# Development Control – Delegated Officer Report

**Application Number: AWDM/1141/19 Recommendation – APPROVE**

**Site: Unit 2A, Rectory Farm Road, Sompting, BN15 0DP**

**Proposal: Removal of Condition 3 of permission reference S/103/71 (hours of working) and replacement with three new conditions to control delivery hours, trade counter opening hours and the hours that any industrial process can take place (all 8am-6pm Monday-Friday and 8am-1pm on Saturdays and at no time on Sundays or Public Holidays) (Units 2A, 2B and 2C)**

**Date of site visit:** 01.08.2019

**Neighbours checked: Y**

**Additional neighbour notifications: N**

**Site, Surroundings:**

The application site is within the Rectory Farm Road Business Park, and the totem sign at the frontage identifies 9no. units. Units 1; 2a, 2b, 2c; 3a, 3b, 3c, 3d, & 3e. The units are housed within 3no. buildings.

There is a dual access/egress to the site, and on entering, unit 3 is the first to be located, sited on the southeast of the site; the access then meets up with unit 2 which is located on the west of the site; and finally, unit 1 is located on the north east of the site.

Unit 2 and associated parking is situated to the back of 12no. residential dwellings. The Business Park is situated on lower land than the residential properties.

The original planning permission S/103/71 for "Three warehouse buildings and ancillary office accommodation. North side of Rectory Farm Road, Sompting," was approved conditionally 20.01.1972

***Applicants Proposed Case & Reasoning***

The condition this application is seeking to vary/remove is Condition 3 of the 1972 permission, S/103/71. That condition reads:-

*"The warehouses shall not be open for business or work undertaken thereat except between 0800 and 1800 hours on Mondays to Fridays and 0800 and 1300 hours on Saturdays."*

*"Reason:-To safeguard the amenities of neighbouring residential property."*

The reason given by the applicant for making this application to vary/remove the condition of the earlier application is:- ***'…that the condition is not***

***precise or clear as to its effect. It would appear to prevent any staff being present at the premises outside the defined hours. This would mean that administrative and office related activities or cleaning etc. would be restricted to the specified times, and a security presence could not be maintained at other times, notwithstanding that such aspects would not have potential to cause disturbance.'***

The applicant's submission then goes on to break down what disturbance could occur from the warehouse use on the nearby residential properties and that units 1 and 3 have now gained planning permission and a similar condition regarding operating times has been attached to those permissions with a slight variation which includes 'loading, unloading, manoeuvring'.

The applicant thereby states that Condition no. 3 of planning permission S/103/71 should be removed and replaced with 3no. conditions; the same conditions that were attached to earlier planning permissions, namely:-

1. *No loading, unloading or manoeuvring (including arrival/departure) of goods vehicles shall take place on the site outside the hours of 0800 – 1800 Monday – Friday inclusive and 0800 – 1300 on Saturdays and at no time on Sundays or Public Holidays;*
2. *No trade counter shall be open to customers except between the hours of 0800 – 1800 Monday – Friday inclusive and 0800 – 1300 on Saturdays and at no time on Sundays or Public Holidays;*
3. *No industrial process (including sorting and packing) shall take place on the premises except between the hours of 0800 – 1800 Monday – Fridays inclusive and 0800 – 1300 on Saturdays and at no time on Sundays or Public Holidays.*

The applicants finish by stating that the replacement of condition 3 of the 1972 permission by his suggested 3no. conditions would provide many benefits such as:-

a) Increased flexibility of occupation of the business accommodation in unit 2, thereby avoiding unnecessary or unreasonable restrictions, and supporting local economic development;
b) Ensuring consistency between the treatment of the application premises and that already in place at units 1 and 3, thereby assisting enforceability;
c) Targeting the nature of the controls more specifically to the matters that have potential to cause disturbance, thereby meeting the tests of precision and necessity set out in national policy.

A later letter dated 07.08.19 has been received from the applicants which they believe lays out a case for providing a further condition above the 3no. conditions already suggested. In the applicant's words:-

"I have realised that it may be desirable to include a further condition in addition to the 3 which I have suggested be attached in substitution for condition 3 of the 1972 permission. The wording of that permission did not clearly specify the nature of the use to which the commercial buildings it authorised were to be put. The largely residential nature of the surroundings suggest that a general industrial (B2) use of the accommodation within Unit 2 could have the potential to adversely affect local amenity.

The planning permission granted under reference AWDM/0398/11 for the subdivision of unit 2A included a condition (no. 3) defining the uses to which those parts of the current application premises may be put, in the following terms: **The units shall be used only for light industry, research and development, and/or storage and distribution within Classes B1 and/or B8 of the Schedule to the town and Country Planning (Use Classes) Order 1987 (or in any equivalent to that Class in any Statutory Instrument revoking and re-enacting that Order with or without modification).”**

**Relevant History:**

**S/103/71** Three warehouse buildings and ancillary office accommodation. North side of Rectory Farm Road, Sompting
**Approved Conditionally 20.01.1972**

**ADC/0314/09 (Unit 3)** Permanent relaxation of condition 3 of S/63/03 to enable continued 24hours working (except loading/unloading & manoeuvring of goods vehicles, trade counter, custom and industrial processing) (Renewal of S/8/06.
**Approved 11.11.2009**

**AWDM/0398/11 (Unit 2A)** Subdivision of warehouse unit 2A into 2 separate units (with new loading door and additional pedestrian doors in south elevation).
**Approved 20.10.2011**

**AWDM/0546/11 (Unit 2A)** Variation of Condition 3 of S/103/71 to extend working hours to 5.30am to 7.30pm Monday – Friday only (Saturday hours restrictions and restrictions on Loading/Unloading between 8am – 6pm Monday-Friday and 8am-1pm Saturdays to remain)
**Temporary Approval 20.10.2011**

**AWDM/0225/12 (Unit 1)** Permanent relaxation of condition 3 of S/103/71 to extend working hours to 0530 to 1930 Monday to Friday (instead of 0800 – 1800) with Saturday working remaining at 0800 – 1300)
**Approved 27.03.2012**

**AWDM/0421/13 (Unit 3)** Permanent Variation of Condition 3 of SU/63/03 to unit 3 of application ADC/0314/09 to enable continued 24 hour working
***Approved*** *05.06.2013*

***Consultations:*** *Environmental Health: No comments*

**Representations:** Letter received 14 Rectory Farm Road:

- No objection to change in permitted hours, however
- Would be very concerned of the noise level should deliveries from large vehicles be made, outside of the hours stated in the application.

**Sompting Parish Council:** Made comments in support of the application.

**Relevant Planning Policies**

Adur Local Plan: Policy 4, 15, 25
National Planning Policy Framework (2019)
National Planning Practice Guidance

**Planning Assessment**

There is no objection in principle to the variation of the condition. The effect of their variation on the neighbouring residential properties will be assessed with regard to noise; disturbance and residential amenity

***Conditions assessment:***

The condition referred to relates to a 1972 permission, S103/71 refers, some 47 years ago. The applicant's reason for the current application to vary the condition is that it is not precise or clear as to its effect. However, it would seem that the use has been operating without an issue for a long time.

On looking at the history of the site, and referred to by the applicant, it would appear that there have been various applications that have been submitted to the LPA to vary conditions, and generally they have sought the same or similar matters as per the current application.

It is considered that it would not be unreasonable to clarify the condition of the permission in order that the unit(s) will marry with the other uses within the Business Park, and to maintain the existing residential amenities of neighbouring properties.

The suggestion by the applicant that the wording of the condition be as per other units within the Business Park or indeed conditions that were used on the temporary permission, may also be considered reasonable.

There were 9no. conditions applied to the 1972 permission:-

1. Implementation condition (5 years);
2. Plans re. design and layout of the site etc.,
3. Trading/work hours (subject of this planning application)
4. 'No storage of materials, waste materials or goods shall take place outside the buildings hereby permitted.'
5. 'The landscaping and screening proposals shown on the submitted plans shall be implemented prior to the occupation of the buildings hereby permitted.'
6. 'The car parking and access proposals shown on the submitted plan shall be implemented prior to the occupation of the buildings hereby permitted.'
7. 'No machinery shall be installed at the site unless permission is granted in this respect by the LPA.'
8. 'The floors of the buildings shall be finished before the buildings are first occupied with a surfacing materials agreed with the LPA.'
9. 'Notwithstanding the provisions of the Town and Country Planning General Development Order, 1963, as amended, the buildings shall not

be extended or altered in any way unless permission is granted by the LPA on an application in that behalf.

The application seeks to replace condition no. 3 with 3no. conditions as indicated above within the '*Applicants Proposed Case & Reasoning'*

As can be seen, the original application approved in 1972 did not include loading, unloading or manoeuvring of goods vehicles; or a trade counter outside of the specified operating hours. However, it is argued that the condition did cover industrial process, including sorting and packing.

But, it is also clear that condition no. 3 does leave a lot to interpretation, which may have resulted in some prospective users shying away from taking up the opportunity to use the premises for their businesses. It may then be appropriate to clarify the operation of the units.

The original description of the permission refers to the buildings as 'warehouse' buildings and ancillary office accommodation. It is clear that a warehouse use is a B8 Storage and Distribution use by virtue of the Town & Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. It is not considered that a variation to include B1 use can be dealt with under this application as it would constitute a change of use of the buildings. Therefore it is considered that the further condition sought by the applicant is not necessary, and thereby will not be applied.

In one of the suggested conditions, the Applicant has mentioned a Trade Counter. This was not a consideration for the 1972 permission, and thereby was not mentioned within any of the conditions. However, trade counters are generally an ancillary use to the primary use and not a separate use in its own right. Indeed, if a trade counter became the primary use, it would then sit within an A1 use, and a change of use would then be required. For clarity purposes, a change of use cannot be undertaken by way of a variation to a condition application, but would require planning permission in its own right.

The following condition on any approval is thereby considered appropriate:-

"Any trade counter use shall remain ancillary to the primary use, B8 hereby approved.
Reason: For the avoidance of doubt and the use of the premises for any other purpose would be contrary to Policy 25 of the Adur Local Plan"

***Summary:***

The site visit did reveal that there appeared to be empty units on site, and therefore, having regard to the desirability of encouraging occupation of the units, if the existing wording of the condition from the 1972 permission is preventing perspective occupants from commitment to the units, it may well be prudent to re-word the conditions to circumvent reservation. Plus, it is sensible that the conditions broadly marry with the other units within this Business Park.

Further, given the fact that a change of use will not be required to utilize the B8 Storage or Distribution, and that B8 has a wider use in today's market, conditions to limit the hours of the operation, continues to be appropriate and to specify the uses occurring within those hours, would also be appropriate.

On the face of it, the 3no. replacement conditions applied for have similar traits within their wording, and it could be seen as appropriate to amalgamate all the 3no. conditions into 1no. condition, but when considering the purpose of this application and the fact that the existing condition has not been considered clear and precise by prospective occupants, it is reasoned that amalgamation of the conditions, could lead to similar problems in the future.

A later letter from the applicant suggests a 4th additional condition relating to the use class(s) that the units can be used as. The description of the original 1972 application was for:- "*Three warehouse buildings and ancillary office accommodation."*

It is acknowledged that 'warehouse' is now related to within the current use classes order as B8 Storage and Distribution. A condition was not attached to that permission as it was considered that the use of the buildings was implicit within the application applied for i.e. its description. Therefore it is not considered appropriate or necessary to utilize a further condition as suggested by the applicants

**Recommendation**

**APPROVE – subject to the reapplying of the original conditions together with the variation of condition 3 of the original condition with the following:-**

1. Approved plans

2. No loading, unloading or manoeuvring (including arrival/departure) of goods vehicles, shall take place on the site outside the hours of 0800 - 1800 Monday to Friday inclusive and 0800 – 1300 on Saturdays and at no time whatsoever on Sundays or Public Holidays.

3. Any trade counter use shall remain ancillary to the primary B8 use hereby approved.

4. No trade counter shall be open to customers except between the hours of 0800 – 1800 Monday to Friday inclusive and 0800 – 1300 on Saturdays and at no time whatsoever on Sundays or Public Holidays.

5. No industrial process (including sorting and packing) shall take place on the premises except between the hours of 0800 - 1800 Monday to Friday inclusive and 0800 - 1300 on Saturdays and at no time whatsoever on Sundays or Public Holidays.

6. No storage of materials, waste materials or goods shall take place outside of the buildings.

7. No machinery shall be installed at the site unless permission is granted in this respect by the Local Planning Authority.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting those Orders with or without modification), the buildings shall not be extended or altered in any way unless permission is granted by the Local Planning Authority on an application in that behalf.

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.

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

Case Officer: Eve Hearsey Date: 12.09.2019

Authorised by: Peter Barnett Date: 12 September 2019