

Recommendation Report for

REF NO: LU/7/19/PD

LOCATION: Unit 4 Hawthorn Road
Littlehampton
BN17 7LA

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/286/18/PD	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)	Objection 04-12-18
LU/176/18/PD	Notification for Prior Approval under Class O for change of use from an office (Class B1) to a dwelling (Class C3).	Withdrawn 06-08-18

Noted.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Littlehampton Town Council

Littlehampton Town Council: Object to this application, their comments are summarised as follows:

In view of the Environmental Health assessment of the plans, the level of mitigation proposed is insufficient and the Town Council maintains its objection.

1 letter of neighbour objection has been received, their comments are summarised as follows:

- The whole area is completely overwhelmed at the moment with traffic, various objections have been made in the past and the area can not cope with the current traffic and volume of people.
- Consideration should be made for the current residence in the area.
- This building should stay as it is.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted and assessed within the Conclusions section.

CONSULTATIONS

Environmental Health
Environment Agency
WSCC Strategic Planning

CONSULTATION RESPONSES RECEIVED:

Environmental Health: Objects, their comments are summarised as follows:

Follow-up Comments: The additional Acoustic detail do not alter Environmental Health's point of view and that we still strongly object to this application.

Initial Comments: Strongly object to this application on noise grounds.

If the building is acoustically sealed up, the residents would not be impacted by the significant noise from the commercial noise outside as detailed in the Acoustic Report as submitted.

Having regard to the NPPF at paragraph 180.

Clearly being unable to open windows will have a negative impact on living conditions and quality of life. This has been proved in Planning Inspectorate Appeal Decisions APP/D0121/A/14/2221207 and APP/J3720/W/16/3160816. The application clearly does not fully comply with Paragraph 180 of the NPPF.

It is Environmental Health's opinion that the application does not comply with Paragraph 170 of the NPPF.

Future residents will adversely affected by noise pollution externally to the premises and the mitigation measures will result in the inability to open any windows in the building in order to mitigate the noise environment of the dwelling being seriously compromised by the external noise. (should windows be openable).

COMMENTS ON CONSULTATION RESPONSES:

Comments are noted and will be discussed in the Conclusions section below.

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**PRINCIPLE:**

This application falls to be 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.

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. As such, the Arun Local Plan and Littlehampton Neighbourhood Development Plan do not apply.

ASSESSMENT UNDER PART 3, CLASS O OF THE TOWN AND COUNTRY (GENERAL PERMITTED DEVELOPMENT) ORDER (as amended):

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 states that 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.

CONCLUSIONS

TRANSPORT & HIGHWAY IMPACTS:

Highways have not commented on this application, however they commented on previous application ref: LU/286/18/PD and did not object. As they have not commented on this application and it is considered that Transport and highway matters e.g. parking provision have not changed since the previously refused application for a similar scheme, their previous comments will be taken.

Highways 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.

Neighbour objection has been raised regarding potential highways impacts of the proposal. It is considered that the whole area is completely overwhelmed at the moment with traffic, various objections have been made in the past and the area can not cope with the current traffic and volume of people. Consideration should be made for the current residence in the area. This building should stay as it is.

In light of the Highway Officer comments it is considered that there the proposed change of use would not lead to any detrimental transport or Highways impacts such that the proposal should be objected to.

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. It should be noted that under previous application ref: LU/286/18/PD, which the Local Planning Authority objected to, the Environmental Health Officer also objected on noised grounds, having regard to the NPPF.

The Environmental Health Officer objects this application on noise grounds. It should be noted that while they object on noise ground they acknowledge that the submitted acoustic report (180801 R001E, dated January 2019 by ACA Acoustics) states that:

"without suitable mitigation measures, noise from commercial equipment is likely to have a significant adverse impact to future residents of the development".

The applicant states that suitable measures would include high performance acoustic double glazing, and appropriate facade and roof insulation and crucially mechanical ventilation such as MVHR or similar.

The use of mechanical ventilation would, presumably mean that the building is acoustically sealed up. Therefore, this would mean that the residents would not be impacted by the significant noise from the commercial noise outside. However, paragraph 180 of the NPF states that:

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.

Mitigation measures will result in the inability to open any windows in the building in order to mitigate the noise environment of the dwelling being seriously compromised by the external noise. Therefore it is considered that clearly being unable to open windows will have a negative impact on living conditions and quality of life.

With regard to the sealing up of windows and quality of life, Officers note Appeal ref: APP/J3720/W/16/3160816 - Stockton Hall Court Rugby Road Stockton, where the Inspector considers that:

"...the option of sealed windows.....would provide unacceptably oppressive living conditions for future residents."

Officers note that the aforementioned appeal was also dismissed on the grounds that the sealed windows would not mitigate any adverse noise conditions experienced outside the dwellings.

Officers also note other appeals where the issue of sealing up windows to mitigate against external noise issues. One such appeal is appeal ref: APP/Z0116/W/18/319399, where the Inspector considers that:

" Whilst some large offices blocks may be hermetically sealed and reliant on artificial ventilation systems, it seems to me that residential occupiers, living at first and second floor levels of a three storey building, would reasonably expect to be able to open their windows during fine weather without being subjected to noise levels in excess of suggested limits."

and:

"The acknowledgement of the need to keep windows closed to meet acceptable internal noise limits during the day and night is testament to the fundamentally noisy environment of an industrial estate with a concentration of commercial premises likely to emit noise. The suggestion...that the effects could be reduced if windows were only 'slightly open' is not sufficient for residential accommodation, where occupiers are likely to wish to open windows normally, especially during warmer weather."

The Inspector also considers that:

"Part 3, Class W of the GPDO sets out the procedure for prior approval applications under Part 3. Paragraph W.10(b) requires the decision-maker to 'have regard to the National Planning Policy Framework so far as relevant to the subject of the prior approval, as if the application were a planning application.' One of the core planning principles, set out in paragraph 17 of the National Planning Policy Framework (the Framework), is that planning should 'always seek to secure high quality design and a good standard of amenity for all existing and future occupiers of land.'"

Officers note the above appeals and that the proposed change of use would be to a single storey building rather than a 3 storey building as per appeal ref: APP/Z0116/W/18/319399. However, while Officers note that the while the aforementioned appeals were not exclusively dismissed with regards to the negative impact on living conditions as a result of not having openable windows, Inspectors did raise the issue. Officers consider that the proposed change of use, the subject of this application would also

lead to a negative impact on living conditions and quality of life of the occupiers as the windows would also be sealed shut as a result of noise mitigation measures.

As aforementioned by the inspector re: appeal ref: APP/J3720/W/16/3160816 Part 3, Class W of the GPDO sets out the procedure for prior approval applications under Part 3. Paragraph W.10(b) requires the decision-maker to 'have regard to the National Planning Policy Framework, so far as relevant to the subject of the prior approval, as if the planning application was a planning permission. With regard to Part 3 Class O, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) there are 4 areas that can be assessed as mentioned in the development plan background above. These are:

- (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.

Therefore while the applicants have stated that they would mitigate the noise impacts of surrounding development by having no opening windows which would by the admission of the Council's Environmental Health Officer, above, that the residents would not be impacted by significant external commercial noise. However, Officers consider that as a result of the noise mitigation the proposal would have negative impact on living conditions as a result of not having openable windows. Therefore as this is a matter that stems from the issue, raised by the Environmental Health Officer, it can be considered, as per the Inspectors in the appeal cases above. Therefore it is considered that the proposal would not adhere to the requirements of the NPPF.

Should the windows be openable, the proposal would then open up the issue of the occupiers complaining about noise levels of the existing surrounding industrial units and business such as Morrisons supermarket thus creating a 'catch 22' situation. The Inspector re: appeal ref: APP/Z0116/W/18/3193990 - Princess House, 1 Princess Street, notes that:

"The issue is acknowledged in paragraph 123 of the Framework, which advises that planning policies and decisions should aim to 'recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.' Given the prevalence of commercial premises in the area, many generating noise, there is a realistic prospect that such complaints would arise, especially if future residential occupiers wished to open their windows."

Hence the need to keep the windows un-openable for the proposed change of use.

Additionally, the above assesment raises the issue of the proposed flats in the centre of the building having no windows at all. Officers also consider that this would be contrary to the requirements of the NPPF with regard to Paragraphs 170 and 180.

SUMMARY:

It is considered that the proposed change of use is permitted development having regard to Class O.1 of the Order. However, concerns regarding the noise impacts of the existing development surrounding the site on the proposal would lead to the proposed flats having no opening windows, creating a negative impact on living conditions contrary to the requirements of the NPPF. Therefore 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, which would lead to the proposed windows being non-opening. This would lead the proposed flats having no opening windows, creating a negative impact on living conditions contrary to the requirements of the NPPF.

As such it is considered that the proposal would not comply with Paragraph 170e and 180a of the NPPF 2019.