Expiry Date - 21/02/2024

Development Control – Delegated Officer Report

Application Number: NOTICE/0024/23 Recommendation – APPROVE

Site: 94 Montague Street Worthing West Sussex BN11 3HF

Proposal: Application for permitted development for prior approval for change of use from (Use Class E) at first and second floors to 1no. residential apartment

Neighbours Checked: Y

Additional Neighbour Notifications N

Site and Surroundings:

The application relates to a terraced shop on the north side on the pedestrianised area of the Montague Street towards the western end.

The property has a timber framed shopfront with a central recessed doorway containing the single door and glazed windows either side with small panes with timber stall risers. The shopfront has a timber fascia above with painted lettering. The colouring of the building is brown and cream. The property has two further floors above with centrally located sash windows with small panes. The building is painted white brick work above

The units either side are in retail or have previously been usd as retail. No 92 to the east has a recessed glazed shop front. No 96 to the west has a traditional shop front with door recess and stall risers.

Montague Street at this point is part of zone A of the town centre primary shopping area, as defined in the Worthing Core Strategy 2011 and is pedestrianised. The property is within the Montague Street Conservation Area, there are a variety of building types and ages.

Description of Development

The application is for prior approval for change of use of the first floor and second floors to a two bedroom unit.

The application is supported by a location plan, block plan, existing and proposed floor plans and elevations. The proposed floor plans show an 82.5sqm two bedroom unit. It would provide a bedroom and en-suite at second floor and kitchen / living and bedroom at first floor. The unit would be access via a staircase to Graham Road at the rear. The application indicates that there are no external changes.

The ground floor is shown as a retail shop with as existing access from Montague Street. It would have a store area, kitchen and separate WC.

Relevant Planning History

96/05537/FULL- CHANGE OF USE OF FIRST FLOOR TO A COFFEE SHOP- APPROVED

AWDM/2040/21- Replace existing shopfront with a new aluminium one. Rebranding the shop in new format.- REFUSED

AWDM/0895/22-Removal of existing shopfront to be replaced with a new front of timber construction. Rebranding the shop in new format. (Resubmission of AWDM/2040/21)-APPROVED

AWDM/0899/22-Replacement signage with non illuminated fascia sign. (Resubmission of AWDM/2306/21)- APPROVED

Consultations:

WSCC Highways

This proposal seeks prior approval for the change of use from Use Class E to residential (C3 Use), to form one residential apartment. The site is located on Montague Street, an E-class pedestrianised street in this location.

Under the current General Permitted Development Order (GPDO), it is permitted development to change use from Class E to residential (Class C3) subject first to prior approval being granted. As part of the prior approval process, there are a number of matters to be considered. This includes matters relating to highways and transport. However, the GDPO is quite clear as to what highways matter can be considered, namely whether the proposal is likely to result in a material increase or material change in the character of traffic in the vicinity of the site.

No vehicular access is associated with this site. No traffic flow information has been provided with the current application; however, Class E uses tend to generate greater material movements than C3 residential. Therefore, the LHA does not anticipate that material movements associated with the site will exceed that of the existing.

The WSCC Car Parking Demand Calculator indicates that a dwelling of this size and location would require at least two car parking spaces. The applicant proposes a nil car parking provision - consequently, parking would have to be accommodated on-street or within nearby paid-for provision. Comprehensive parking restrictions are in place on nearby roads, prohibiting parking in places that would be detriment to highway safety. The LHA does not anticipate that the existing nil car parking provision would result in a highway safety concern or parking capacity issue in this instance.

The site is situated in a sustainable town centre location within walking/cycle distance of local services, amenities, and public transport links. Due to the location of the development within a sustainable location, it is not considered that occupants would be reliant on the use of a car. The LHA would request that

secure and covered cycle storage for at least one bicycle be provided, if there is space within the site to do so.

In summary, the proposal is not anticipated to result in a material increase or change in the character of traffic. Consequently, no highway concerns would be raised. In principle, the current GPDO gives limited ability to consider wider highway and transport impacts beyond those set out. The prior approval is therefore considered acceptable in highway terms.

Southern Water

Southern Water requires a formal application for any new connection to the public foul and surface water sewer to be made by the applicant or developer.

Adur and Worthing Councils

EHO (PH)

Flat above Commercial
The sound insulation of the floor/ceiling between the ground and first floor shall achieve a minimum airborne sound insulation value of 50dB (DnTw + Ctr dB). Before the residential unit is occupied a test shall be undertaken to demonstrate compliance with this level.

Construction Management Plan

No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate, but not necessarily be restricted to the following matters:

- the parking of vehicles by site operatives and visitors,
- the loading and unloading of plant, materials and waste,
- the storage of plant and materials used in construction of the development.

Reason: As this matter is fundamental in order to consider the potential impacts on the amenity of nearby occupiers during construction.

Officer's response: The GPDO does not allow the assessment of impacts on neighbouring residents so it is not considered necessary to require a CMP by condition. Hours of buildings works will be included as an informative which will help protect residential amenity.

EHO (PSH)

No objections

Drainage Engineer

The applicant is applying for the permitted development for prior approval for change of use from (Use Class E) at first and second floors to 1no. residential apartment.

Following a review of the submitted information, we have no objection on surface water grounds. Due to the site, size, location, and type of development **we would recommend the approval of the application**.

Representations:

None

Relevant Planning Policies

National Planning Policy Framework (HCLG 2023)
National Planning Practice Guidance (CLG)

Worthing Local plan

DM1- HOUSING MIX
DM2 - DENSITY
DM5 - QUALITY OF THE BUILT ENVIRONMENT
DM13 - RETAIL AND TOWN CENTRE USES
DM16 - SUSTAINABLE DESIGN
DM22 - POLLUTION

Legislation

Permitted development

MA 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.

Development not permitted

MA.1.—(1) Development is not permitted by Class MA—
(a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;
(b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;
(c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;
(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 1981(a);
(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 conditions

(2) Before beginning the development, 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; and

(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(a), the impact on the local provision of the type of services lost.

(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 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”.

(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 201559

Procedure for applications for prior approval under Part 3

W.— (1) The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.
(2) The application must be accompanied by—

(a) a written description of the proposed development, which, in relation to development proposed under Class C, M, N or Q of this Part, must in the same application include any building or other operations;

(b) a plan indicating the site and showing the proposed development;

(ba) in relation to development proposed under Classes M, MA, N, O, P, PA and Q of this Part, a statement specifying the net increase in dwellinghouses proposed by the development (for the purposes of this sub-paragraph, "net increase in dwellinghouses" is the number of dwellinghouses proposed by the development that is additional to the number of dwellinghouses on the site immediately prior to the development);

(bb) in relation to development proposed under Class Q of this Part, a statement specifying—

(i) the number of smaller dwellinghouses proposed;

(ii) the number of larger dwellinghouses proposed;

(iii) whether previous development has taken place under Class Q within the established agricultural unit and, if so, the number of smaller and larger dwellinghouses developed under Class Q;

(bc) in relation to development proposed under Class M, MA, N, O, PA or Q of this Part, a floor plan indicating the total floor space in square metres of each dwellinghouse, the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses;

(c) the developer's contact address;

(d) the developer's email address if the developer is content to receive communications electronically; and

(e) where sub-paragraph (6) requires the Environment Agency to be consulted, a site specific flood risk assessment, together with any fee required to be paid.

(2A)Where the application relates to prior approval as to adequate natural light, the local planning authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses.
(3) The local planning authority may refuse an application where, in the opinion of the authority—

(a) the proposed development does not comply with, or

(b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions except for conditions in paragraph M.2(1)(f), paragraph N.2(1)(e),

paragraph O.2(1)(e), paragraph PA.2(1)(v), or paragraph Q.2(1)(g), limitations or restrictions specified in this Part as being applicable to the development in question.
(4) Sub-paragraphs (5) to (8) and (10) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval.
(5) Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult—

(a) where the increase or change relates to traffic entering or leaving a trunk road, the highway authority for the trunk road;

(b) the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority; and

(c) the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway.

(6) Where the application relates to prior approval as to the flooding risks on the site, on receipt of the application, the local planning authority must consult the Environment Agency58 where the development is—

(a) in an area within Flood Zone 2 or Flood Zone 3; or

(b) in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.

(7) The local planning authority must notify the consultees referred to in sub-paragraphs (5) and (6) specifying the date by which they must respond (being not less than 21 days from the date the notice is given).
(8) The local planning authority must give notice of the proposed development—

(a) by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which—

(i) describes the proposed development;

(ii) provides the address of the proposed development;

(iii) specifies the date by which representations are to be received by the local
planning authority; or

(b) by serving a notice in that form on any.

(i) on any adjoining owner or occupier; and

(ii) where the proposed development relates to part of a building, on any owner or occupier of the other part or parts of the building".

Assessment against the legislation

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

The planning history of the site shows that the property was a retail unit at ground floor with at one point the first floor potentially used as a café.

The applicant agent has confirmed that the floors first and second floor has been vacant for at least 3 months. There are no further details although the retail unit is currently vacant and has been for at least 3 months. The property has therefore been vacant for at least 3 months as stipulated with MA.1(1) (a). This stipulation is therefore met.

The building has been used as a mixture of commercial uses for at least 2 years prior to the date of the application and as such complies with MA.1 (1) (b).

The proposals relate to a floor area of 82.5sqm and does not exceed 1,500 square metres. The limitation set out in MA.1(1)(c) is met.

The building is not covered by or within an SSSI, a Listed building, a Scheduled Monument, within a safety hazard area, a military explosives area, an AONB, a National Park, the Broads, a World Heritage Site or area specified under Section 4(3) of the Wildlife and Countryside Act.

The limitations set out in MA.1(1)(d)(e)(f) and (g) do not apply.

Consideration of the planning merits of the proposal is restricted to those matters set out in MA.

(a) transport impacts of the development, particularly to ensure safe site access

The site is sustainably located within easy walking distance of the various shops and services available within the town centre, and with good public transport links to other parts of the town and destinations further afield.

The LHA do not consider that highway safety would be detrimentally affected through the proposed nil car parking provision. The LHA anticipate that the level of traffic generated by the proposed dwelling would be of a similar nature to the existing.

The LHA have suggested cycle parking should be provided.

There is limited space to provide cycle parking within the building although there is potential in the lobby area of the rear entrance.

(b) contamination risks on the site,

The land has not been identified as potentially contaminated.

(c) *flooding risks on the site*,

No concerns have been raised by the Council's Consultant Engineer.

(d) impacts of noise from commercial premises on the intended occupiers of the development,

An unacceptable level of amenity would be contrary to the National Planning Policy Framework and Planning Practice Guidance which states at para 130 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 SPD Guide for Residential Development and the Policy DM22 of the Worthing 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 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, and the significant observed adverse effect level – this is the level of noise exposure above which significant adverse effects on health and quality of life occur.

The Worthing Local Plan policy DM22 states amongst other things:

(a) Development should not result in pollution or hazards which prejudice the health and safety of the local community and the environment, including nature conservation interests and the water environment.

(d) Where appropriate, air quality and/or noise assessments will be required to support planning applications. These should be undertaken in accordance with the most up to date guidance and have regard to any relevant action plans.

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 191 That Planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

The site is located on a busy commercial street with activity throughout the day and into the evening. There are commercial units both sides. The Environmental Health Officer has not raised concerns about noise but suggested a condition for the submission of sound insulation between the ground and first floor.

(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;

The building is within the Montague Street conservation area but does not involve any changes to the ground floor or the elevations.

(f) *the provision of adequate natural light in all habitable rooms of the dwellinghouses,*

The application proposes the conversion of the building into a two bedroom dwelling over 2 floors. All the rooms within the units would have natural light from existing windows.

(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; and*

N/A in this case

(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(a), the impact on the local provision of the type of services lost.

NA in this case.

Recommendation

Prior Approval is required because of the relevant issues raised above and is recommended for APPROVAL subject to the following conditions:-

1. Approved Plans
2. Agree Cycle parking
3. Agree noise insulation scheme between ground and first floor

Expiry Date - 21/02/2024

Informatives

1. New address
2. Party wall act
3. Southern Water connection
4. Hours of work

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

Case Officer: Jackie Fox Date: 13.02.24

Authorised by: Louise Prew Date: 13/02/2024