Development Control – Delegated Officer Report

Application Number: AWDM/0616/13 **Recommendation – Refuse**

Site: **Boc Edwards Unit 2, 23 Dolphin Road, Shoreham-By-Sea, West Sussex, BN43 6PB**

Proposal: **Application to remove Condition 2 of permission SU/159/90 which restricts use of the premises**

Date of site visit: 5 June 2013

Neighbours checked: Y

Additional neighbour notifications: N

Proposal, Site and Surroundings

The application relates to a large industrial building at the west end of Dolphin Road. It was approved in 1971 (SU/180/71) as a building for the service and repair of motor vehicles and was limited by Condition 6 of that permission to be used "for motor vehicle repair and servicing purposes and for no other purpose" in order "to comply with the terms of the Industrial Development Certificate".

The premises were used for this purpose for some years. Around 1983 the unit was then used for the manufacture of kitchen furniture, without planning permission. The Council at that time considered it was not expedient to serve an enforcement notice. That use ceased in 1989.

In 1990 permission was granted to remove condition 6 of SU/180/71 but a fresh condition was imposed (condition 2 of SU/159/90) which restricted the use of the premises "solely for servicing of vacuum pumps with a technical laboratory and ancillary offices and for no other purpose without the prior written permission of the Local Planning Authority." The reason was "to safeguard the residential amenities of the adjacent houses to the west."

This application seeks to remove condition 2 of SU/159/90 to enable the building to be occupied by another user. No user has been identified.

To the east of the site are other industrial premises within the Dolphin Road Industrial Estate. To the north is an industrial unit known as "North Building BOC Edwards Unit 1" while directly to the west are residential properties in Corbyn Crescent.

Relevant site history

As above

Consultations

Adur and Worthing Councils: The Environmental Health Officer has no objection.

West Sussex County Council: No highway objection. Whilst intensification in vehicular movements is possible, the access is afforded good visibility in both directions with a wide access that enables two vehicles to pass one another. Turning within the confines of the site is limited; there would be sufficient space for small HGV, vans and cars to turn off the highway but there is little room for articulated vehicles. There would appear to be no restriction on such vehicles entering the site through previous permissions, and the removal of the condition would not alter a scenario that could already occur, although it is noted that the current site occupiers direct articulated vehicles away from this premises. The confines of the site are likely to naturally limit the type of vehicles accessing the site as, from an operational perspective, frequent access for large HGV would be inconvenient.

Representations

1 email of objection received from the occupier of 59 Corbyn Crescent with the following comments:-

- Concerned at potential for increased noise and for alteration of premises which could also increase noise

Relevant Planning Policies

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AH7, AE2, AE4
Assessment of Saved Policies against the NPPF (ADC 2013)
National Planning Policy Framework (CLG 2012)

Planning Assessment

Principle

The removal of a restrictive condition on an industrial unit is considered to be acceptable in principle subject to amenity considerations. Saved Policy AE2 of the Adur District Local Plan states that, within this industrial estate, business and industrial uses within Classes B1 and B2 will be acceptable, except where development proposed is in close proximity to residential areas when uses will be restricted to those falling within Use Class B1. This policy has recently been assessed against the NPPF and has been found to be fully consistent with it.

Visual amenity

No alterations are proposed to the building.

Residential amenity

The main concern with the removal of the restrictive condition is the unrestricted use of the use of the building in the future and the potential for harm to residential amenity that could arise.

The current condition limits the use of the building to service pumps, laboratory and associated offices. No other use is permissible unless approved by the Local Planning Authority. This control was deemed necessary at the time and continues to be deemed necessary given the premises adjoin residential dwellings. The nature of the current permission is for a specified use only, which does not refer to a use class, and it is considered that to remove the condition would result in a fundamental change in the nature of the permission which goes beyond simply modifying the permission.

Legal advice from the Council's solicitor has been that it would not be lawful for the LPA to grant the removal of this condition and allow a broad permission for any industrial use. This advice is based on the commentary at paragraph P72.06 in Volume 2 of the Encyclopedia of Planning Law and Practice which observed that a planning condition may have the effect of modifying the development proposed by the application provided it did not constitute a fundamental alteration in the proposal.

The most appropriate way to enable another use of the building would be for the applicants to apply for a change of use application. Appropriate conditions could then be imposed to ensure adequate control over the use in the interests of protecting residential amenity.

It is noted that permission was granted in 2012 for the variation of a condition to allow occupation of Unit 1 to the north of this building by "any alternative occupier" (AWDM/0952/12). Having sought legal advice it would appear that the outcome of that application was to fundamentally change the permission and the decision could therefore be open to challenge. It would not be appropriate therefore to replicate that decision here. Consequently, notwithstanding the decision at Unit 1, it is considered that the removal of the condition as applied for at Unit 2 cannot be supported for the reasons outlined above.

Recommendation

REFUSE for the reason:-

1. The proposed removal of the condition would constitute a fundamental alteration in the use of the premises rather than a modification of the existing permission and it would not therefore be lawful for the Local Planning Authority to grant permission for this application. The removal of the condition could result in a use of the premises which would have a detrimental impact on the residential amenities of the occupiers of the dwellings which adjoin the site, contrary to saved policies AG1 and AE2 of the Adur District Local Plan and the policies of the National Planning Policy Framework.

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason for the refusal, approval has not been possible.

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

Case Officer: Peter Barnett Date: 12 July 2013

Authorised by: Gary Peck Date: 12 July 2013