

Recommendation Report for Planning Permission

REF NO: R/220/19/PL

LOCATION: 2 Ash Lane
Rustington
BN16 3BZ

PROPOSAL: Change of use from Class A2 (financial & professional services) to Class A1 (retail) /Class A3 (restaurant & cafe) /A4 (drinking establishment) with alterations to the shopfront to create an external seating area.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above.
TOPOGRAPHY	Predominantly flat.
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	No boundary fences. Commercial property opens out directly onto the street.
SITE CHARACTERISTICS	The site comprises a single storey unit within a shopping parade in the village centre.
CHARACTER OF LOCALITY	Predominantly retail with business and residential uses above.

RELEVANT SITE HISTORY

R/169/72	Change Of Use To Building Society Office Of Ground Floor Shop	ApproveConditionally 18-08-72
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Relevant planning history noted.

REPRESENTATIONS**REPRESENTATIONS RECEIVED:**Rustington Parish Council
No objection

3 neighbour letters of objection have been received and are summarised as follows:

Do not want Rustington to become an area for late night drinking.

The majority of residents are either elderly or family oriented folk and do not need the litter and aggravation which goes with alcohol establishments.

Offices above application property:

1 no objection. No further concerns regarding pavement seating obstructing entrance to the office above.

COMMENTS ON REPRESENTATIONS RECEIVED:

Objection regarding anti social activity is an area controlled by the police and is not a material planning consideration.

Officers note that the entrance to the office would not be obscured by the proposed 'outside seating as:

1. A "pavement seating" area is being created within the existing building and does not use any of the pavement in front of the existing building.
2. There will be barriers in front of the seating area (facing Ash Lane) to stop people spilling out onto the pavement and congregating in front of the entrance to the offices.

CONSULTATIONS

Environmental Health
Economic Regeneration
WSCC Strategic Planning

CONSULTATION RESPONSES RECEIVED:

Environmental Health Officer: Does not object. Recommends the imposition of a number of conditions upon any grant of planning permission.

Economic Regeneration - No comments received.

WSCC Highways - No objection subject to an informative.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted

POLICY CONTEXT

Designation applicable to site:
Built -up Area Boundary

DEVELOPMENT PLAN POLICIES

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

DDM1	D DM1 Aspects of form and design quality
QEDM1	QE DM1 Noise Pollution
QEDM2	QE DM2 Light pollution
QESP1	QE SP1 Quality of the Environment
SDSP1	SD SP1 Sustainable Development

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework

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 policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

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 relevant Rustington Neighbourhood Development Plan policies in this case.

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 that the proposed development is not considered to have any significantly harmful impact upon the commercial character of the locality, or the residential amenities of nearby dwellings.

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 AND POLICY**

The applicant had previously wanted the change of use to include D2 (assembly and leisure) as well as A3 use. Following discussions with the Planning Officer they have since requested that the D2 use be removed from the description in its entirety. As such the Proposed change of use is only for A1 retail use along with additional A3 and A4 use.

The site is located within the main shopping area of Rustington town centre and is also within the secondary shopping frontage as defined in the Arun Local Plan. The proposal seeks permission for A1, A3 and A4 use, but contains very little information in relation to this use.

Policy SD SP1 of Arun Local Plan states that the Council will take a positive approach to considering development and proposals that reflect the presumption in favour of sustainable development contained in the NPPF.

Paragraph 85 of the NPPF advises that planning policies should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Local authorities should promote their the long-term vitality and viability and define the extent of town centres and primary shopping areas and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre. This has occurred and the site is located within a Primary Shopping Frontage as defined in Arun Local Plan.

Arun Local Plan (July 2018)

Policy RET SP1 identifies Rustington as a 'Local Service Centre' that provides a good range of shops serving the local population, together with a range of other services and facilities. The policy advises that the Council will welcome development and initiatives that add diversity to the centre to aid economic resilience and vitality.

The Council's intention to maintain the existing hierarchy of retail centres within the District is set out in Policy RET DM1, which also advises that development proposals that accord with this objective will be permitted, provided that criteria relating to design standards, accessibility by public transport, equal access and crime prevention measures are met. The Policy requires applications for A3 Uses to be accompanied by details of the provisions for the extraction of fumes and cooking odours and the provision of areas for the collection of waste.

Policy RET DM1 also states that proposals for Use Class A1 (retail) will be permitted along the primary shopping frontages, as defined on the Policies Map. Proposals for food and drink premises (Use Class A3) will be permitted provided that:

- The proposal would not create a concentration of non-retail uses to the detriment of the vitality of the town centre;
- Provision is made for a window display, appropriate to a shop front, which is in keeping with the character of the shopping area; and,
- There is no detrimental effect on the character or amenities of the area through smell, litter or noise.

In addition, the Council will require evidence that retail units have not been made deliberately unviable, that marketing has been actively conducted for a reasonable period of time and that alternative retail uses have been fully explored.

This policy reflects the guidance given in para 84 of the NPPF by defining the extent of the town centre and secondary shopping area and making clear the range of uses permitted in this location, as part of a positive strategy for the future of the centre.

PROPOSED ADDITIONAL A3 AND A4 USES.

In this part of the shopping parade (from Hays Travel to Waitrose) 1 out of 19 units (on the same side of the road as the application site) are already in use as A3:

Broadmark Cafe.

On the opposite side of the road it is noted that there is the also a cafe/bar called the Establo Lounge.

In this part of the shopping parade (from Hays Travel to Waitrose) 2 out of 19 units (on the same side of the road as the application site) are already in use as A5.

Officers note previously granted application: R/34/19/PL for the Change of use of currently vacant

former A1 (Shops) ground floor premises to a mixed A3/A5 (Restaurants & Cafe & Hot Food Takeaway) at 4 Broadmark Parade close to the application site.

Having regard to the above, Officers consider that the proposed proposal would not result in a concentration of non-retail uses to the detriment of the vitality of the shopping centre.

With Rustington Town Centre the national retailers including Waitrose and Boots are largely located towards the eastern end of The Street and the independent retailers are located towards the northern end of The Street. Rustington features a range of services which serve local residents, as well as several entertainment facilities including Establo Lounge (restaurant/bar), The Lamb Inn (Public House). The accompanying 'Health Check' report shows that Rustington already contains a diverse range of 'town centre uses', to which additional Class A3 or A4 uses could be added without prejudicing the function of the Town Centre. The proposed A1/A3/A4 use would allow a wider opportunity for use of this unit and would increase the likelihood of this unit being occupied.

The proposal intends to maximise the opportunity to secure ongoing occupation of the existing unit, and reduce the risk of long term vacancy. Although the former Class A2 (bank) use only ended in August 2019, the supporting documents suggest that interest in response to the marketing activity undertaken has been from Class A1, A3 and A4 operators. However, Officers note that at the time of receipt of the former Class A2 unit had only been vacant for 1 month.

An additional marketing document, a letter from the applicants commercial estate agents show interest in response to the marketing activity undertaken has been limited to A4 operators at this location. Officers consider that the marketing of the unit since May 2019 has been actively conducted for a reasonable amount of time in excess of 6 months.

Part 2 of policy RET DM1 of the Arun Local Plan states that:

'The Council will require evidence that the unit has not been made deliberately unviable, that marketing has been actively conducted for a reasonable period of time and that alternative retail uses have been fully explored.'

As such Officers consider that the proposed change of use would not be contrary to par 2 of policy RET DM1 of the Arun Local Plan.

NEIGHBOURING AMENITY

Officers note that certain units within the area have had delivery restrictions and varying opening hours applied, via planning conditions. These conditions have been applied in order to reduce the impact of the residential amenities of adjoining and nearby residential properties, such as flats above. Officers note application ref: R/209/18/PL which imposed delivery times, via a planning condition, as follows:

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.

It considered that the above delivery times together with other appropriate mitigation conditions would not lead to levels of noise that would result in a detrimental impact on nearby the occupiers of nearby, residential dwellings and the offices above. Should noise become an issue this is a matter that could be dealt with under separate Environmental Health legislation.

SUMMARY:

The proposed development is deemed to accord with relevant development plan policies and as such is 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 Elevations & External Seating Area dwg.no. 9379 104 dated July 2019.
Propose Floor Plans dwg.no. 9379 103 dated July 2019

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 Construction work shall not commence unless and until an impact assessment of the noise from the development on the nearest noise-sensitive receptor(s) has been completed and submitted in writing to the Local Planning Authority. The impact assessment shall include noise from deliveries and operation of the development and shall include a noise mitigation

scheme. The assessment shall have regard to the principles of BS 4142:2014 and achieve a difference between the measured 'rating' level and the measured 'background' level of at least 5dB(A). A test to demonstrate compliance with the noise mitigation scheme shall then be undertaken by a competent acoustician / consultant before the use commences.

Reason: To protect the amenity of local residents in accordance with Policy QE DM1 of the Arun Local Plan. This is required as a pre-commencement condition to protect the residential amenities of nearby residential properties.

- 4 The use hereby approved shall only be between the hours of 8.00am to 11pm Monday to Saturday and between 9.00am and 10pm on Sundays and Bank Holidays. The use of machinery operations and ventilation associated with the use shall only be between the hours of 8.00am to 11pm Monday to Saturday and between 8.00am 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.

- 5 No construction activities shall take place, other than between 08:00 to 18:00 hours (Monday to Friday) and 08:00 to 13:00 hours (Saturday) with no noisy working activities on Sunday or Bank Holidays.

Reason: To protect the amenity of local residents in accordance with Policy QE SP1 of the Arun Local Plan 2011 - 2031.

- 6 No external lighting shall be installed until details have been submitted to, and approved in writing by the Local Planning Authority prior to the commencement of the development. This submission shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles). The approved scheme shall be installed, fully assessed by a competent individual when operational to ensure no light creep / bleed, maintained and operated in accordance with the approved details unless the Local Planning Authority gives its written consent to the variation.

Reason: To protect the appearance of the area / the environment and wildlife / local residents from light pollution in accordance with policy QE DM2 of the Arun Local Plan

- 7 Prior to the first operation of the premises, a scheme and maintenance schedule for the extraction and treatment of fumes and odours generated from cooking or any other activity undertaken on the premises, shall be submitted to and approved in writing by the Local Planning Authority. Any equipment, plant or process provided or undertaken in pursuance of this condition shall be installed prior to the first operation of the premises and these shall thereafter be operated and retained in compliance with the approved scheme.

Reason: To protect the amenity of local residents in accordance with Policy QE SP1 of the Arun Local Plan.

- 8 Prior to the first use of the premises, details of any plant (including ventilation, refrigeration and air conditioning) and/or ducting system to be used and the method of control of noise and vibration of this plant shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details, retained in perpetuity as agreed and the plant/equipment shall be permanently maintained in good order thereafter.

Reason: To protect the amenity of local residents in accordance with Policy QE DM1 and D

DM1 of the Arun Local Plan.

- 9 Deliveries and collections to and from the premises shall be made only between the hours of 08.00 and 19.00 Monday to Saturday and 10:00 and 18:00 on Sundays and Bank and Public Holidays.

Reason: To protect the amenity of local residents in accordance with Policy QE DM1 and D DM1 of the Arun Local Plan.

- 10 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 assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

- 11 INFORMATIVE: Temporary Works Required During Construction
The applicant is advised of the requirement to enter into early discussions with and obtain the necessary licenses from the Highway Authority to cover any temporary construction related works that will obstruct or affect the normal operation of the public highway prior to any works commencing. These temporary works may include, the placing of skips or other materials within the highway, the temporary closure of on-street parking bays, the imposition of temporary parking restrictions requiring a Temporary Traffic Regulation Order, the erection of hoarding or scaffolding within the limits of the highway, the provision of cranes over-sailing the highway.

- 12 The owner(s) of any commercial property (warehouses, offices, etc.) built before 2000 are legally obliged to hold a copy of an asbestos register for each property in their portfolio. The Council need to be satisfied that if any asbestos previously identified is still present, it is either removed or suitably managed to minimise risk to human health as there is no safe threshold for asbestos exposure. A copy of the asbestos register and any remedial strategy (where appropriate), must be provided in writing to the Local Planning Authority prior to any works commencing.