

Recommendation Report for Planning Permission

REF NO: R/141/19/PL

LOCATION: 4 Broadmark Parade
Broadmark Lane
Rustington
BN16 2NE

PROPOSAL: Application for variation of condition imposed on planning reference R/34/19/PL relating to condition 3 - amend deliveries & servicing hours to be only between the hours of 08:30 & 20:00 Monday-Saturday & 10:00 & 20:00 on Sundays & Bank holidays.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	Planning permission R/34/19/PL was granted approval subject to condition 3 which stated "The use hereby approved including deliveries, retail unit opening hours, machinery operations and ventilation associated with the use shall only be between the hours of 10.30am to 11pm Monday to Saturday and between 10.30am and 10pm on Sundays and Bank Holidays. Reason: To protect the amenities of occupiers of adjoining properties in accordance with Arun Local Plan policies D DM1, QE DM1 and QE DM3." This application seeks to vary the condition by allowing deliveries and servicing hours to the premises to occur between 0830 and 2000 hours Monday-Saturday & 10:00 & 20:00 on Sundays & Bank holidays.
BOUNDARY TREATMENT	The site currently has a 2 metre brick wall to the rear yard.
SITE CHARACTERISTICS	An A1 retail use with residential accommodation above. The shop was last used 18 months ago as a home nursing supplies shop. The site backs on to Rustington Waitrose car park (public car park).
CHARACTER OF LOCALITY	A local shopping parade serving Rustington village centre.

RELEVANT SITE HISTORY

R/34/19/PL	Change of use of currently vacant former A1 (Shops) ground floor premises to a mixed A3/A5 (Restaurants & Cafe & Hot Food Takeaway) use, incorporating the erection of a single storey rear extension, replacement shopfront & associated plant & extraction equipment	ApproveConditionally 07-06-19
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Planning permission R/34/19/PL was also granted subject to condition 6 which stated:

The development shall proceed in accordance with the details contained within the Delivery and Service Plan dated December 2018.

The Delivery and Servicing Plan stated:

"Customer access to the unit will remain from the frontage onto Broadmark Lane/Ash Lane.

Rear access to the unit is provided from a private access road, approximately 4.6-metres wide, to the north of the site from Ash Lane. It is expected that waste collection requirements would be taken from this access road.

It is expected that deliveries to the unit will be undertaken from the retail frontage to the north of The Street, with items transported to the unit via the signalised pedestrian crossing over Ash Lane. This servicing would be undertaken outside of the restricted hours of 08:00 -18:00 hours.

Typically, A3/A5 units are serviced approximately 3 times per week utilising a rigid HGV. The core logistics providers now offer reverse logistics to minimise the waste collection requirements at these units, this may be possible at this unit depending on the end occupier's logistics arrangements.

Appendix B provides a 10.5 metre rigid HGV swept path, demonstrating the proposed servicing arrangement from The Street along the one-way access road and egressing onto Ash Lane."

The same Delivery and Servicing Plan has been submitted as part of this application.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Rustington Parish Council

No Objection

1 Support

- No 4, Broadmark Parade, Rustington which has been vacant for over 18 months.
- Kentucky Fried Chicken (KFC) are interested in the shop.
- The Planning Authority has placed a restriction on delivery times.
- The applicant has pointed out that if there is a delay and deliveries are delayed he would be breaking the law through no fault of his making.
- Dominos shop in the parade operates without this restriction and deliveries are made to the back of the shop on land owned by the shop.
- At the moment the "High Street" is suffering - this restriction is making things worse.
- Request restriction is removed as quickly as possible.

COMMENTS ON REPRESENTATIONS RECEIVED:

The merits of amending the wording of the condition are set out below in the conclusions section of this report.

CONSULTATIONS

Environmental Health

Economic Regeneration

CONSULTATION RESPONSES RECEIVED:

Environmental Health - Objection.

The proposed amendment to delivery and servicing times to start at 06.00 hours, has the potential to cause a statutory nuisance to neighbouring residents with regard to noise. The supplier's lack of a suitable delivery vehicle is acknowledged and temporal parking restrictions cited in the applicant's covering letter, therefore suggest that the proposed early start time is amended to 07.00 hours to reduce the likelihood of disturbance to neighbours.

The proposed 6am start time is unnecessary and unreasonable.

What times do Dominos have their commercial deliveries? This information could influence this application; for example, if Dominos have deliveries during the day, perhaps it's possible to have daytime deliveries but if they have them early/late, it might be tolerated for 'x' days per week however this disturbance might be doubled with KFC deliveries

6am is very early for such activities and it then sets a precedent for future applications of this type.

Economic Regeneration Officer - No Comment

COMMENTS ON CONSULTATION RESPONSES:

Comments noted and the concerns regarding the impact on residential amenity are agreed. It is not considered that a 7am start would not unreasonably affect neighbouring residential amenity.

Following discussions with the applicant's agent the application description has subsequently been amended to refer to a later start time of 8.30 Monday to Saturday and a 10am start on Sundays and Bank Holidays.

POLICY CONTEXT

Designation applicable to site:

Town Centre

Secondary Retail Frontage

DEVELOPMENT PLAN POLICIES

[Arun Local Plan 2011 - 2031:](#)

DDM1	D DM1 Aspects of form and design quality
DSP1	D SP1 Design
QEDM1	QE DM1 Noise Pollution
QESP1	QE SP1 Quality of the Environment
TSP1	T SP1 Transport and Development

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework
NPPG National Planning Practice Guidance

SUPPLEMENTARY POLICY GUIDANCE:

RDS Rustington Design statement by Rustington Parish Council

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area.

There are no policies relevant to this application in the Rustington Neighbourhood Plan.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to comply with relevant Development Plan policies in that the proposed revised delivery and servicing hours would not adversely affect the residential amenities of adjoining properties.

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

PRINCIPLE

The proposal seeks amendments to the hours of operation condition imposed on the original change of use application for the premises. The use of the property and principle of the use has previously been agreed. Consideration of this application is therefore limited to the servicing and delivery hours only.

The key policies applicable to this proposal include D DM1, QE DM1 and T SP1 of the Arun Local Plan which seek to ensure that the change of use is acceptable in relation to the impact on neighbouring residential amenity and that the development is adequately serviced by parking facilities, can be easily accessed and would not cause any hazards to the local transport network.

RESIDENTIAL AMENITY

The premises retains residential accommodation at first floor and there are other residential units above adjoining units in the parade. While commercial uses and delivery vehicles and associated noise, disturbance and odours are part of the current residential environment, it is important to ensure any noise and activity generated by the proposal does not have a significant additional adverse impact on residential amenity and takes place at reasonable hours. The hours of operation and delivery times were restricted by condition when previously approved.

The site is already subject to some noise and disturbance due to the use of the public car park which serves the Rustington village centre, in particular the Waitrose supermarket, throughout the operating hours of 7.30am - 8pm Monday to Saturday, 10am to 4pm Sunday. This car park also serves other A3/A5 uses including the Dominos pizzeria at 9 Broadmark Parade.

R/303/15/PL (Domino's site) was granted subject to the following condition:

"The premises shall not be open for collection on any day except between the hours of 10am to 11pm Monday to Saturday and between 10am and 10pm on Sundays and Bank Holidays. The premises shall not be open to customers beyond approved opening times and no ordered customer food deliveries shall take place outside of these times except between 10pm and 11pm Sundays and Bank Holidays."

No restriction was placed on delivery times which can be undertaken to the rear of the premises via the access road.

In contrast, the proposed operators for the application premises do not currently have a vehicle at its disposal which could provide deliveries to the site utilising the service road and associated area to the rear of the premises. This is not the case for refuse and recycling collection removal, which can utilise the service road and associated area to the rear of the premises.

Paragraph 3.1.1 of the Delivery and Servicing Plan (D&SP) clarifies deliveries to the unit. They are expected to occur approximately 3 times per week, would be undertaken from the parking spaces to the front of the retail frontage to the north of The Street (to the west of the application premises), with items transported to the premises via the signalised pedestrian crossing over Ash Lane. The main carriageways within the immediate area comprise double yellow lines, and therefore delivery vehicles (and any other vehicles) cannot park on those carriageways at any time.

The parking spaces opposite the unit are subject to restrictions between 08.00 to 18.00 hours on Mondays to Saturdays, and during the hours of 9am and 5.30pm most of the spaces are in use by customers of the numerous commercial premises. It would therefore be reasonably possible to use the spaces before 9.00 am and after 5.30pm ie the restrictions referred to by the agents are not as tightly defined as suggested.

The agent has advised that in reality, such deliveries are very rarely made after 18.00, and therefore the application was originally made to vary condition (3) to enable deliveries and servicing to take place between the hours of 06.00 to 20.00 (to cover the occasional instance when a delivery has to be made in the early evening). This has subsequently been amended to 8.30 am.

The agents suggest that the easiest way this request could be secured would be by way of condition (3), as originally imposed, to be varied to not include deliveries and servicing, and an additional condition be imposed relating solely to deliveries and servicing, and restricting times. This process is agreed.

Assessment of proposed variation.

The reason for the imposition of condition (3) was to protect the amenities of occupiers of adjoining properties.

The agent for the application has advised that in appraising whether the proposed variation would adversely affect the amenities of nearby residential properties, it is important to emphasise that condition (3) as imposed allows deliveries and servicing to take place until 23.00 everyday. Conversely, the suggested variation would ensure that deliveries and servicing does not take place after 20.00, thereby reducing any potential adverse impact upon residential amenity in the evenings.

Although the site is located within a designated 'Local Service Centre', as well as fronting the B2140 road, a delivery being made to the premises typically 3 times a week potentially at 08.30 hours would not result in material harm, given that the existing level of general activity occurring at that time is acceptable and does adversely affect the residential properties which exist above ground floor commercial uses in this area. The deliveries would require movement of goods along pavements and across a road which would be likely to generate noise from bumping and rattling cages as well as the delivery activity itself and vehicle movements. However, this would occur against the established backdrop of noise from traffic and users of the service centre. The Environmental Health officer had suggested that the 06.00 am start requested would not have been reasonable and would have result in material harm to residential amenity, but the amended hours are now considered acceptable.

Since deliveries will be undertaken to the site opposite and close to the premises known as Establo which was granted permission under R/37/16/PL the restrictive conditions on this site are relevant. . Condition 7 of the permission states:

"Deliveries by commercial vehicles shall only be made to or from the site between 08.30 hours and 18.00 hours Monday to Saturday and at no time on Sundays, Bank or other Public Holidays without the prior written consent of the Local Planning Authority."

Therefore the proposed variation of condition (3) of R/34/19/PL to enable deliveries and servicing to take place between the hours of 08.30 to 20.00 Monday to Saturday and 10am to 8pm Sundays and Bank Holidays would only increase evening deliveries Monday to Saturday by 2 hours when other A3 uses currently operate. The Sunday and Bank holiday delivery times are only being increased by half an from 10am and are being reduced by 3 hours at the end of the day. It is not considered that the revised hours result in material harm to the amenities of occupiers of nearby residential properties in compliance with Local Plan policies D DM1, QE DM1 and QE SP1.

HIGHWAYS

The site is located adjacent to one of the main public car parks in Rustington which provides up to 3 hours parking as well as further public car parking opposite on the layby to the primary shopping frontage on The Street. In addition, there are adequate bus stops and services nearby. As a whole parking for deliveries and customers visiting the premises would be adequate and similar to other similar uses in the village centre.

To the front of the premises there are railings, double yellow lines and traffic lights to prevent vehicular access onto the pavement from the road frontage.

The use of parking spaces opposite for deliveries was referred to in the Delivery and Servicing Plan submitted with the previous application and was not considered to be unacceptable to County Highways.

This element of the application has therefore been previously agreed and is considered acceptable with respect to policies T SP1 and T DM1 of the Arun Local Plan.

CONCLUSION

The requested change of delivery times can be undertaken without adversely affecting the residential amenities of adjoining properties in compliance with policies D DM1, QE SP1 and QE DM1 of the Arun Local Plan. The application is therefore recommended for approval subject to the following conditions.

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) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval 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

APPROVE CONDITIONALLY

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby approved shall be carried out in accordance with the following approved plans:

Proposed Roof Plan dwg. no. 2940/PL125 Rev. B dated 09.05.19.

Proposed External Elevations dwg.no.Rev. C 2940/PL211 dated 08.05.19.

Proposed Ground Floor GA Plan dwg.no. 2940/PL100 Rev. A dated 20.12.2018.

Proposed First Floor GA Plan dwg.no. 2940/PL101 Rev. A dated 06.02.19.

General Arrangement of HVAC Installation Plan & Side Elevation dwg.no. 0000/M/101 Rev B dated 08/02/19.

General Arrangement of HVAC Installations Sheet 2 of 2 - Elevations dwg.no. 0000/M/101 Rev B dated 08/02/19.

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policy D DM1 of the Arun Local Plan.

- 3 The use hereby approved including retail unit opening hours, machinery operations and ventilation associated with the use shall only be between the hours of 10.30am to 11pm Monday to Saturday and between 10.30am and 10pm on Sundays and Bank Holidays.

Reason: To protect the amenities of occupiers of adjoining properties in accordance with Arun Local Plan policies D DM1, QE DM1 and QE DM3.

- 4 The extraction system shall be constructed and retained in perpetuity in accordance with the following document:

The Mechanical Ventilation & Environmental Control Equipment - Planning Application Information dated 21-01-18 & email update of 09/05/2019 15:32.

Reason: To protect the amenities of occupiers of adjoining properties in accordance with Arun Local Plan policies QE SP1, QE DM1 and QE DM3.

- 5 The use hereby permitted shall include the sound insulation scheme, recommended by Ned Johnson Acoustic Consultants' Acoustic Assessment (ref. 451819 Rev. A, dated February 2019), for protecting the upper floor residential unit from noise. The scheme shall achieve a minimum airborne sound insulation value of 50dB (DnTw + Ctr dB). Following implementation of the insulation scheme, a test shall be undertaken to demonstrate that the attenuation measures carried out has achieved the minimum airborne sound insulation criteria. The use of the development shall not commence until test results, demonstrating the minimum sound insulation criteria has been achieved, has been submitted to and approved by the local planning authority.

Reason: In the interests of the amenity of nearby residents & occupiers of any nearby noise sensitive premises, the general amenities of the area and in the interests of highway safety in accordance with policies D DM1 and QE SP1 of the Arun Local Plan and the National Planning Policy Framework.

- 6 The development shall proceed in accordance with the details contained within the Delivery and Service Plan dated December 2018.

Reason: To protect the amenities of occupiers of adjoining properties and provide adequate servicing and delivery to the premises in accordance with Arun Local Plan policies QE SP1, QE DM1, QE DM3 and T SP1.

- 7 Deliveries by commercial vehicles and servicing shall only be made to or from the site between 08.30 hours and 20.00 hours Monday to Saturday and 10.00 hours and 20.00 hours on Sundays, Bank or other Public Holidays without the prior written consent of the Local Planning Authority.

Reason: To protect the amenities of occupiers of adjoining properties in accordance with Arun Local Plan policies D DM1, QE DM1 and QE DM3.

- 8 INFORMATIVE: Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the

National Planning Policy Framework.

- 9 INFORMATIVE: The premises will require Registration under the Food Safety Act 1990 and will need to comply with the standards contained in the relevant Food Hygiene Regulations prior to becoming operational. The applicant is advised to contact The Food Safety Team at Environmental Health on Tel 01903 737755 or via E-Mail at Food.Safety@arun.gov.uk.