Development Control – Delegated Officer Report

Application Number: NOTICE/0029/15 Recommendation - Prior Approval required and refused

Site: 136 Beach Green, Shoreham-By-Sea

Proposal: Prior approval for change of use of ground floor shop (Use Class A1) to 1no. two-bedroom flat (Use Class C3) with associated external alterations.

Date of site visit: 26 January 2016

Neighbours checked: Y

Additional neighbour notifications: Y – units to rear

Proposal, Site and Surroundings

The application relates to a retail unit currently in use as a hair salon. The unit is one of three in this three storey block, with flats on the upper floors. A further three commercial units with flats above are located in a separate block to the east. The site is located on the corner of Beach Green and The Saltings, at the entrance to Shoreham Beach.

The application is a notification of a proposed change of use of the ground floor to a flat (Class C3 dwellinghouse). Such development became permitted under Part 3, Class M of the GPDO 2015, subject to various limitations and conditions involving a prior approval process.

The application includes external alterations consisting of replacement of the shopfront, new windows and a new door on the west side to access a proposed side garden. The garden is to be enclosed by a new garden fence which is indicated on the submitted plans as being 1.8m high. As it is adjacent to the highway, the fence requires planning permission in its own right.

Relevant Planning History

Planning permission was granted in 1960 for the shops, flats and garages in which the application site sits (SU/150/60).

Consultations

West Sussex County Council: No highway objection. No traffic flow information has been provided with the current application. However from experience of other similar proposals, the LHA recognise that shops generate more vehicle movements compared with residential developments. As such,

there is no expectation for this proposal to give rise to any increase or material change in the character of traffic in the vicinity of the site.

Adur and Worthing Councils: The ***Environmental Health*** Officer advises that the site adjoins potentially contaminated land.

Engineer: The proposed site lies within flood zone 2/3, appears to be affected by surface water flooding and has a history of being flooded.

I would like additional information regarding Flooding / flood proofing.

This proposal is for a vulnerable development in a high risk area.

I do not consider the FRA is adequate.

Paragraph 6 talks about 2 additional exits protected by the defences. If there is 2m of flooding these doors are flooded.

Para 6 also talks about the provision of Sustainable drainage systems to aid water run off - what's to be provided a 1m deep pit which will have no effect in a flood instance.

Para 8 refers to the number of people who have to exit the building 2-3 as opposed to the 5-6 who were employed in the retail business, the difference is the 2-3 people may be asleep - a point the FRA IGNORES.

Environment Agency: Object - The application site lies within Flood Zone 3 defined by the Environment Agency Flood Map for planning as having a high probability of flooding in accordance with the National Planning Policy Framework (NPPF).

There is the potential for flood depths of over 2 meters therefore we would consider that sleeping accommodation on the ground floor with no access to the first floor may pose an unacceptable risk to occupants in accordance with Table 13.1 of FD2320/TR2.

The FRA does not comply with the requirements set out in paragraph 9 of the Technical Guide to the NPPF. The submitted FRA does not therefore provide a suitable basis for assessment to be made of the flood risks arising from the proposed development.

In particular, the submitted FRA fails to

1. Take the impacts of climate change into account
2. Consider how people will be kept safe from flood hazards identified
3. Consider the effect of a range of flooding events including extreme events on people and property.

Representations

1 objection received from the Chair of Shoreham Beach Residents' Association (SBRA):

- Beach residents are very keen to retain the only retail parades on the Beach at Beach Green and Ferry Road which both house successful businesses that are well used by the community.
- There are no empty shops on the Beach Green Parade which supports flourishing businesses such as the signwriters, convenience store and dog grooming parlour. This proves that businesses can thrive if they are charged commercially viable rents.
- SBRA is keen to avoid a situation whereby a precedent is set, allowing retail units to be turned into flats. Local people, particularly the elderly, rely on local shops
- Enclosed side garden may cause problems for visibility on the corner which is a busy road and forms the only entrance/exit point to the Beach

Planning Assessment

Relevant Planning Policies

Town and Country Planning (General Permitted Development) Order 2015 (as amended), Schedule 2, Part 3, Class M

Planning Assessment

Class M allows as Permitted development

Development consisting of—

(a) a change of use of a building from —

(i) a use falling within Class A1 (shops) or A2 (financial and professional services) of the Schedule to the Use Classes Order;

(ii) a use as a betting office or pay day loan shop; or

(iii) a mixed use combining use as a dwellinghouse with –

(aa) a use as a betting office or pay day loan shop, or
(bb) a use falling within either Class A1 (shops) or Class A2 (financial and professional services) of that Schedule (whether that use was granted permission under Class G of this Part or otherwise),

to a use falling within Class C3 (dwelling houses) of that Schedule, and

(b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

Development is not permitted by Class M where—

(a) the building was not used for one of the uses referred to in Class M(a) on 20th March 2013 or, if the building was not in use on that date, when it was last in use;

(b) permission to use the building for a use falling within Class A1 (shops) or A2 (financial and professional services) of that Schedule has been granted only by this Part;

(c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres;

(d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M;

(e) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

(f) the development consists of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order); or

(g) the building is—

(i) on article 2(3) land;
(ii) in a site of special scientific interest;
(iii) in a safety hazard area;
(iv) in a military explosives storage area;
(v) a listed building; or
(vi) a scheduled monument.

Conditions

M.2 (2) Where the development proposed is development under Class M(a) only, development is permitted subject to the condition that before the beginning of 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 the items referred to in sub-paragraphs (1)(a) to (d) and the provisions of Paragraph W (prior approval) of this Part apply in relation to that application —

[(a) transport and highways impacts of the development,
(b) contamination risks in relation to the building,

(c) flooding risks in relation to the building,
(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use—
(i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or
(ii) where the building is located in a key shopping area, on the sustainability of that shopping area.]

(3) Development under Class M is permitted subject to the condition that –

(a) development under Class M(a) must be completed within a period of 3 years starting with the prior approval date: and
(b) a building which has changed use under Class M is to be used as a dwelling house within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose except to the extent that the other purpose is ancillary to the primary use as such a dwelling house.

Part W sets out that a local planning authority may refuse an application where in the opinion of the authority –

(a) The proposed development does not comply with, or
(b) the developer has provided insufficient information to enable the authority to establish whether the proposal complies with,

any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

The application proposal meets the tests of M1 since the site is not part of any area excluded from the order; evidence indicates the site was last used for A2 purposes and the site does not form part of a safety hazard area; a military explosives storage area; nor is the building a listed building or a scheduled monument

Consideration of the planning merits of the application is restricted to those set out in M2 and that the provisions within paragraph W are met.

Transport and highways impacts

The site is sustainably located close to local facilities and with good public transport links. No car parking is to be provided. There is no expectation that this proposal would give rise to any increase or material change in the character of traffic in the vicinity of the site. The Highway Authority has not raised an objection.

Land contamination

The rear of the site is identified as potentially contaminated, but no ground works are proposed, other than a proposed new fence. The contamination risks are therefore considered to be low.

Flooding

The application site lies within Flood Zone 3 and has a high probability of flooding.

There is the potential for flood depths of over 2 metres and the Environment Agency has advised that sleeping accommodation on the ground floor with no access to the first floor may pose an unacceptable risk to occupants.
The applicants submitted a Flood Risk Assessment (FRA) but the EA considers that it does not comply with the requirements of the NPPF and does not therefore provide a suitable basis for assessment to be made of the flood risks arising from the proposed development.

In the light of the flood risks to future occupants of this property, the proposal is considered to be unacceptable and does not comply with the requirements of section (c) of the Conditions in paragraph M2 above.

Impact on provision of A1/A2 services and sustainability of shopping area if a key shopping area

The site is identified in the Adur District Local Plan as adjoining a neighbourhood shopping area (this may be a drafting error on the plan as it includes the forecourt in front of the site rather than the buildings themselves). Saved policy AS5 seeks to retain a predominant shopping use (Class A1) within such areas. Proposals for change of use to non-A1 uses will not normally be permitted, but “will be treated on their merits and will be assessed in relation to the need for the proposed use compared to retail use of the particular premises concerned.”

The emerging Adur Local Plan, the site is identified correctly as being within a local shopping parade where Draft Policy 28 requires a predominant shopping use “on ground floor uses to be retained. Where proposals would result in a dominance of non-retail uses, this will only be acceptable where it can be demonstrated that retailing is no longer a viable use in that unit, particularly where it has remained vacant for a long period (normally a minimum of 1 year) and that reasonable attempts have been made to market it for retail purposes.”

In this case, the loss of the hair salon would leave a local convenience store (A1), a dog grooming parlour (sui generis), an electrical appliances repair shop (A1) and a sign making business (A2). Of 4 remaining units, 50% would not be in retail use. Of the five original units, the majority would no longer be in retail use.

A letter has been submitted with the application from a commercial agent which states that the property has been marketed for several years without being able to find a commercial tenant or purchaser. No evidence of the marketing that has been carried or responses received has been submitted however.

Given the lack of marketing evidence and the loss of A1 use which would arise, leading to an imbalance between retail and no retail uses, it is considered that the proposal would result in harm to the retail function of the local shopping parade contrary to section (d) of the Conditions in paragraph M2 above.

Design and External Appearance

The existing shopfront would be removed and replaced with a new smaller window at the front of the building. Other alterations to windows are proposed which are not considered to result in visual harm.

The proposed fence requires planning permission and should be subject of a separate application for planning permission.

Paragraph W

The Council considers that sufficient information has been submitted with this application in relation to any conditions, limitations or restrictions relevant to the development. It is considered that the remainder of the requirements set out within paragraph W have been met.

Recommendation

PRIOR APPROVAL IS REQUIRED AND REFUSED for the following reason:

Prior approval for the change of use of the ground hair salon (Use Class A1) to single flat (Use Class C3) with associated external alterations as shown on drawings 1074664-15-01, SK02 and SK05 received 29 December 2015 is required and refused because of the detrimental impact of the change of use on the adequate provision of A1 services in the local shopping parade to which it relates and because the proposal cannot be adequately safeguarded from the future risk of flooding and would therefore result in risk to the safety of future occupants. The proposal would therefore conflict with saved policy AS5 of the Adur District Local Plan, draft policy 28 of the Proposed Submission Adur Local Plan 2014 and the relevant policies of the National Planning Policy Framework relating to flood risk.

Is recommendation contrary to letter(s) of representation? N

Case Officer: Peter Barnett Date: 16 February 2016

Authorised by: Gary Peck Date: 18 February 2016