

REPORT TO: **COUNCIL ASSESSMENT PANEL**

DATE: **27 MARCH 2019**

SUBJECT: **NON COMPLYING DEVELOPMENT APPLICATION - DECISION TO PROCEED**

PROPOSAL: **CHANGE IN USE OF LAND FROM RETAIL SHOWROOM AND WAREHOUSE TO A RESTAURANT INCLUDING THE DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF NEW BUILDING AND ASSOCIATED ADVERTISING DISPLAYS WITH INTEGRAL DRIVE THROUGH, CAR PARKING AND LANDSCAPING**

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ATTACHMENTS: **1. PLANS AND SUPPORTING INFORMATION**

1. Abstract of Report

Development Application 110/00130/19 was lodged with Council on 18 February 2019 as a non-complying form of development at 262-270 Brighton Road, Somerton Park, which is located within the Light Industry Zone.

A Restaurant is listed as a non-complying development within the Light Industry Zone.

Pursuant to Section 39 (4)(d) of the Development Act 1993, the relevant authority may refuse an application that relates to a development of a kind that is described as a non-complying development under the relevant Development Plan without proceeding to make an assessment of the application. Accordingly, a decision is sought on whether to proceed with further processing of the Development Application.

2. Background

The subject land currently contains a pair of buildings, currently used as a retail showroom and warehousing (floor tiles and bathroom fixtures). Council records show that the current land use has been in operation since 2008 in which a change in use application from warehouse to warehouse and retail showroom was approved by Council.

3. Site and Locality

The subject site is located on the eastern side Brighton Road, on the western edge of the Light Industry Zone and bounded by steel fabrication to the north, a car yard to the south and warehousing to the east. To the west of the site, on the other side of Brighton Road is a retail premises, offices and residential. The immediate locality is therefore described as mixed, with a wide variety of land uses.

4. Proposal

The proposed development comprises a change in use of land from a retail showroom and warehouse to a restaurant including the demolition of existing buildings and construction of new building and associated advertising displays with integral drive through, car parking and landscaping

The technical details of the proposal are not to be considered at this stage however, will at a later stage if the land use is considered to have merit to proceed.

5. Assessment of Proposed Land Use

The Light Industry Zone seeks to accommodate a range of light industrial, storage and warehouse land uses. The Zone specifies that the area fronting Brighton Road as primarily accommodating a range of small-scale business and commercial activities to support the service and industrial functions of the area.

Development within 60 metres of a Residential Zone should be designed and developed to minimise and potentially negative noise or visual impacts by way of appropriate landscaping and building sound attenuation.

The desired character for the Zone references development comprising quality building materials, consistent form and scale and landscaped frontages which minimise visual clutter of parked cars. Development in close proximity to residential areas should limit noise, light, dust, odour, emissions and other nuisances.

Although the proposed land use is non-complying (restaurant), the architecture of the building, its scale and siting are considered appropriate. The proposal also contains a good level of landscaping, which will assist in minimising the visual clutter of parked cars within the car park.

The form of development proposed is not considered to generate nuisance for nearby residential (23 metres away on the western side of Brighton Road) in the context of what is typically anticipated in the Light Industry Zone. The proposed land use does not generate a level of noise that is greater than what would typically be envisaged within the Zone (the current land use is not restricted in its hours of operation).

Odour emitted from flues is not considered to form a nuisance in the case of a development of this nature, particularly as the prevailing winds in the locality are south-westerly (hence the wind blows in the opposite direction of nearby residences) as well as the fact flues are designed in such a way as to substantially reduce odours.

The proposed advertising displays are proposed to be internally illuminated and therefore would not cause a light nuisance to adjacent residences (The Zone anticipates the use of advertising displays, including those that are illuminated).

Nuisance associated with vehicle movements outside of regular business hours are likely to be negligible, as evident with the substantially reduced general traffic flow during these times and as demonstrated with a nearby similar restaurant at Brighton Road, South Brighton.

With respect to car parking demand and traffic, the restaurant is proposed to accommodate 100 seats. The Development Plan anticipates a car parking demand of 1 space for every 3 seats. The proposed development would therefore generate a car parking demand of 33.33 spaces. The site plan demonstrates the provision of 37 on-site car parking spaces. Vehicle access is achieved via both Brighton Road and Seaforth Avenue, and would be subject to a formal assessment by the Department for Planning, Transport and Infrastructure.

6. Summary

It is considered that the proposed land use and construction has sufficient merit to proceed. The use, while not envisaged within the Zone, is not considered to detract from the primary function of the Light Industry Zone, particularly in the context of the subject locality which has a mix of land use including residential, office, place of worship, service trade premises, retail showroom, service industry, shop, industry, car wash, and retail show room. The locality therefore cannot be defined as reflecting an intact Light Industry Zone with respect to the nature of diverse mix of existing land uses. Accordingly, it is recommended that the Panel allow the Development Application to proceed to an assessment to be publicly notified, with a comprehensive application and assessment.

7. RECOMMENDATION

That pursuant to Regulations 17 (3)(b) of the Development Regulations, 2008 the Development Assessment Panel resolves that the intended land use proposed by Development Application 110/00130/19 has merit and resolves to allow the Development Application to proceed to public notification and a formal assessment.