

Recommendation Report for Planning Permission

REF NO: R/224/19/PL

LOCATION: 4 Broadmark Parade
Broadmark Lane
Rustington
BN16 2NE

PROPOSAL: Variation of condition 3 imposed under R/141/19/PL relating to hours of operation of the plant & machinery associated with the approved A3/A5 use classes (09.30 to 23.00 Mondays to Saturdays and 9.30 am and 10pm on Sundays and Bank Holidays) with no changes to trading.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

Planning permission R/141/19/PL was granted approval subject to condition 3 which stated

"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."

The description of the application originally sought permission to enable machinery operations and ventilation associated with the approved A3/A5 use to take place between the hours of 09.00 to 23.30 on Mondays to Sundays.

The application description has been amended since originally submitted to reduce the times requested and seeks to vary the condition by allowing the use of machinery operations and ventilation associated with the use to be increased by an hour at the start of the day to between the hours of 9.30am to 11pm Monday to Saturday and between 9.30am and 10pm on Sundays and 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 is vacant and 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/141/19/PL	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.	ApproveConditionally 11-10-19
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

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Rustington Parish Council

Objection - The proposal to extend the hours of operation of the plant and machinery to 23.30 hours would most certainly adversely affect the quiet enjoyment of the residents of the properties above not only the retail unit itself, but also a number of the other retail units in close proximity, by reason of the noise element which would be caused by staff leaving the premises and from any items of equipment being used up to this time.

Request that the Local Planning Authority should, for the above reason, consider setting the hours of operation of plant and machinery to 09.00 hours to 23.00 hours.

COMMENTS ON REPRESENTATIONS RECEIVED:

The applicant's agent has amended the hours so that they are now a 9.30am start which is half an hour later than requested by the Parish Council and 11pm finish which is half an hour earlier than originally requested and in line with the Parish's comments. This therefore satisfactorily addresses the concern over start and finish times they have outlined. The application has not been re-advertised since this represents an improvement and reduction in the opening hours requested.

The application does not need to go to Development Control Committee for determination in accordance with paragraph 14 of the Scheme of Delegation dated 16-01-2019.

CONSULTATIONS

Environmental Health

CONSULTATION RESPONSES RECEIVED:

Environmental Health - No Objection

Condition (3) of R/34/19/PL exists with the aim of protecting the amenities of occupiers of adjoining properties.

- Environmental Health has no objection to amend the hours of operation of the plant/machinery/ventilation to commence at 09.30 hours.
 - Environmental Health has concerns, however, that the proposed increase in hours of operation of the aforementioned equipment to 23.30 hours may adversely affect the neighbouring residents.
 - It is therefore recommended that the permitted hours of operation for the plant/machinery/ventilation to the premises are amended to 09.30 hours - 23.00 hours.
 - In the event that this is not acceptable to the applicant, it is recommended that an acoustic report is commissioned, to be undertaken by a suitably qualified, independent consultant.
- This report should assess the likely disturbance to neighbouring residents caused by the proposed increase of hours into night-time.
- Upon receipt of this report, EH will be able to re-assess the application.
 - Please also note that the amended hours are not considered applicable to the other elements of Condition (3) (deliveries and opening hours).

COMMENTS ON CONSULTATION RESPONSES:

- comments noted. Delivery times are covered by another condition. The agent has reduced the hours as requested and therefore the submission of an acoustic report has not been requested.

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
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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 hours of machinery operations and ventilation 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, delivery times, machinery operations and ventilation 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 the times of use of machinery operations and ventilation

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 requested that the description of the application is amended to now refer to the plant/machinery to be turned off at 23.00 (i.e. the same time as the closure of the premises to customers), but for the condition to be varied, in line with the submission, to enable the plant/machinery to be operational from 09.30am as requested by the Environmental Health Officer and Parish Council.

Therefore the proposed variation of condition (3) of R/141/19/PL to enable plant/machinery/ventilation to take place between the hours of 09.30 to 23.00 Monday to Saturday and 9.30am to 10pm Sundays and Bank Holidays would only increase the approved hours by half an hour in the morning. 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.

This element of the application has 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 times to use of plant/machinery/ventilation 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:

Location Plan

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 relating to retail unit opening hours, 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. The use of machinery operations and ventilation associated with the use shall only be between the hours of 9.30am to 11pm Monday to Saturday and between 9.30am 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.