

Recommendation Report for

REF NO: LU/286/18/PD

LOCATION: 4 Hawthorn Road
Littlehampton

PROPOSAL: Notification for Prior Approval for a Proposed Change of Use of a building from Office Use (Class B1(a)) to a Dwellinghouse (Class C3) to provide 30 self-contained flats (14 studios & 16 one-bed flats)

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above
TOPOGRAPHY	Predominantly flat
BOUNDARY TREATMENT	The site is open plan to its front elevation, as there is a car park adjacent to the street scene.
SITE CHARACTERISTICS	The site is populated by a large commercial unit, set back from the street scene as a result of a large car park.
CHARACTER OF LOCALITY	The area is populated by predominantly commercial units. There is a large Morrison's supermarket within walking distance of the site.

RELEVANT SITE HISTORY

LU/30/12/	Portakabin on the car park to the rear of offices with 17.18m ² floor space and 2.3m in height. The area will be used as a staff break room.	ApproveConditionally 16-04-12
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Noted.

REPRESENTATIONS

None.

COMMENTS ON REPRESENTATIONS RECEIVED:

N/A.

CONSULTATIONS

Environment Agency
Environmental Health

WSCC Strategic Planning

CONSULTATION RESPONSES RECEIVED:

Environment Agency: no comments received.

Highway Officer does not object to this application.

Consider that visibility is good and raise no issues with any of the access routes to the site.

As the offices provided 50 spaces, there is ample parking provided for within the development.

Appropriate levels of cycle parking/storage would be provided.

Reduction in trip numbers.

Environmental Health Officer: objects to this application. Their comments are summarised as follows:

They note that the application is sited within an area where there are B2 uses in close proximity to the application site e.g. to the west of the site with no time use restrictions on it, and a further B2 use at Unit 14 of Martello Enterprise Centre directly behind the proposed site again with no time use restrictions on it. The worst case uses of these two sites (for example 24/7 sheet metal production) and it is considered that this worst case has not been taken into account by the acoustic report.

Additionally, the Environmental Health Officer has concerns that the acoustic report has also underestimated the noise impact of deliveries at the Morrisons supermarket site.

Serious concerns that allowing residential use at this site will directly contravene Paragraph 170e and 180a of the revised NPPF.

Noise is likely to give rise to significant adverse impacts on health and quality of life from excessive noise and potential Statutory Nuisance from the surrounding land uses.

Finally, although the comments from Private Sector Housing are detailed, it should be noted that due to the internal flats, it is highly likely that Category 1 and significant Category 2 Hazards (under the HHSRS) may be present which would result in either a Prohibition Order or Improvements Notices being served.

Housing Officer: has commented on this application re: fire safety, room sizes, ventilation, windows, general (Housing Act 2004) - However housing matters are separate legislation outside of this application and can not be taken into account as part of this application but are noted.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted and assessed within the Conclusions section.

POLICY CONTEXT

Designation applicable to site:
Within built up area boundary.

DEVELOPMENT PLAN POLICES

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The application is determined under the provisions of Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) in respect of a development consisting of a change of use of a building and any land within its curtilage to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order from a use falling within Class B1 (a) (offices) of that schedule.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

This application falls to be determined under the provisions of Class O of the Town and Country Planning (General Permitted Development) Order 2016 in respect of a development consisting of a change of use of a building and any land within its curtilage to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order from a use falling within Class B1 (a) (offices) of that schedule.

The principle of the development is not in dispute. Class O allows for the change of use (and limited building operations) as long as certain criteria are met:

Development is not permitted by Class O if:

(1) (a) the building is on article 2(5) land and an application under paragraph O.2(1) in respect of the development is received by the local planning authority on or before 30th May 2019;

The host building is not on article 2(5) land

(b) the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order -

(i) on 29th May 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.

It is considered that it was.

(d) the site is or forms part of a safety hazard area;

It is not /does not form part of a safety hazard area.

(e) the site is or forms part of a military explosives storage area; and

it is not /does not form part of a military explosives storage area.

(f/g) the building is a Listed Building or is within the curtilage of a listed building. Is or contains scheduled

monument.

The building is not a listed building and is not and does not contain a scheduled monument.

The above criteria are considered to have been met.

Class O (paragraph O.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 on the site,
- (c) flooding risks on the site, and
- (d) impacts of noise from commercial premises on the intended occupiers of the development, and the provisions of paragraph W (prior approval) apply in relation to that application.

(2) Development under Class O is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date.

The Order also state the provision 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 subparagraphs (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(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 4 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.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

TRANSPORT & HIGHWAY IMPACTS:

Highways do not object to this application. They consider that visibility is good and raise no issues with any of the access routes to the site. As the offices provided 50 spaces, there is ample parking provided for within the development. Appropriate levels of cycle parking/storage would be provided. With regard to trip impact Highways consider that the proposal will see a vast reduction in the overall number of trips using the access, which will have a positive impact on the surrounding highway network.

The site is considered to be a sustainable location where residential occupiers can easily access shops, services and facilities without the need to own a car.

CONTAMINATION RISKS:

The site is not contaminated land, there have been no objections relating to contaminated land.

FLOOD RISK:

The site is located within low risk Flood Zone 1 and there are no policy objections to the location of a dwelling in Flood Zone 1.

IMPACTS OF NOISE FROM COMMERCIAL PREMISES ON NEW OCCUPIERS:

The application proposes to introduce noise sensitive receptors into an established area of commercial activity. The Council's Environmental Health Officer has been consulted on this application and objects to this application. They note that the application is sited within an area where there are B2 uses in close proximity to the application site e.g. to the west of the site with no time use restrictions on it, and a further B2 use at Unit 14 of Martello Enterprise Centre directly behind the proposed site again with no time use restrictions on it. The potential use of these two sites could therefore be 24hours, 7 day sheet metal production. This worst case scenario has not been taken into account by the acoustic report.

Additionally, the Environmental Health Officer has concerns that the acoustic report has also underestimated the noise impact of deliveries at the Morrisons supermarket site as it states "Levels from this commercial activity are understood to occur only between the hours of 8am - 9pm, and as such do not affect measured night time levels". However the restrictions on the Morrisons site for deliveries/loading/unloading are from 6am - 10pm inclusive.

Whilst the Environmental Health Officer has assessed the acoustic report submitted for this application and the addendum subsequently submitted, they have serious concerns that allowing residential use at this site will directly contravene Paragraph 170e and 180a of the revised NPPF where:

170. Planning policies and decisions should contribute to and enhance the natural and local environment by:

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

and further, Paragraph 180a states:

180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living

conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life

The Environmental Health Officer therefore considers that the impacts of noise from commercial premises on the intended occupiers of the development are such that an objection should be raised in this respect.

REPRESENTATIONS FROM LOCAL RESIDENTS & ASSESSMENT AGAINST THE NPPF:

No objections or representations have been received from local residents. Therefore, there is no requirement to assess the proposal against the NPPF.

SUMMARY:

It is considered that the proposed change of use is permitted development having regard to Class O.1 of the Order. However due to concerns regarding the noise impacts of the existing development surrounding the site on the proposal, the local authority raises objections to the granting of permitted development. The application must fail with an objection raised for the following reason.

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 Development under Part 3, Class O of the Town and Country Planning (Development) Order 2015 as amended, is subject to the conditions, under O.2, that before beginning the

development, 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:

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

Objection to the proposed change of use is given on the basis that it is considered that the proposal conflicts with advice given by the Council's Environmental Health Officer in that there are commercial uses surrounding the site on several sides, which have potential to adversely affect the amenity of future residential occupiers with regard to noise. As such it is considered that the proposal would not comply with Paragraph 170e and 180a of the NPPF 2018.