

Recommendation Report for Prior Notification

REF NO: LU/57/25/PD

LOCATION: 51 Pier Road
Littlehampton
BN17 5LP

PROPOSAL: Prior notification under Schedule 2, Part 3, Class MA for the change of use of part of building on ground floor from restaurant (Class E) to dwelling house (Class 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.

It is noted that the elevations involve the relocation of a rear access door to the rear elevation of the building. Whilst this has not been applied for as part of this application, consideration as to whether the alteration constitutes development under Section 55 of the Town and Country Planning Act 1990 should still be given as part of the consideration.

SITE CHARACTERISTICS The site is currently mixed use with a store at basement level, retail store (food and drinks) at ground floor levels, and a residential maisonette to first and second floor levels.

CHARACTER OF LOCALITY Mixed use with the River Arun in close proximity to the West.

Relevant planning history noted.

REPRESENTATIONS

Littlehampton Town Council - No objection.

No representations received from nearby occupiers.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted.

CONSULTATIONS**CONSULTATION RESPONSES RECEIVED:**

Environmental Health - No objection:

- Condition securing a scheme for protecting the proposed residential accommodation from the existing noise climate advised.
- Condition restricting construction hours advised.

WSCC Highways - No objection:

- The change of use to residential is not anticipated to give rise to a material intensification of movements to or from the site.
- Vehicular parking would have to be accommodated on-street, as per the existing arrangement.
- There are comprehensive parking restrictions in place that would preserve highway safety.
- Does not anticipate that the proposal would result in a detrimental highway safety impact, nor lead to a parking capacity issue.

Environment Agency - Objection (16/04/25):

- Notwithstanding the mitigation measures proposed, the risk to life and/or property, within the development from tidal inundation would be unacceptable if the development were to be permitted. The application does not demonstrate that occupants can remain safe for the lifetime of the development.

Environment Agency - Objection (13/05/25):

- As this development poses an unacceptable risk to life and property from flooding, we object.
- Notwithstanding the mitigation measures proposed, the risk to life and property from tidal inundation would be unacceptable if the development were to be permitted.
- The application does not demonstrate that occupants can remain safe for the lifetime of the development when allowances for climate change are taken into consideration. There is insufficient flood risk mitigation up to the design flood level and no specified arrangements for safe access and egress.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted. Conditions restricting construction hours are not relevant to the considerations allowed within Class MA.

POLICY CONTEXT

Built Up Area Boundary.
2km Buffer for Site of Special Scientific Interest.
Flood Zone 2 and 3.
Future Flood Zone 3a.
1 in 1000 Surface Water Flood Risk.

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, the application site has accommodated a relevant use (Class E) 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:

As confirmed by the application form, this is not applicable.

(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:

As set out in sub-paragraph 6 of paragraph W (prior approval), the Environment Agency being consulted and an appropriate Flood Risk Assessment being submitted is only required where the development is within Flood Zone 2 or 3, or if it is in an area of Flood Zone 1 which has critical drainage problems and which has been notified to the Local Planning Authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.

The building is in Flood Zone 3 and the Environment Agency have been consulted.

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.

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:

Criteria (a), (c), (d), and (f) are assessed below. Criteria (b), (e), (g), and (h) are not of relevance to this site or proposal.

TRANSPORT IMPACTS AND SITE ACCESS

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

OFFICER COMMENT:

No vehicular access or parking is proposed. WSCC Highways have raised no objections to the nil provision of parking for the proposal, and identify that the proposal would have no detrimental highway safety impact, nor lead to a parking capacity issue. Any car parking necessary for intended occupiers would need to be accommodated on surrounding public highways. This is in keeping with the character of the area.

Whilst not ideal for the amenities of the occupiers, 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.'

The proposal was accompanied by a Flood Risk Assessment (FRA) which was reviewed by the Environment Agency (EA), and subsequently amended and re-reviewed by the EA during the application process. The FRA was objected to on both occasions. The EA have advised that notwithstanding the mitigation measures proposed, the risk to life and property from tidal inundation would be unacceptable if the development were to be permitted. They also clarify that the proposal does not demonstrate that occupants can remain safe for the lifetime of the development when allowances for climate change are taken into consideration, and that there is insufficient flood risk mitigation up to the design flood level and no specified arrangements for safe access and egress.

The development should be made safe for its lifetime, which, as outlined by the NPPG, residential developments should be considered to have a lifetime of 100-years. The submitted FRA identifies that in an undefended 1 in 200 year 2115 scenario tidal flood event, the flood level at the Site would be 5.03 mAOD. This would result in flood depths of 0.6m at ground floor finished floor level. The FRA does not consider that this future scenario requires mitigation. Paragraph 170 of the NPPF is clear that the development must be made safe for its lifetime, and given the 100-year lifetime, 2115 is included. Whilst a residual risk, the undefended scenario should still be considered and safely managed as outlined within Paragraph 181(d) of the NPPF.

The submitted FRA clearly states 'Emergency evacuation to land outside of the floodplain should be provided if feasible. Where this is not possible, 'More Vulnerable' developments and, where possible, development in general (including basements), should have internal stair access to an area of safe refuge within the building to a level higher than the maximum likely water level. An area of safe refuge should be sufficient in size for all potential users and be reasonably accessible to the emergency services'.

The FRA then neglects to identify a safe access/egress route to land outside the flood plain during a flood event (presumably as this appears to not be possible), rather it identifies that occupiers should

evacuate ahead of a flood event in line with a flood warning service to an area approx. 500m east (as the crow flies). For a small scheme like this, signing up to the flood warning service would be difficult to enforce and not reasonably controlled by way of condition, certainly not in perpetuity. Moreover, there are many factors which could influence whether occupiers would receive such a flood warning, i.e. loss of power or communication services. Reliance on a flood warning service alone is insufficient.

It is clear that the surrounding land would likely be inundated in the relevant future flood event when accounting for climate change and the undefended scenario. The proposal also does not include an internal staircase to an area of safe refuge that can be relied upon. It is noted that the building features a first-floor flat to which an internal staircase reaches, however, the flat would not be readily accessible for safe refuge by occupiers of the ground-floor flat, and the benevolence or the availability of others in first-floor property in such situations cannot be relied upon for access to be available.

The latest surface water flood risk mapping from the Environment Agency (EA) do not identify the site as being at risk of surface water flooding now or in 2040-2060. The EA has not yet either produced or made public surface water flood maps for the years beyond 2060. Arun District Council has produced a Strategic Flood Risk Assessment which predates the more up-to-date EA flood maps, however, it does provide surface water flood risk mapping for the 1 in 1000 flood event which is often used as a point of reference for the 1 in 100 plus climate change allowances in lieu of data which accurately maps the 1 in 100 event while accounting for climate change. This mapping identifies that part of the building would be at risk of surface water flooding, whilst the surrounding land would be unaffected. Given the local topography with a substantial drop to the rear of the property, and that there would be no risk of surface water flooding at the lower topography or the land immediately surrounding the building, the mapping would not appear to accurately reflect the movement of surface water at the site. Additionally, even if surface water flooding were to occur in this small area that has been mapped, it would not occur on the roof of the building, rather it would flow down to the rear of the site which features the rear access to the basement level of the building. The floodwater would not impact the ground floor level of the building. Surface water flooding impacts are not a constraint of concern for this proposal.

The proposal has not demonstrated that it would be safe for its lifetime when taking account of relevant climate change allowances and the undefended scenario, nor does it demonstrate a safe access/egress from the site. The proposal does not adequately address criterion 2(c) of Class MA.2.

IMPACTS OF NOISE

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

The Environmental Health department were consulted on this application and advised that a pre-commencement condition securing the provision of a scheme to protect the proposed residential accommodation from noise from the existing noise climate should be imposed. It is agreed that given the adjoining retail/business uses, such a scheme should be provided to preserve the amenity of the intended occupiers and the condition would have been imposed had this application been successful.

NATURAL LIGHT TO HABITABLE ROOMS

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

The proposed living room area would benefit from sufficient light through what is the existing shop frontage window. The bedroom to the rear would benefit from sufficient light through the rear glazed access door that is to serve the bedroom.

The application complies with this 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 proposed unit is single storey and provides 1 No. bedroom. The dwelling would have an internal floorspace of just over 49.2sqm, which is compliant with the minimum internal floor space required for such a dwelling. The bedroom is also of sufficient width and area.

The proposal complies with the NDSS per the requirement of Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

PHYSICAL ALTERATIONS

The proposed plans indicate the removal of some plant/ventilation equipment which would not require development consent, but also the relocation of a rear access door from the southern elevation to the east elevation and by approx. 2m. The Local Planning Authority are satisfied that in this context, the relocation of the access door would not materially alter the appearance of the building and would not constitute development in accordance with Section 55 of the Town and Country Planning Act 1990.

SUMMARY

An objection has been received from the EA on the grounds of unacceptable risk of flooding to life and property, and insufficient detail relating to safe access/egress. The proposal would be in Flood Zone 3a, and at a high risk of flooding. Mitigation measures have been proposed, however, these are not sufficient to protect life and property from tidal inundation in an undefended design flood event flood event when accounting for climate change allowances. Additionally, no arrangements for safe access and egress or suitable onsite safe refuge are provided. This results in unacceptable risk of harm to life and property from flooding, in conflict with the NPPF.

This risk of flooding conflicts with Schedule 2, Part 3 Class MA, MA.2 2(c) of the Town and Country Planning Act (General Permitted Development) Order 2015, and the proposal 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.

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| RECOMMENDATION |
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OBJECTION

- 1 The proposal fails to demonstrate that the property and its occupiers would not be at unacceptable risk of flooding when accounting for relevant climate change allowances. This is contrary to the requirements of 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.