From: Peter Barnett
Sent: 04 July 2013 10:36
To: 'Rob Huntley'
Cc: 'James Belbin'
Subject: RE: Unit 2, 23 Dolphin Road, Shoreham - AWDM/0616/13

Dear Mr Huntley

Thanks for your email, which I have discussed with the Council's Solicitor.

The condition you wish to remove limits the use to service pumps, laboratory and associated offices. No other use is therefore permitted unless approved by the LPA. This control was deemed necessary at the time to protect residential amenity and it continues to be deemed necessary, given the premises abut a residential area. To remove the condition and therefore any control over the use could have a detrimental effect on amenity, contrary to policy AE2 and the policies of the NPPF. The saved policies in the Local Plan were recently assessed for conformity with the NPPF and policy AE2 was found to be fully consistent. This assessment can be found at the link below:
http://www.adur-worthing.gov.uk/media/media,111438,en.pdf

The nature of the existing permission is for a specified use only (it does not refer to a use class). It is not possible to vary the condition if it will result in a fundamental change in the nature of the permission. It is considered that opening up the permission to allow any industrial use goes further than simply modifying the permission. My wish to add a lot of conditions if the use was changed in this way is indicative that the resulting permission would be fundamentally different in nature to the existing permission. The Solicitor has therefore concluded that, taking into account the commentary to the planning encyclopedia referred to, it is not lawful for the LPA to grant the variation of condition and allow a broad permission for any industrial use. It is therefore reasonable for the Council to require this to be dealt with as a change of use rather than a removal of condition and a full planning application should be submitted.

I would therefore advise you to withdraw the current application and submit a fresh application on this basis.

Regards

Peter Barnett

Peter Barnett - Principal Planning Officer, Development Management | Adur & Worthing Council Services
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From: Rob Huntley [mailto:rob.huntley@talk21.com]
Sent: 21 June 2013 15:35

To: Peter Barnett
Cc: 'James Belbin'
Subject: RE: Unit 2, 23 Dolphin Road, Shoreham - AWDM/0616/13

Dear Mr Barnett,
James Belbin of Hargreaves has asked me to reply on his behalf to your email to him of 18 June (below).

You have indicated that you are contemplating attaching certain conditions to a grant of planning permission, and you have asked for any comments on these before formalising the decision notice. Below, I set out some preliminary observations, followed by specific comments on your suggested conditions.

Preliminary Observations
The application under reference AWMD/0616/13 is made under S73 of the Town and Country Planning Act 1990. In dealing with such an application, the local planning authority is required to confine its consideration to the conditions attached to the previous planning permission. In this context, it is entitled, where necessary and justified, to attach new or different conditions. However, in dealing with a S73 application the LPA is not entitled to completely rewrite the original permission. In this regard I would draw your attention to the Commentary on S73, set out in Volume 2 of the Encyclopedia of Planning Law and Practice at P73.06 and P73.07.

The original planning permissions authorised the industrial use of the building. This permitted use is not limited to uses falling within Class B1 of the Use Classes Order and it seems clear that the previous uses (by Edwards and the previous motor vehicle use), did not fall within that Use Class. The attachment of a condition which sought to limit the use in the way now apparently contemplated would go beyond the scope of the powers of S73.

As a matter of national policy, any condition must accord with the guidance in Circular 11/95 and paragraph 206 of the NPPF. In this way they must be necessary, relevant to planning and to the development to be permitted, enforceable and reasonable in all other respects. No physical development is involved in the S73 application, which simply seeks to remove the personal restriction to the previous named occupier. It is difficult to imagine what the relevance would be, in this context, of conditions the effect of which would be severely to constrain the attractiveness of the industrial building to the market. The reuse of the existing industrial building is clearly something that would be conducive to fostering economic development and sustainable forms of development. Unnecessarily constraining such reuse would be wholly contrary to the objectives of the NPPF, particularly those set out in paragraphs 18 to 21.

Consistency of decision making is also an important facet of the LPA's duty in deciding applications. In this regard, although you make reference in your email to conditions "*similar to those imposed on the North Building under reference AWDM/0952/12*", in fact several of the conditions you set out would have a substantially different effect. In this case, as the application building shares its access with the North Building, a different approach would be both illogical and unjustified. Such differences would also effectively render the conditions unenforceable, as in investigating any potential breach, it would not be readily apparent which of the 2 different conditions applying to the site as a whole would be applicable.

Comments on Specific Suggested Conditions
Your suggested **condition 2** specifies different hours, during which deliveries by larger vehicles may be made, from those set out in condition 1 of AWDM/0952/12. There would be no justification for this difference, so this would be unnecessary as well as unreasonable. Practical difficulty in enforcement would also arise and the principle of consistency would be infringed. For these reasons, any formulation of this condition at variance with that attached to AWDM/0952/12 would be unsupportable.

Seeking to restrict the use of the building to purposes within Use Class B1, which suggested **condition 7** would do, is not necessary, and would be unjustified and unreasonable for the reasons I have set out above. The reason stated for this condition makes reference to Policy AE2 of the Local Plan. This Plan is not up to date, having been adopted in 1996 (17 years ago). Paragraph 214 of the NPPF makes clear that

full weight can not be given to policies adopted before 2004, so the Local Plan has little relevance to the circumstances of this case. The consistency point I have made reference to above is also of relevance here, as no equivalent condition was attached to the permission granted under application AWDM/0952/12.

It appears that potential noise disturbance to residential properties to the west may be the underlying reason for this suggested condition. In this context, paragraph 89 of Circular 11/95 makes clear that :

> *"It would not be right to use a condition restricting uses where an alternative, more specific, condition would achieve the same end (for example, where it is necessary to restrict the volume of noise emitted from an industrial site, and a condition addressing the problem expressly can be used, that condition should be imposed, rather than one restricting the permitted uses)".*

In relation to conditions restricting uses, including changes that would be otherwise allowed by the General Permitted Development Order, paragraph 87 of Circular 11/95 explains that:

> *"Save in exceptional circumstances, conditions should not be imposed which restrict either permitted development rights granted by development orders or future changes of use which the Use Classes Order would otherwise allow. The Secretaries of State would regard such conditions as unreasonable unless there were clear evidence that the uses excluded would have serious adverse effects on amenity or the environment, that there were no other forms of control, and that the condition would serve a clear planning purpose."*

There seems to be no such evidence in this case.

For all these reasons your suggested condition 7 should not be imposed, and suggested condition 2 (if it is justified at all), should be made consistent with condition 1 of AWDM/0952/12 relating to the adjacent unit to the north.

Suggested condition 1 (3 year implementation period), is of course not necessary or appropriate in the context of this S73 application and should not be attached.

I hope this response to your suggested conditions is helpful. If there is any further clarification that would assist, please let me know.

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From: Peter Barnett [mailto:Peter.Barnett@adur-worthing.gov.uk]
Sent: 18 June 2013 12:18
To: James Belbin
Subject: Unit 2, 23 Dolphin Road, Shoreham - AWDM/0616/13

Dear Mr Belbin

I am writing with reference to your recent application to remove Condition 2 of SU/159/90.

I do not have an issue with the removal of this restrictive condition in principle but I would like to ensure that any future occupier does not cause disturbance to residents of Corbyn Crescent, immediately to the west of the building. To this end I would like to impose several conditions, similar to those imposed on the North Building under reference AWDM/0952/12.

I am therefore proposing to impose the following:

01. The development hereby permitted shall be begun before the expiration of three years from the date of this permission

Reason: *To comply with Section 91 of the Town and Country Planning Act 1990*

02. There shall be no deliveries or collections of goods to and from the site between 6pm and 8am where deliveries are made by van or larger vehicle.

Reason: *In the interests of protecting residential amenity and to comply with saved policy AE2 of the Adur District Local Plan.*

03. No raw materials, finished or unfinished products or parts, crates, packing materials, gas cylinders, industrial waste or refuse nor any other items shall be stacked, stored or displayed on the site except within the buildings or within enclosed storage areas, details of which shall be approved in writing by the Local Planning Authority.

Reason: *In the interests of protecting the amenity of the environment and to retain adequate off-street parking space and to comply with saved policy AE2 of the Adur District Local Plan.*

04. No external working shall take place anywhere on the premises to which this permission relates and all working shall be confined to the buildings behind shut doors. The roller shutter doors shall only be opened to handle the delivery of goods, products or waste to and from the building.

Reason: *In the interests of protecting the amenity of the environment and to retain adequate off-street parking space and to comply with saved policy AE2 of the Adur District Local Plan.*

05. No mechanical extraction plant or external plant shall be installed except in accordance with details of equipment, type of machinery that it will serve, location, type of extraction, means of ventilation, location of ducting, which shall be submitted to and approved in writing by the Local Planning Authority. These details shall include a BS4142 acoustic assessment and any sound insulation measures found to be necessary.

Reason: *In the interests of protecting the amenity of the environment and to comply with saved policy AE2 of the Adur District Local Plan.*

06. Waste skips and other refuse receptacles within the outside curtilage of the building shall not be filled between the hours of 6pm and 8am. Waste skip or other refuse collection shall only occur between the hours of 8am and 6pm.

Reason: *In the interests of residential amenity and to comply with policy AE2 of the Adur District Local Plan.*

07. The premises shall be used only for purposes within Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to

that Class in any Statutory Instrument revoking and re-enacting that Order with or without modification) and for no other purpose.

Reason: *In the interests of amenity having regard to saved policy AE2 of the Adur District Local Plan*

The last condition you may find overly restrictive but policy AE2 does specify that, where development is in close proximity to residential areas, any industrial development shall be restricted to Use Class B1.

I shall be grateful to receive your response to these suggested conditions before I formalise the Decision Notice.

Regards

Peter Barnett

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