

Recommendation Report for Planning Permission

REF NO: R/290/18/PL

LOCATION: 130 The Street
Rustington
BN16 3DA

PROPOSAL: Variation of conditions imposed under R/209/18/PL relating to condition 3-rewording of condition to read 'The Class A3 (restaurant/cafe) use hereby permitted shall not be commenced until full details of any proposed ventilation extract system to discharge odours and fumes and noise from the cooking process has been submitted to and approved by the Local Planning Authority, the associated equipment has been installed and be in full working order to the satisfaction of the Local Planning Authority' & 6-rewording of condition to read 'Deliveries by commercial vehicles regarding the Class A3 (restaurant/cafe) use hereby permitted, shall only be made to or from the site between 07.00 hours and 18.00 hours Monday to Saturday and 08.00 and 16.30 on Sunday, Bank or other Public Holidays without the prior written consent of the Local Planning Authority'.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above. The description of the application has been amended since the application was submitted to incorporate the wording agreed by environmental health. The most significant change has been to the wording of condition 6 to read include deliveries by commercial vehicles between 08.00 and 16.30 on Sunday, Bank or other Public Holidays. The proposal was re-advertised following this change.
TOPOGRAPHY	Predominantly flat.
BOUNDARY TREATMENT	None. The premises is located on the site boundaries
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/209/18/PL	Change of use from retail shop (A1 Shops) to retail shop (A1 Shops) / restaurant/cafe (A3 Food & Drink).	ApproveConditionally 23-11-18
R/183/90	Install new bronze anodised aluminium shopfront	ApproveConditionally 02-01-91

REPRESENTATIONS**REPRESENTATIONS RECEIVED:**

Rustington Parish Council

No Objection

COMMENTS ON REPRESENTATIONS RECEIVED:

None

CONSULTATIONS

Environmental Health

CONSULTATION RESPONSES RECEIVED:

Environmental Health - No Objection

COMMENTS ON CONSULTATION RESPONSES:

- comments noted

POLICY CONTEXT

Designation applicable to site:

Within Built Up Area Boundary

Town Centre

Primary Retail Frontage

DEVELOPMENT PLAN POLICES

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

DDM1 D DM1 Aspects of form and design quality

SDSP1 SD SP1 Sustainable Development

[Rustington Neighbourhood Plan 2014 Policy 6](#) Local Employment

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

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.

Policy 6 - 'Local Employment' of Rustington Neighbourhood Plan is relevant to consideration of this application

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 restaurant use would not have a materially adverse effect on the residential amenities of the adjoining properties or an adverse impact upon the vitality of the town centre.

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

The site is located within the main shopping area of Rustington town centre and is also within the primary shopping frontage as defined in the Arun Local Plan. The proposal seeks to vary conditions imposed on the original permission for A3 use (R/209/18/PL). The principle of the use has therefore been agreed.

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.

Rustington Neighbourhood Plan Policy 6: Local Employment states 'Proposals which would result in the loss of an existing employment or business use will be resisted, unless it can be demonstrated that the existing use is no longer viable. Proposals to expand an existing employment or business use will be supported, provided that any impact on flood risk, local amenity, traffic and landscape can be satisfactorily mitigated.' The continued use of the premises for retail purposes would sustain employment at the site. An A3 use may provide more employment opportunities and they would not be at the expense of the vitality of the shopping area or residential or visual amenity.

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, which is in keeping with the character of the shopping area; and,
- There is no detriment to the character or amenities of the area through smell, litter or noise.

This policy reflects the guidance given in para 84 of the NPPF by defining the extent of the town centre and primary 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. In this part of the shopping parade 5 out of 11 units are already in use as banks and in non retail use and there are A3 uses close to each end of the parade at Establo and La Cuccina. However there are no other A3 uses in this part of the parade and the proposal would not result in a concentration of non-retail uses to the detriment of the vitality of the shopping centre

The proposal maximises the opportunity to secure ongoing occupation of the existing unit, and reduce the risk of long term vacancy. The site has been vacant since the end of March 2018 and the supporting documents suggest that expressions of interest in response to the marketing activity undertaken have principally been from Class A3 operators. The agent has demonstrated that Rustington already contains a diverse range of retail, service and leisure, and is not deficient in convenience or comparison retail provision.

The premises have been in continuous retail use since first used and have only been empty for 10 months. Since March 2017 the vacancy rate in Rustington has decreased from 9% to 5% and is 7% below the UK average. There is a mix of independent and chain retail stores across the town centre. Rustington features a range of services. The vitality of the village centre is good and generally better than elsewhere. The proposal would allow a wider opportunity for use of this unit and would increase the likelihood of this unit being occupied.

The potential for a wider range of operators to occupy the unit would help to ensure that Rustington remains a 'healthy', competitive, and vibrant village centre, with a wide variety of retail, service and leisure offers for the local community. Therefore, in light of the above, it has demonstrated that the flexibility to lease the site to a retail or restaurant would not jeopardise the function of the town centre. Accordingly, the proposed change of use is not considered to conflict with national and local policy seeking to ensure the vitality of town centres.

Policy RET DM1 requires provision of details for the provision for the extraction of fumes and cooking odours to be submitted with any applications for A3 use. Whilst no details have been included with the application, these would be controlled by the condition as recommended by environmental health and included in the application description. There are other A3 uses in the village centre on this side of the

shopping parade which operate without causing harm to residential amenity. The impact on residential and visual amenity of any equipment would be considered when any discharge of condition applications are submitted.

The delivery hours and days would accord with those of nearby units. Indeed a recent permission R/212/18/PL for 12 Churchill Parade was granted with Sunday opening hours of 0800 hours to 16:30 as requested I this application.

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/Block and Site Plan 106, Proposed Floor Plan and Elevation 108 and Plans for Change of Use 109.

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policy DDM1 of the Arun Local Plan.

- 3 The Class A3 (restaurant/ cafe) use hereby permitted shall not be commenced until full details of any proposed ventilation extract system to discharge odours and fumes and noise from the cooking process has been submitted to and approved by the Local Planning Authority, the associated equipment has been installed, and is in full working order to the satisfaction of the Local Planning Authority.

Reason: To ensure that unsatisfactory cooking odours outside the premises are minimised in the interests of the amenity of occupiers of nearby properties in accordance with Arun Local Plan policy QE SP1.

- 4 The extraction equipment installed in pursuance to Condition No.3 above shall be regularly maintained to ensure its continued satisfactory operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Local Planning Authority.

Reason: That the use does not result in excessive cooking odours outside the premises and that the amenity of occupiers of nearby properties is protected in accordance with Arun Local Plan policy QE SP1.

- 5 The use hereby permitted shall be open to the public Monday - Sunday 08.00 - 23.30, with no food served after 23.00 daily.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties in accordance with Arun Local Plan policy QE SP1 and QE DM1.

- 6 Deliveries by commercial vehicles shall only be made to or from the site between 07.00 hours and 18.00 hours Monday to Saturday and 08.00 and 16.30 on Sunday, Bank or other Public Holidays without the prior written consent of the Local Planning Authority.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties in accordance with Arun Local Plan policy QE SP1 and QE DM1

- 7 There shall be no outdoor seating unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties in accordance with Arun Local Plan policy QE SP1 and QE DM1.

- 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 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.

- 9 INFORMATIVE: The proposed floor plan currently shows only one toilet in the premises. The numbers of toilets required will depend on the number of staff and covers proposed. Please note the requirements for toilet provision in Arun District which can be found at <https://www.arun.gov.uk/download.cfm?doc=docm93jjm4n11788.pdf&ver=11779>. The granting of this planning permission does not in any way indemnify against statutory nuisance action being taken should substantiated complaints within the remit of the

Environmental Protection Act 1990 be received. For further information please contact the Environmental Health Department on 01903 737500.

- 10 INFORMATIVE: The granting of this planning permission does not in any way indemnify against statutory nuisance action being taken should substantiated complaints within the remit of the Environmental Protection Act 1990 be received. For further information please contact the Environmental Health Department on 01903 737500.