

Development Control – Delegated Officer Report

Application Number: NOTICE/0017/24 Recommendation – APPROVE

Site: 15 - 17 Broadwater Street West Worthing West Sussex BN14 9BT

Proposal: Application for Prior Approval pursuant to class MA of Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to allow the change of use of part ground floor from retail (Class E) to one residential unit (Class C3)

Neighbours Checked: Y

Additional Neighbour Notifications N

Site and Surroundings:

The application property is a two-storey building which forms part of a retail terrace and parade along Broadwater Street West.

The property is currently vacant and has been since the beginning of the year, it was previously occupied by a retail occupier.

As the site is within the retail centre, the site is surrounded by generally commercial uses with some residential units on upper floors.

There is a vehicular access road to the rear accessed from Rectory Gardens

The site is adjacent to the Broadwater Conservation Area and close to the Broadwater Green Conservation Area but has no specific heritage designation

The site is within the Broadwater District shopping centre

Description of Development

The application is for prior approval for change of use of part of the ground floor to a two bedroom flat.

The application is supported by a location plan, block plan, existing and proposed floor plans and elevations, a planning statement and a flood risk assessment. The proposed floor plans show a 74.80sqm two bedroom unit. It would provide a living room/kitchen, two bedrooms one en-suite, a bathroom and store.

The remainder of the ground floor would be two shop units approved as part of AWDM/0640/24

The external changes are unchanged from those approved under AWDM/0640/24.

An enclosed cycle and bin store is shown on the opposite side of the courtyard.

Relevant Planning History

AWDM/1373/16- Change of Use from Financial (A2) to Medical Practice (D1) with new shop front and entrance door- APPROVED

AWDM/1808/16- Remove existing frontage and install new shopfront with enlarged display windows and new entrance door (to facilitate A1 retail use of former Lloyds Bank). APPROVED.

AWDM/0640/24- Fenestration alterations to front, side and rear elevations; new rooflights; and sub division of existing ground floor unit into two separate units- APPROVED

Consultations:

WSCC Highways

This proposal is for prior approval for the change of use of part ground floor from retail (Class E) to one residential unit (Class C3). The site is located on Broadwater Street West, an A-classified road subject to a speed restriction of 30 mph.

The LHA previously provided consultation advice for this site for application AWDM/0640/24, raising no highway safety concerns. This Local Planning Authority (LPA) granted the application.

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 formal vehicular access is associated with this site. The LHA does not anticipate that the change of use would give rise to a significant material intensification of movements to or from the site.

No vehicular parking is to be provided for this development. The WSCC Car Parking Demand Calculator indicates that a dwelling of this size in this location would require at least two car parking spaces. Consequently, vehicular parking would have to be accommodated on-street.

The LHA does not anticipate that the proposed nil car parking provision would result in a detrimental highway safety impact, nor give rise to a parking capacity issue. However, the LPA may wish to consider the potential impacts on on-street parking from an amenity point of view. Weight is given to the fact the site is situated within a sustainable town centre location, within walking distance of public transport links and public car parks.

The applicant has demonstrated a cycle store to the rear of the site, which will provide secure cycle parking provision in accordance with WSCC Parking Standards.

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): There are no adverse EH comments for this application

EHO (PSH) : No response

Drainage Engineer

The applicant is applying for prior approval pursuant to class MA of Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to allow the change of use of part ground floor from retail (Class E) to one residential unit (Class C3). The application is to Worthing Borough Council.

Following a review of the submitted information, we have noted that insufficient information has been provided to demonstrate that the application is in accordance with the NPPF. The applicant should provide an updated Flood Risk Assessment that demonstrates safe access and egress.

We would recommend the application is not approved until updated information is received that addresses the above points.

Reason

To prevent flooding in accordance with National Planning Policy Framework paragraphs 165-175 by ensuring the satisfactory management of local flood risk, surface water flow paths, storage, and disposal of surface water from the site in a range of rainfall events and ensuring the SuDS proposed operates as designed for the lifetime of the development.

Following additional information:

Following a review of the submitted information, we have no objection on surface water grounds. We have noted that the site is classed as a high surface water risk and not medium as stated within the provided FRA. However, as this does not change the flood depths, we are happy with the safe access and egress routes that have been provided. It is noted that, when considering the 1 in 100plus climate change depth (0.1% proxy), the flood depths to the north of the site would not be an acceptable evacuation route.

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—

(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;

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

The proposals relate to a floor area of 74.80 sqm 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 applicant has demonstrated a cycle store to the rear of the site, which will provide secure cycle parking provision in accordance with WSCC Parking Standards

(b) contamination risks on the site,

The land has not been identified as potentially contaminated.

(c) flooding risks on the site,

The EA Flood Map identifies the development site to lie within Flood Zone 1, where the chance of flooding in any given year is less than 1 in 1000 (0.1%).

The NPPF Paragraph 173 of the NPPF states “When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment⁵⁹. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- b) the development is appropriately flood resistant and resilient;
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- d) any residual risk can be safely managed; and
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan”.

Footnote 59 states “A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use”.

Furthermore paragraph 30 of the Planning Practice Guide on Flood Risk and Climate Change states “A site-specific flood risk assessment is carried out by (or on behalf of) a developer to assess the flood risk to and from a development site. Where necessary, the assessment should accompany a planning application submitted to the local planning authority. The assessment should demonstrate to the decision-maker how flood risk will be managed now and over the development’s lifetime, taking climate change into account, and with regard to the vulnerability of its users.

The objectives of a site-specific flood risk assessment are to establish:

- whether a proposed development is likely to be affected by current or future flooding from any source;
- whether it will increase flood risk elsewhere;
- whether the measures proposed to deal with these effects and risks are appropriate;
- evidence for the local planning authority to apply (necessary) the Sequential Test, and;
- whether the development will be safe and pass the Exception Test, if applicable”.

Continuing paragraph 31 of the Planning Practice Guidance quotes “The information provided in the flood risk assessment should be credible and fit for purpose. Site-specific flood risk assessments should always be proportionate to the degree of flood risk and make optimum use of information already available, including information in a Strategic Flood Risk Assessment for the

area, and the interactive flood risk maps available on the Environment Agency's web site.

A flood risk assessment should also be appropriate to the scale, nature and location of the development. For example, where the development is an extension to an existing house (for which planning permission is required) which would not significantly increase the number of people present in an area at risk of flooding, the local planning authority would generally need a less detailed assessment to be able to reach an informed decision on the planning application. For a new development comprising a greater number of houses in a similar location, or one where the flood risk is greater, the local planning authority would need a more detailed assessment".

DM20 of the Worthing local Plan states:

- b) A site specific Flood Risk Assessment must be submitted with planning applications for:
- i) sites of 1 hectare or greater in Flood Zone 1;
 - ii) all new development (including minor development and change of use) in Flood Zones 2 and 3;
 - iii) development that would introduce a more vulnerable class on land at increased flood risk in future or subject to other sources of flooding identified by the Strategic Flood Risk Assessment.

A FRA has been submitted with the application. Residential dwellings are classified as being a More Vulnerable development within Table 2 of the Planning Practice Guidance. More vulnerable developments are acceptable in Flood Zone 1.

The uFMfSW shows that area in the vicinity of the development site is at medium risk of surface water flooding. Medium risk means that the probability of flooding in any given year is between 1 in 100 (1%) and 1 in 30 (3.3%). To mitigate against extreme events, it is recommended that flood resistance and resilience measures are incorporated in the development. Suitable measures are specified:

- External walls rendered resistant to flooding to higher level;
- External ventilation outlets, utility points and air bricks fitted with removable waterproof covers;
- Ground level electrical main ring run from higher level; and on separately switched circuit from first floor;
- Electrical incomer and meter situated at higher level;
- Boilers, control and water storage / immersion installed at higher level;
- Gas meter installed at higher level;
- Plumbing insulation of closed-cell design;
- Non-return valves fitted to all drain and sewer outlets;
- Manhole covers secured;

- Anti-siphon fitted to all toilets;
- Kitchen units of solid, water resistant material;
- Use of MDF carpentry (i.e. skirting, architrave, built-in storage) avoided at ground floor level.

The Councils Drainage consultants had advised that insufficient information has been provided to demonstrate safe access and egress.

Following amended information the applicants have provided a suitable flood route and that the route will experience flood depths no greater than 30cm. WSP have confirmed that this is acceptable.

(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 and to the front. The service area and rear access to the commercial properties is served off the rear. The Environmental Health Officer had raised no concerns about noise but the site is within a potential service area for the flats with windows onto this service area and as such there is the potential for noise from the access the both commercial units at the rear.

This was raised with the applicant who has amended the drawing to show the commercial units only accessed from the front and a fenced area around the flats to provide an enclosed private courtyard and help mitigate noise from the service area to the rear.

(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 not within a conservation area.

(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 ground floor flat. Planning permission was granted for additional windows to be inserted into the property under application AWDM/0640/24. These windows have not been inserted. At the timing of the application there would not therefore be light to all the rooms and as such natural light would not be provided. The principle has however been accepted and can be accommodated in the building without impact to amenity and can be secured by condition.

(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 and Granted subject to Conditions:

1. Approved plans
2. Bin storage/cycle storage to be provided prior to first occupation.
3. Flood Evacuation Plan in place prior to first occupation
4. Implementation of AWDM/0640/24 prior to first occupation

Informatives

1. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. SW Connection
3. New Address
4. CIL

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

Case Officer: Jackie Fox

Date: 13.11.24

Authorised by: Louise Prew

Date: 18/11/24