

Report by the Director of Economy

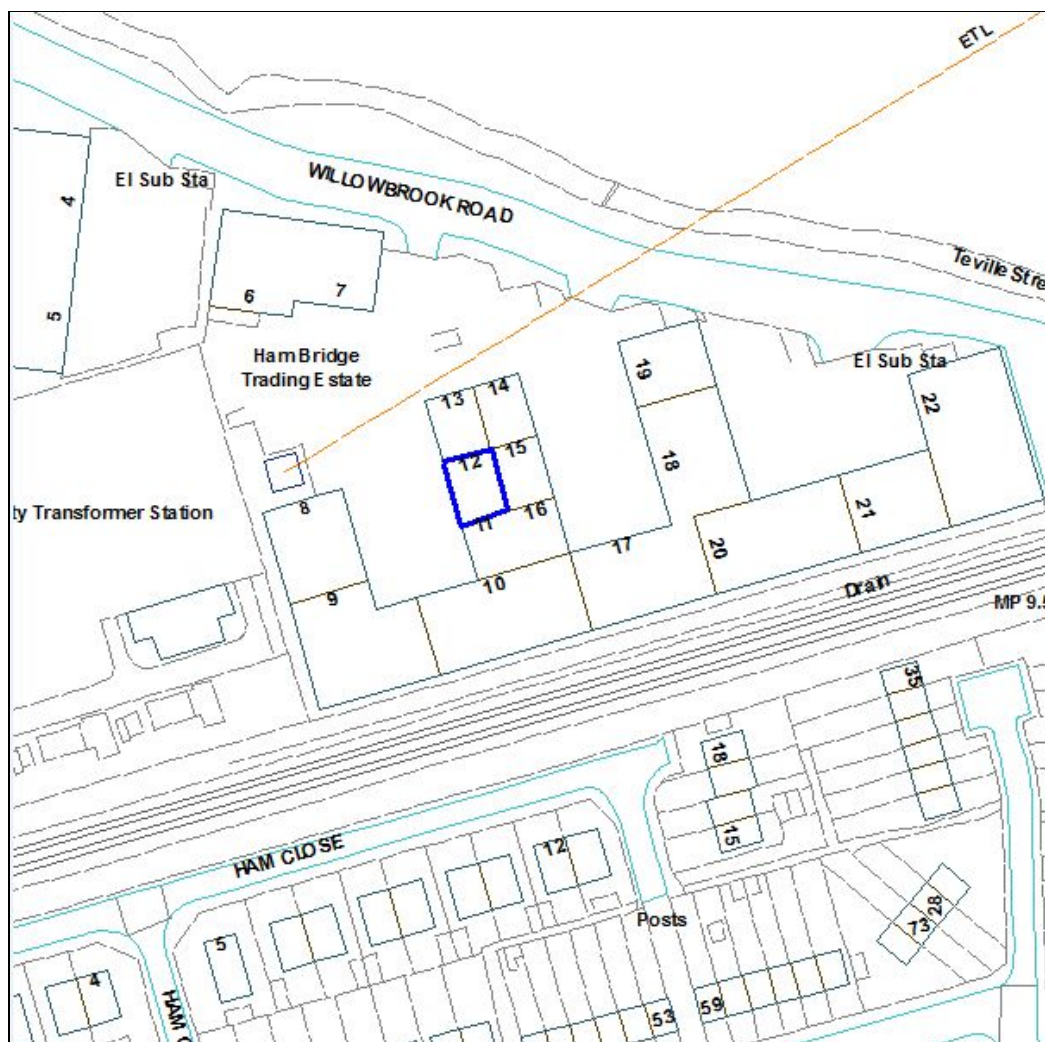
ENFORCEMENT REPORT

Units 11 & 12 Ham Bridge Industrial Estate, Willowbrook Road, Worthing

Unauthorised occupation of unit 12 as a retail showroom

Reference Number: AWEN/0210/16

**Recommendation – that it is not expedient to take enforcement action
provided there is no change in the current situation**



Not to Scale

Background

Members will recall that at the July meeting of the Committee a planning application (AWDM/0660/16) was refused for the change of use from B1/B8 to sui generis (Dog Day Care and Training Facilities) with ancillary retail at Unit 18 Ham Bridge Industrial Estate. The reason for refusal was:

The unit is located within a protected, key industrial estate and insufficient evidence has been submitted to clearly identify that the unit is no longer viable as a B1/B8 use or that reasonable steps have been taken to maintain the existing use. Thereby, the proposed change of use from the existing B1/B8 use to a Sui Generis use would be contrary to Policy 4 of the Worthing Core Strategy, the Council's 'Sustainable Economy' SPD and the NPPF.

The applicant for the above proposal had contested that other uses that did not comply with the above mentioned policies were already present within the immediate vicinity of Unit 18 and therefore it would be inconsistent for the Council to resist the application. At the meeting, your officers explained that, with the exception of unit 12, all of the other cases referred were in fact compliant with the Council's Core Strategy and Sustainable Economy SPD, but there was no record of any permission having been obtained for the use of Unit 12 and therefore an investigation would take place to ascertain the situation.

The occupiers of Unit 12 are Pete Hart Carpets whose website referred to a showroom at the premises. As such a retail showroom would fall under Use Class A1 and therefore would require planning permission. In light of the refusal reason above, and the aims of policy 4 and the Sustainable Economy SPD, which seek to retain such industrial units as B class units, it would be unlikely that planning permission would be granted for such a use.

A site visit was therefore arranged with Mr & Mrs Hart, attended by the Planning Services Manager and the Enforcement Team Leader. During the meeting, it emerged that the company also occupied Unit 11 which was being used as a carpet warehouse, a B class usage which did not require planning permission and in any case would comply with policy requirements.

Relevant Planning History

There is planning history directly relevant to the consideration of this matter, although Members are referred to the decision in respect of unit 18 as outlined above.

Consultations

Economic Development has verbally expressed concern regarding the occupation of the premises and also confirmed that they were not previously aware of the unauthorised use of Unit 12. They also comment that in the past they have advised other companies of a similar nature who approach the Council before occupying such premises that planning permission was unlikely to be granted.

Representations

None received

Relevant Planning Policies and Guidance

National Planning Policy Framework

Core Strategy Policy 4 and Sustainable Economy SPD

Planning Assessment

The main issue in respect of the consideration of this case is whether there is sufficient justification to take enforcement action in respect of the unauthorised use of the premises.

Your officer's inspection of Unit 12 confirmed that the use of the building requires planning permission. A showroom is defined as an A1 Use Class and ordinarily planning permission would not be granted for such use in a protected industrial estate.

The owners of the carpet company have advised that they had been occupying the unit for about 2 years and were unaware that planning permission was required: the sales particulars at the time did not, apparently, refer to the fact that any permissions may be required. The Council has not received any complaints regarding the occupation of the building and as referred to above, an awareness of the unauthorised use only arose because of the consideration of the application at unit 18.

During the site visit, the owners further advised that subsequent to their occupation of unit 12, they then acquired the use of adjoining unit 11 which is being used as a warehouse to store/cut carpets etc. Planning permission would not be required for the use of this unit.

As such, therefore, the case is slightly unusual – the owners of the company point out that they have occupied Unit 12 for about 2 years without any complaint and that awareness of their occupation of the unit only arose as a result of a separate application which they had actually written in and supported.

Notwithstanding the above, the length of occupancy of unit 11 is not sufficient for there to be immunity from any enforcement action and it is quite open to the Council to take enforcement action if it sees fit.

The fact that no complaints have been received could be considered relevant in the assessment of the case. An intensive use of the premises as a retail showroom with attendant visitor movement and parking requirements would almost certainly have come to the attention of the Council as there is relatively limited availability for parking in the immediate environs of the site. It appears that the opening hours of the showroom are largely limited to weekdays and indeed subsequent to the site visit, the showroom does not open at all at weekends, closing from 13.00 on Fridays to 09.00 on Mondays. As is typical for a carpet

company the Unit is well populated with samples and the actual product itself requires work at a purchaser's house.

It would be fair to say, therefore, that the nature of the showroom is not one that causes nuisance in itself, but nonetheless, when considered in isolation, still fails to comply with adopted Local Plan policy. It should be remembered that in terms of the potential user of Unit 18, there was similarly no indication that any nuisance would arise through its use in terms of amenity, but that it was a matter of principle that a non B Use Class occupation of the premises was unacceptable.

The Council's position in respect of the policy has been upheld at appeal and, in isolation, therefore, the continued occupation of Unit 12 by the carpet company would appear unacceptable. In itself, there is no apparent reason why the showroom has to be located within a unit such as this, given that there are many A class premises in the town which could accommodate such a use.

The use of the adjoining unit as a warehouse, though, does add further consideration to the case. The cutting and rolling of carpets takes place for example and therefore represents an acceptable use within Unit 11, which was previously understood to be vacant. The occupation of this unit has benefitted the company but this would be seemingly unaffected if the adjoining unit were no longer to be occupied by the Company. Ordinarily, in cases like this, a single unit would house both uses and provided that any showroom elements are ancillary to the overall use of the warehouse, then it is often the case that planning permission is not required. Where 2 separate units are concerned, an ancillary argument cannot be used.

An alternative discussed with the applicant would be partition unit 12 so that the showroom element was reduced and the warehouse use expanded into this unit as well. While a potential solution to the problem, it would appear artificial in the sense that unit 12 would still be physically separated from unit 11 and there would seem little merit in using a restricted space in unit 12 to cut and roll carpets when a far more adequate space is available in the adjoining unit. Moreover, to receive the necessary commission from the supplier of the carpets concerned, it is understood to be a requirement to have the requisite samples on display which would clearly would be restricted if the display area were to be reduced, by at least half, in order to demonstrate that the showroom use was ancillary.

An alternative course of action could be to place any enforcement proceedings in abeyance on the strict proviso that the workshop in the adjoining unit remains in place so that there is a directly associated industrial process in immediate proximity and that, taking the 2 units together, there is at least half of a use that conforms with planning policies on the combined site. Should, however, the use of unit 11 ever cease for such purposes, but unit 12 remains in its current use, then an enforcement action could be undertaken. However, this does not address the concern that the retail element could be relocated to a vacant shop unit elsewhere in the town and the concerns about setting a precedent for allowing non-industrial uses (Members will recall that other uses such as the change of use to Jubilee Church have been resisted on this industrial estate and the decision upheld at appeal).

Comments of the Executive Head of Corporate and Cultural Services

The legal power to take enforcement action is contained in Section 172(1) Town and Country Planning Act 1990 (as amended), that states that a Local Planning Authority may issue an enforcement notice where it appears to them:-

- (a) that there has been a breach of planning control; and
- (b) it is expedient to issue an enforcement notice, having regard to the provisions of the development plan and to any other material considerations

Paragraph 207 National Planning Policy Framework reiterates that enforcement action is discretionary, and local planning authorities should act proportionately in responding to breaches of planning control.

Conclusion and Recommendations

This is a difficult case and whilst Officers have some sympathy with the Company there is a danger that allowing this unauthorised use to continue could set an unacceptable precedent. To resolve the matter members have the following options:

1. Invite a planning application from the Company to try and regularise the situation (a temporary permission could be granted and conditions imposed linking the use to the adjoining industrial unit).
2. Take no further action against the unauthorised occupation of unit 12 as a retail showroom provided that unit 11 remains in B8 class use in connection with Pete Hart Carpets (this would have the effect of authorising enforcement action should the use of unit 11 cease).
3. Take enforcement action to cease the use of the retail unit on the basis that it would result in the unacceptable loss of an industrial unit on a protected Industrial Estate. Any notice could specify an extended compliance period (upto 12 months) to enable the current use to relocate.

The Committee is recommended to consider the above options to regularise the current unauthorised use of this industrial unit.

19th October 2016

Schedule of other matters

1.0 Council Priority

1.1 To support and contribute to the health, safety and well-being of the area

2.0 Specific Action Plans

2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

3.1 The location at this level in a flood zone is unsustainable.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 None in this context.

6.0 Human Rights Issues

6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those affected by proposed developments and the relevant considerations which may justify interference with human rights have been considered in the planning assessment.

7.0 Reputation

7.1 Decisions are required to be made in accordance with the Town & Country Planning Act 1990 and associated legislation and subordinate legislation taking into account Government policy and guidance (and see 6.1 above and 14.1 below).

8.0 Consultations

8.1 As referred to in the above report.

9.0 Risk Assessment

9.1 As referred to in the above report.

10.0 Health & Safety Issues

10.1 As referred to in the above report.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

12.1 Matter considered and no issues identified.

13.0 Legal

13.1 Powers and duties contained in the Town and Country Planning Act 1990 (as amended) and associated legislation and statutory instruments.

14.0 Financial implications

14.1 Decisions made which cannot be substantiated or which are otherwise unreasonable having regard to valid planning considerations can result in an award of costs against the Council if the land owner is aggrieved and lodges an appeal. Decisions made which fail to take into account relevant planning considerations or which are partly based on irrelevant considerations can be subject to judicial review in the High Court with resultant costs implications.