicant to provide you with details of the proposed roller shutter door, including manufacturers details of its noise rating. You could then check with your EHO whether the spec of the roller shutter door is acceptable to them given its proposed location. This would avoid the need for a full acoustic assessment and noise report, which are very expensive will require my client to incur significant unnecessary costs to discharge your proposed pre-commencement condition

I hope this is acceptable to you and I would be delighted to discuss this with you further if you need.

Secondly, while this is not related to pre-commencement conditions, the applicants are keen that no other conditions that would unreasonably prevent their business operating be imposed on the grant of permission. To that end, I must request that they are allowed to operate and have vehicle movements on site from 6.AM as this aligns with their current operation and is mindful of the hours of operation of other units in the Industrial estate which are not time controlled, particularly Biffa next door. As with the above, should noise from vehicle movements prove to be an issue in the early mornings, your environmental health team can intervene under powers of noise abatement. However I consider this to be highly unlikely given the background noise from the operation of a waste transfer station and depot on the adjacent suite from 5.30AM.

I trust this email is of assistance to you and I would be most grateful if you could reply in due course. If you do not feel that you are able to grant planning permission without imposing the two conditions that are the subject of this email, please could you let me know your full reasons for this in advance of issuing the final decision.

I look forward to hearing from you in due course.

Sincerely

Luke Carter MRTPI

Lewis & Co Planning

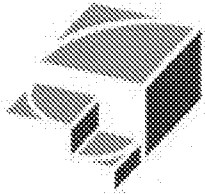


2 Port Hall Road
Brighton
BN1 5PD

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Lewis & Co Planning
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