

Report following a request for further information, negotiations or consultation

REF NO: CM/68/21/PL
LOCATION: The Bald Kitchen
Site of former Bairds Farm Shop
Crookthorn Lane Climping
PROPOSAL: Variation of condition following grant of CM/16/21/PL relating to Condition No 5 - opening hours. This application may affect the setting of a Listed Building.

This application was discussed at Planning Committee on 02-03-2022.

Following consultation with the Council's Solicitor it is apparent the voting process was not undertaken correctly. Councillors voted against the officer recommendation however they did not then take a second vote in respect of refusing the application and detailing the reasons. Therefore, this application has not been determined and is being returned to this Committee to vote on the reason for refusal.

The suggested wording for the reason for refusal is as follows:

'The extension of opening hours to 4pm on Sundays at the premises will result in the unacceptable loss of residential amenity from levels of noise and disturbance to the occupiers of The Cottage, Clymping Street from comings and goings of customers to the site in conflict with policies QE SP1 and QE DM1 of the Arun Local Plan.'

REPORT UPDATE

Application No: CM/68/21/PL

Reason for the Update / Changes

Reason for Update

One additional representation.

The application form states the proposal serves the public and the garden centre.

The Bald Kitchen and Arundel Gardener have both recently changed their opening hours. The Bald Kitchen closes at 5.00 pm Mon - Sat . The Arundel Gardener are now advertising that they will be open until 6.00 pm. (that is 6 hours that the drive thru has decided not to be in line with the garden centre's opening times. Similarly, they open 2 hours earlier than the garden centre Mon - Sat (2.5 hours earlier on Sunday). This means that the Bald Kitchen chooses to have more than 1/3 (20.5 hours) of their current opening hours different from the garden centre. These opening hours also differ from those of Maidenhead Aquatics. It is therefore a poor argument to suggest that these 2 extra hours on a Sunday should be approved so that all the businesses have the same opening hours.

When the original planning application was approved, last July, the Council granted certain opening hours to the proposal 'To safeguard the amenities of the neighbouring properties in accordance with Arun District Local Plan policies QE SP1.' The information put forward in the application report under the headings 'Principle', 'Impact on Highway Safety' and 'Residential Amenity' are exactly the same as when the Council set the opening hours last July. This means that either the department made an error then or this application needs to be refused. If the Council is aware of any information that wasn't available to the planning department when the first application was approved, it should elicit it now.

Particularly in the winter, those couple of hours on Sunday afternoon are the only daylight hours that the resident of the adjacent Listed house can have even a tiny piece of privacy from the business at the west end of the carpark. These two hours would make very little difference to the business but would have a huge impact on the mental well-being of the resident.

Officers Comment:

There is no additional information that was not made available to the Committee or planning department when the first application was approved, in terms of residential amenity or highway safety. The application has been submitted so the agreed opening hours can be considered further, particularly since the premises have now been operating for some time.

Members are advised that condition 8 of CM/16/21/PL in respect of boundary treatment has been complied with.

Notes: Changes to recommendations, conditions and / or reasons for refusal will always be reflected in the recommendation section of the attached Officer's Report.

PLANNING APPLICATION REPORT

REF NO: CM/68/21/PL

LOCATION: The Bald Kitchen

Site of former Bairds Farm Shop
 Crookthorn Lane
 Climping
 BN17 5SN

PROPOSAL: Variation of condition following grant of CM/16/21/PL relating to Condition No 5 - opening hours. This application may affect the setting of a Listed Building.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	<p>Condition 5 of planning permission CM/16/21/PL states:</p> <p>The use hereby permitted shall not be operated at any time otherwise than between the hours of 06.00 - 18.00 Monday - Friday, 07.00 - 18.00 Saturday and 08.00 - 14.00 on Sunday. The courtyard area shall not be open for use before 08.00 hours Mon - Sun and there shall be no external illumination outside of these times.</p> <p>Reason: To safeguard the amenities of the neighbouring properties in accordance with Arun District Local Plan policies QE SP1.</p> <p>The proposal seeks to vary this condition by increasing the opening hours on a Sunday by 2 hours until 4pm. This would accord with the closing time of the garden centre.</p>
BOUNDARY TREATMENT	Post and rail style fencing to site frontage.
SITE CHARACTERISTICS	Established farm shop with car parking adjacent to road frontage. It is single storey with clad elevations. The area immediately to the east of the car park contains a raised bed planted with shrubs and enclosed by sleepers. The car park area is hard surfaced with clearly defined spaces.
CHARACTER OF LOCALITY	The area is rural in character with sporadic linear development to the south. Land to the east and west of the site is predominantly undeveloped agricultural land.

RELEVANT SITE HISTORY

CM/16/21/PL	<p>Convert existing on site storage to picnic area with fast food Cafe. This application may affect the setting of a Listed Building. This application is in CIL Zone 5 (Zero Rated) as other development.</p>	<p>ApproveConditionally 22-07-21</p>
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The site benefits from a lawful use as a farm shop. The recent change to aquatics sales use was granted by CM/27/18/PL. As part of the farm shop use there was a previous cafe on site and there are no restrictions on opening hours.

To the south and east of the site, permission has been granted for a 64 bed care home in a two storey building. This will be accessed from the existing access onto the A259.

Further to the east, permission has been granted for a 0.95ha site to be used for camping under CM/20/20/PL.

CM/16/21/PL was approved subject to other conditions which restrict delivery times and require provision of boundary screening. These conditions are unaffected by the proposal.

REPRESENTATIONS

Climping Parish Council - Objection.

- The premises is located 28m from a Grade 2 Listed cottage which is already impacted by the noise and odours from the site. Extending Sunday trading hours is unnecessary and would increase this impact.
- The drive-through already has more extensive opening hours than the garden centre.
- Concern remains regarding the impact the use is having on the safety of the A259.
- The application compromises the character of the local area (policy CPN4 of the Climping Neighbourhood Plan) and fails to respond and integrate with the local built environment (policy CPN11).
- It is noted that the planted screening is not in place & the notice to remove car wash canopy is not complied with.

Seven Objections.

- The facility has no toilets.
- The premises is already open longer than the garden centre.
- External lights are switched on by 6am or on all night.
- Alternative facilities are available in Ford.
- There has been no change that would make the reason for imposition of the condition invalid.
- The applicants claim they are serving the same customers as the Arundel Gardener and they would therefore like similar Sunday trading hours. At present The Bald Kitchen is allowed to open 77.5 hours a week. Of these hours, nearly half (34.5) are when the garden centre is closed so this is not a valid argument for longer working hours.
- The Bald Kitchen's main clientele are not Arundel Gardener customers.
- The occupants of the adjacent, Listed Building are already suffering increased noise and lack of privacy from the establishment of this business at the west end of the site. They deserve to have a few hours on a Sunday afternoon, free from this kind of intrusion.
- Maidenhead Aquatics (formally Bairds Farm Shop) has more suitable hours for a farm shop in a rural area and the Bald Kitchen should be aligned to these hours.
- The hours of 14:00 -16:00 on Sundays will also be the busiest resident visiting time for the dementia care home on the land directly behind The Bald Kitchen fast food site. The shared entrance/exit with the dementia care home will lead to vehicle queuing on the highway increasing danger on the A259.
- Would being open for an additional 2 hours on Sunday afternoons really make a substantial contribution to The Bald Kitchen's operating profit?

COMMENTS ON REPRESENTATIONS RECEIVED:

The applicant is not suggesting that their client base is the same as the garden centre. They are seeking agreement to the same opening hours on a Sunday to achieve consistency regarding the opening hours of uses at the site.

With regard to impact on residential amenity the consideration of an additional 2 hours opening on a Sunday should take account of the hours of operation of adjacent businesses.

The provision of toilets, the presence of similar alternative cafes and the current unauthorised use of lighting are not relevant to consideration of this application.

The other issues are addressed in the Conclusions section.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

Environmental Health - No Objection.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Designation applicable to site:
 Outside Built Up Area Boundary
 Within Settlement Gap

DEVELOPMENT PLAN POLICIES

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

DDM1	D DM1 Aspects of form and design quality
DSP1	D SP1 Design
EMPDM1	EMP DM1 Employment Land: Development Management
QEDM1	QE DM1 Noise Pollution
QESP1	QE SP1 Quality of the Environment
RETDM1	RET DM1 Retail development
TSP1	T SP1 Transport and Development

<u>Clymping Neighbourhood Plan 2015 Policy CPN11</u>	Quality of Design
Clymping Neighbourhood Plan 2015 Policy CPN14	Traffic and the Environment
Clymping Neighbourhood Plan 2015 Policy CPN4	Protection of existing commercial premises or land

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 policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The relevant policies in Climping Neighbourhood Plan have been considered.

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 there would be no materially adverse effect on residential amenity or the character of the area.

Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that

(2) in dealing with an application for planning permission the authority shall have regard to -

(a) the provisions of the development plan, so far as material to the application,

(aza) a post examination draft neighbourhood development plan, so far as material to the application,

(b) any local finance considerations, so far as material to the application, and

(c) any other material considerations.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to be weighed in the balance with the Development Plan.

CONCLUSIONS

INTRODUCTION

This proposal seeks only to vary the hours of use of the premises imposed on CM/16/21/PL. All other matters remain as approved and do not form part of the consideration of this application.

PRINCIPLE

The cafe use of the site is established and operating and the principle of the intensification of the use as proposed by the variation of condition development is acceptable, subject to accordance with relevant planning policies. In this instance, the main criteria against which the application will be assessed are contained within Arun District Local Plan policy D DM1 which seeks to prevent development that would have an unacceptable adverse impact upon visual and residential amenities and local plan policy T SP1 which relate to parking and highway safety.

Policy EMP DM1 seeks to protect and enhance existing employment sites and states that it will promote and support measures to upgrade existing areas. Part 6 relates to economic growth outside of the built up area boundary and states that permission will be granted if the proposals are an appropriately sized extension to an existing employment site, would not intensify uses to the detriment of access, there is a high standard of design, can be accessed by public transport and there is a satisfactory relationship with adjoining uses. Paragraph 83 of the NPPF states policies should support economic growth and expansion in rural areas.

Policy CPN 4 of the CNP supports proposals to upgrade or extend existing employment sites if residential amenity is protected, the character of the area is respected and traffic impacts are acceptable.

IMPACT ON VISUAL AMENITY, SETTING OF LISTED BUILDING AND THE CHARACTER OF THE AREA

The variation of condition 5 will not have a materially greater impact on the character of the area to that already approved under CM/16/21/PL and would not materially increase the use of the development. This proposal does not increase the built form on the site and has no impact on the Settlement Gap and does not result in any greater harm to the setting of the adjacent Listed Building.

The development will not involve external alterations to the building and is acceptable in design terms in compliance with policy D DM1.

IMPACT ON HIGHWAY SAFETY

Policy T SP1 of the Arun Local Plan 2011 - 2031 discusses transport issues including safe highway access. Policy CPN 14 of the CNP requires new development which will have a detrimental impact on highway safety and the living conditions of residents will be resisted.

Regard should be had to paragraph 111 of the National Planning Policy Framework which states that: "Development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts of development are severe".

The proposal is for a small extension to the hours of operation of the cafe on a Sunday. This, when compared to the approved use of the access to the site to serve a retail use (currently aquatic sales), camp site and approved care home (once constructed), will result in minimal additional journeys. The Highway Authority previously confirmed in the initial application (CM/16/21/PL) that the likely level of activity would result in no highway safety concerns for this application and that the existing access has sufficient visibility in both directions.

Further, there is ample parking capacity on the site for a use of this intensity. The additional hours of opening are compliant with policy T SP1 of the Arun Local Plan.

RESIDENTIAL AMENITY

There is permission (granted on appeal) for a 64 bed care home to the south and east. The closest property is approximately 28m to the south/west. The current use of the site is as a car park and external storage area and there will be existing levels of noise and disturbance. The existing retail use has no opening hours restrictions.

The additional 2 hours of business on a Sunday between 2pm and 4pm will introduce additional activity later in the day, this has to be considered against the fact that the number of vehicles will not be substantial and other businesses at the site operate until 4pm which will generate noise and activity at the site in any case. The minor increase in noise will be against a backdrop of noise from vehicles traveling on the A259.

The means of enclosure on the southern boundary is currently being upgraded and will prevent vehicle headlights causing impacts outside the site. This should have been completed within 1 month of opening. There are a number of outbuildings between the site and the nearest residential property. The private residential amenity area for this property is to the south of the building and away from the application site. The Council's Environmental Health officer has raised no objection to this proposal.

Since the other restrictions of the use as approved under CM/16/21/PL will remain, the proposed variation of condition 5 would not have an unacceptable greater impact on residential amenity and

therefore complies with policy D DM1 of the Arun Local Plan.

SUMMARY

It is therefore considered that the proposal complies with the Development Plan policies and the NPPF and should be approved 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 application form states the proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE CONDITIONALLY

- 1 Condition 5 imposed under CM/16/21/PL is amended to read:

The use hereby permitted shall not be operated at any time otherwise than between the hours of 06.00 - 18.00 Monday - Friday, 07.00 - 18.00 Saturday and 08.00 - 16.00 on Sunday. The courtyard area shall not be open for use before 08.00 hours Mon - Sun and there shall be no external illumination outside of these times.

Reason: To safeguard the amenities of the neighbouring properties in accordance with Arun District Local Plan policies QE SP1.

- 2 INFORMATIVE: For the avoidance of doubt only condition 5 attached to CM/16/21/PL has been amended by this permission. All other conditions attached to CM/16/21/PL are required to be adhered to.
- 3 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.

BACKGROUND PAPERS

[The documents relating to this application can be viewed on the Arun District Council website by going to https://www.arun.gov.uk/weekly-lists and entering the application reference or directly by clicking on this link.](https://www.arun.gov.uk/weekly-lists)

CM/68/21/PL - Indicative Location Plan (Do not Scale or Copy)
(All plans face north unless otherwise indicated with a north point)



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