Development Management – Delegated Officer Report

Application Number: NOTICE/0001/24 **Recommendation – PRIOR APPROVAL REQUIRED AND REFUSED**

Site: **88A High Street, Shoreham-by-sea**

Proposal: **Notification for Prior Approval under Class MA for change of use from office use (Class E[g][i]) to residential (Class C3) - Conversion of first floor of existing building into 1 No. self-contained residential unit.**

Date of site visit: 24 May 2024

Neighbours checked: Y

Additional neighbour notifications: N

Site and Surroundings

The application relates to the first floor above Piston Broke public house on the north side of Shoreham High Street. It is a three storey property (two storeys with rooms in the roof) comprising a pub on the ground floor and vacant offices above.

The property is located within the Shoreham Conservation Area. It is located within the primary shopping frontage of the Town Centre but is outside of a designated flood zone.

Proposal

An application for Prior Approval is sought under the provisions of the Town and Country Planning GPDO 2015 Schedule 2 Part 3 Class MA for a change of use of the first floor from commercial, business and service use (Class E) to provide 1no. one bedroom flat.

Planning History

None relevant

Consultations

WSCC: No highway objection, commenting:-

Generally, the change of use from office to residential would generate a reduction in material use at the site. The existing use would create a certain number of movements throughout the day, whereas the movements associated with residential use would be anticipated within network peaks. Therefore, although the nature of trips would change, the frequency would likely not exceed that of the potential of the current use.
The WSCC Car Parking Demand Calculator indicates that the single bedroom flat in this location would require a single car parking space. The proposal will retain the existing nil parking provision. Parking would therefore have to be accommodated on-street or within nearby public car parks. Whilst on-street parking is limited in the area, there are comprehensive parking restrictions in place prohibiting vehicles from parking in places that would be a detriment to highway safety. The LHA does not anticipate that the proposed nil parking provision would result in a detrimental highway safety impact, nor lead to a wider parking capacity issue. However, the LPA may wish to consider the potential impacts on on-street parking from an amenity point of view.

The site is located within reasonable walking distance of local shops and amenities. Bus services operate along High Street A259 and rail services are within walking distance of the site. In summary, the movements associated with Use Class E have done so safely with no known safety highways concerns, and C3 residential uses are considered less intensive. West Sussex County Council in its role as LHA has therefore considered the proposal on that basis. The prior approval is therefore considered acceptable in highway terms.

Southern Water: Standard response

Adur and Worthing Councils:

EHO (Public Health): The proposed residential fronts a noisy high street and has a licenced premises below. Looking at Google photos of the bar, it has hosted live music.

We have an agent of change here should a future tenant complain about nuisance from the licenced premises and I would be minded to object. You may be able to manage traffic noise out front and commercial noise from below, but it's going to be difficult to control noise from customers chatting on the stairwell outside your flat entrance door.

We will need to see an acoustic scheme accompanying any application.

Subsequent comments: We need a sound insulation scheme to protect against the commercial noise and the external noise. Because of the agent of change issue, I still think we should have a planning application rather than add a condition to a notice, just in case the necessary sound insulation required is not viable. I would want to see what scheme we were agreeing to before permission is granted.

Private Sector Housing: The applicant has argued that there are few grounds to object to this matter as it is a Prior Approval application. Therefore the following comments may be taken as advisory or objections as planning law permits.

The proposal creates a fire risk to future occupiers by designing a layout whereby the bedroom is an "inner room" where the only means of escape from of the property is via the living / kitchen area which is generally considered a high risk room where fires are more likely to start.

The introduction of a residential flat above an established public house will potentially give rise to noise problems. The bedroom is at the front of the flat where it will be most affected by traffic noise and potentially patrons. Even if a robust sound insulation scheme were incorporated, this is not likely to be able to control all noise especially during the warmer months when windows would be open for ventilation. There may be benefit in siting the bedroom at the rear of the flat where it is potentially quieter.

Both these matters are potential health hazards which could subsequently lead to enforcement under other legislation and costly retrospective works. It would therefore be timely to optimise the design at this stage.

Avoiding an inner room such that the bedroom leads directly to a protected hallway and considering the potential for noise minimisation in the design is recommended.

Drainage: No objection on surface water grounds

Representations:

ADCAG**:** Approve

Relevant Planning Policies

Adur Local Plan 2017 Policies 15, 20, 28, 34, 36
'Supplementary Planning Guidance' comprising: Development Management Standard No.1 'Space Around New Dwellings and Flats'
Sustainable Energy SPD (August 2019)
Shoreham by Sea Conservation Area Character Appraisal & Management Strategy (ADC 2008)
WSCC Guidance on Parking at New Developments (Sept 2020).
National Planning Policy Framework (December 2023)
Technical Housing Standards – nationally described space standard (DCLG 2015)

Legislation

The application is made under the Prior Approval procedure and the consideration is restricted to the limitations, restrictions and conditions set out in respect of Class MA, Part 3, Schedule 2 of the GPDO 2015 as amended and the provisions of Paragraph W.

Class MA allows for development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

These provisions are subject to the limitations sets out in MA.1 and conditions set out in MA.2

Development not permitted

MA.1
(1) Development is not permitted by Class MA-
(b) unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;
(d) if land covered by, or within the curtilage of, the building—
(i) is or forms part of a site of special scientific interest;
(ii) is or forms part of a listed building or land within its curtilage;
(iii) is or forms part of a scheduled monument or land within its curtilage;
(iv) is or forms part of a safety hazard area; or
(v) is or forms part of a military explosives storage area;

(e) if the building is within—
(i) an area of outstanding natural beauty;
(ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 198155;
(iii) the Broads;
(iv) a National Park; or
(v) a World Heritage Site;

(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

(g) before 1 August 2022, if—
(i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
(ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

(2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—

(a) the following classes of the Schedule as it had effect before 1st September 2020—
(i) Class A1 (shops);

(ii) Class A2 (financial and professional services);
(iii) Class A3 (food and drink);
(iv) Class B1 (business);
(v) Class D1(a) (non-residential institutions – medical or health services);
(vi) Class D1(b) (non-residential institutions – crèche, day nursery or day centre);
(vii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;

(b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule

Conditions

MA.2

(1)Development under Class MA is permitted subject to the following conditions.
(2) Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
(a) transport impacts of the development, particularly to ensure safe site access;
(b) contamination risks in relation to the building;
(c) flooding risks in relation to the building;
(d) impacts of noise from commercial premises on the intended occupiers of the development;
(e) where—
(i) the building is located in a conservation area, and
(ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;
(h) where the development involves the loss of services provided by—
(i) a registered nursery, or
(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006,
the impact on the local provision of the type of services lost; and
(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.
(3) An application for prior approval for development under Class MA may not be made before 1 August 2021.
(4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if—
(a) for paragraph (e) of sub-paragraph (2) there were substituted—
“(e) where—

(i) sub-paragraph (6) requires the Environment Agency to be consulted, a site-specific flood risk assessment;
(ii) sub-paragraph (6A) requires the Health and Safety Executive to be consulted, a statement about the fire safety design principles, concepts and standards that have been applied to the development,";

b) in the introductory words in sub-paragraph (5), for "and highways impacts of the development" there were substituted "impacts of the development, particularly to ensure safe site access";
(c) after sub-paragraph (6) there were inserted—
"(6A)Where the application relates to prior approval as to fire safety impacts, on receipt of the application, the local planning authority must consult the Health and Safety Executive.";
(d) in sub-paragraph (7) for "(5) and (6)" there were substituted "(5)(6)(6A)";

(5) Development must be completed within a period of 3 years starting with the prior approval date.
(6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

Interpretation of Class MA

MA.3. Development meets the fire risk condition referred to in paragraph MA.2(2)(i) if the development relates to a building which will—
(a) contain two or more dwellinghouses; and
(b) satisfy the height condition in paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Planning Assessment

The starting point for consideration of the proposal is whether it can lawfully take advantage of the procedures under Class MA.

Limitations MA.1

MA.1(b) A Supporting Statement submitted with the application confirms that the first floor was in use as office space within Use Class B1 (now Class E) for at least 2 years prior to the date of the application.

MA.1(d) The building is not covered by or within an SSSI, a Listed building, a Scheduled Monument, within a safety hazard area, or a military explosives area.

MA.1(e) The building is not within an AONB, a National Park, the Broads, or a World Heritage Site or area specified under Section 4(3) of the Wildlife and Countryside Act.

MA.1(f) The building is not occupied under an agricultural tenancy.

MA.1(g) The application post-dates 1 Aug 2022.

Conditions MA.2

Transport and safe site access

The site is sustainably located in easy walking distance of the various shops and services available within the Town Centre and with good public transport links by bus and train.

The development would be a car-free development.

The local Highway Authority is satisfied that the proposal would have safe site access and raises no adverse transport impacts.

No provision has been specifically identified for bin or cycle storage and it is unclear where such provision would be made on the site.

Contamination risks

The proposals involve a change of use on the upper floors of the building with no breaking of ground. There is no external amenity space provision. No contamination risks are envisaged.

Flooding risks

The area is outside of a designated Flood Zone.

Impact of noise from commercial premises on the intended occupiers

An unacceptable level of amenity would be contrary to the National Planning Policy Framework and Planning Practice Guidance which states at para 135 that planning decisions should ensure (amongst other things) that developments:

- create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

This is underlined by policies 15 and 34 of the Adur Local Plan.

The Noise PPG further indicates noise needs to be considered when development would be sensitive to the prevailing acoustic environment. Good acoustic design needs to be considered early in the planning process to ensure that the most appropriate and cost effective solutions are identified from the outset. Decision making needs to take account whether or not a significant adverse effect is occurring or likely to occur. This is the level of noise exposure above which significant adverse effects on health and quality of life occur.

The site is located above a busy commercial street with activity throughout the day and into the evening. There is a public house on the ground floor, a future office use above and other commercial uses adjacent, including a fish and chip restaurant. The EHO is concerned that the proposed flat will be adversely affected by noise from commercial properties, especially the pub below which also plays live music. A noise assessment is required before permission can be granted for the use to ensure that any noise reduction scheme is viable and can be implemented.

The National Planning Policy Framework makes it clear that the onus for successful noise control/protection is the responsibility of the ‘agent of change’ (the developer).

The NPPF specifically advises at paragraph 193 that “planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”

Should residential use be permitted and future occupiers were to suffer significant noise nuisance, enforcement measures such as Noise Abatement Notices or Community Protection Notices could be served on adjoining businesses. In the event that the Council was forced to take action against noise nuisances, this would clearly prejudice the operation or future legitimate expansion of business practice located in the heart of the town centre.

The Private Sector Housing Officer is concerned that the layout of the flat creates a fire risk, as the bedroom is an "inner room" where the only means of escape from of the property is via the living / kitchen area which is generally considered a high risk room where fires are more likely to start. He also considers that the bedroom would be better located at the rear of the building to avoid traffic noise at the front. However, neither of these matters are for consideration under the prior approval process.

All habitable rooms would be provided with an adequate standard of natural light.

Article 3(9A)

The 1-bedroom 1-person flat would have a GIA of 46m2 which meets the Government's Technical Housing Standards.

Other

The building is within a Conservation Area but the ground-floor of the building would be retained as a pub and is not affected by the proposal. There is a separate entrance to 88A at the side of the pub.

The High Street is not an area important for general or heavy industry.

The proposal does not involve the loss of a registered nursery or a health centre.

The fire safety impacts of the development are not applicable in this case.

Recommendation

Prior Approval is Required and Refused for the following reason:

The proposed change of use from office to residential would result in the creation of a dwelling in close proximity to a range of commercial uses including a drinking establishment and live music venue directly below. Owing to noise created by these nearby commercial uses, continuing late into the evening and night-time, and with no noise assessment having been submitted, the Local Planning Authority is not satisfied that satisfactory living conditions would be provided for the future occupiers of the residential dwelling. As a result the proposed development would be contrary to policies 15 and 34 of the Adur Local Plan and the provisions of the National Planning Policy Framework (NPPF).

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

Case Officer: Peter Barnett Date: 30 May 2024

Authorised by: Gary Peck Date: 3 June 2024