Development Control – Delegated Officer Report

Application Number: Notice/0007/24 **Recommendation: Prior Approval Required and Granted**

Site: **70 Ham Road Worthing**

Proposal: **Application for permitted development for prior approval for change of use from Use Class E (shop) to form 1 bed 1 person dwelling (Use Class C3) to ground floor.**

Date of site visit: 04.06.2024

Neighbours checked: Y

Additional neighbour notifications: N Site notice posted 4.6.2024

Site and Surroundings
The application site relates to a mid-terrace property located on the east side of Ham Road and comprises of a ground floor shop unit and flat above which is accessed separately via a door at the frontage and appears to have its kitchen at ground floor level. The application relates to the ground floor only which is currently vacant with letting/sale advertising in the shop window. The previous use appears to be as a 2nd hand clothing/gift shop/charity shop with the shopfront signage remaining.

No.68 to the south is in use as an estate agent's office. At No.72 to the north, permission was granted in 2019 for an extension to and change of use of the rear part of the ground floor retail unit to a studio flat retaining a reduced retail area (AWDM/0435/19 refers). At the time of visiting this unit did not appear to be in retail use and had privacy screening to its shopfront window.

The site is within the Ham Road Medium Scale Local Centre where policy DM13 applies.

Proposal

An application is for Prior Approval is sought under the provisions of Class MA of the GPDO as amended.

The application proposes a one bedroom one person dwelling which the proposed floor plans indicate an area of 40sqm. The existing shopfront would be retained and no external alterations are proposed. Access would be via the existing shopfront door. The accommodation would comprise of a living/kitchen/dining area at the frontage, shower room/wc, and a bedroom to the rear. No changes are indicated to the layout of the first floor flat.

A supporting statement and noise assessment have been provided.

Relevant Planning History:

WB/04/1199/FULL Change of use of part of the ground floor from retail (Class A1) to offices within Class A2. Approved 02.12.2004

Consultations:

Southern Water has commented as follows:

Foul and Surface Water Drainage

Southern Water requires a formal application for a connection to the public sewer to be made by the applicant or developer.

To make an application visit Southern Water's Get Connected service: developerservices.southernwater.co.uk and please read our New Connections Charging Arrangements documents which are available on our website via the following link: southernwater.co.uk/developing-building/connection-charging-arrangements

For further advice, please contact Southern Water, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel: 0330 303 0119).
Website: southernwater.co.uk or by email at: SouthernWaterPlanning@southernwater.co.uk

The **Highway Authority** has made the following comments:

This application seeks prior approval for the change of use of ground floor retail (Class E) to residential (Class C3) to form a one-bedroom dwelling. The site is located on Ham Road, a B-classified road subject to a speed restriction of 30 mph.

Under the current General Permitted Development Order (GPDO), it is permitted development to change use from Class E to 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 GPDO is quite clear as to what highway matters can be considered, namely whether the proposal is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site.

Generally, the change of use from retail 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 a dwelling of this size in this location would require at least one car parking space. No vehicular access or parking has been outlined as being associated with this site and as such, parking would have to be accommodated on-street or within nearby public car parks.

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 car parking provision would result in a detrimental highway safety impact, nor lead 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.

The applicant has not provided details of cycle parking provision. Cycling is a viable option in the area, and the LHA request that secure and covered cycle parking provision be provided in accordance with WSCC Parking Standards, if there is space within the site to do so.

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.

The Council's **Drainage Consultant** has confirmed no objection on surface water grounds and recommends approval.

The Council's **Environmental Health Officer** has commented as follows:

No objections on noise grounds.

In principle it would be a good place to have a flat but I wish they would provide a proper domestic front rather than leave the shop frontage. West facing and in the summer there is no window to open for ventilation in the living room. Come winter there is a risk that the existing glazing will be prone to chronic condensation unless the ventilation is adequate. Hopefully Building Regs will pick this up.

The Council's **Private Sector Housing** team raises no objection and requests the following informative:

The Private Sector Housing team of Adur & Worthing Councils have identified that some aspects of the development may result in hazards that require action under the Housing Act 2004. Typical hazards can include 'inner' rooms (where the only means of escape in the case of fire is through another risk room i.e. bedroom, living room, kitchen, etc.) or where there are inadequate windows or outlook from habitable rooms. The risk can be mitigated by ensuring that the bedroom windows meet fire escape window requirements.

Representations:
None received

Relevant Planning Policies

Worthing Local Plan policies (WBC 2023):
SP1 (Presumption in Favour of Sustainable Development)
SS1 (Spatial Strategy)

DM1 (Housing Mix)
DM2 (Housing Density)
DM5 (Quality of the Built Environment)
DM15 (Sustainable Transport and Active Travel)
DM16 (Sustainable Design)
DM17 (Energy)
DM20 (Flood Risk and Sustainable Drainage)
DM22 (Pollution)

National Planning Policy Framework (DLUHC 2023)
National Planning Practice Guidance

Planning Assessment

The application is made under the Prior Approval procedure and consideration is restricted to the limitations, restrictions and conditions as 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—
~~(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.

(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 201559

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 2004 permission (WB/04/1199/FULL) accepted that the existing use at that time was a retail shop under Use Class A1. That previous permission allowed a change of use to an office under Use Class A2 and did not remove permitted development rights for future changes of use. The previous use of the premises as a second hand clothing/charity shop would have been previously considered a class A1 use prior to the September 2020 changes when this use would have been reclassified under the new Class E.

The application form states that the use of the building has been in continuous use for at least 2 years prior to the date of the application. The last occupier appears to have occupied the premises as a shop since at least 2016 and closing the business in September 2023 although it is not clear precisely when this was vacated. However there has been no change of use since that time and so its use has fallen within class E for at least 2 years prior to the date of the application and as such complies with MA.1 (1) (b).

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.2.

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

The site is in a sustainable location within easy walking distance to shops and services and bus services providing connections with the town centre and wider area. No on site parking is available for the current or proposed use.

The Highway Authority considers that 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, and no objection has been raised.

Cycle parking has been requested by the Highway Authority and this can be accommodated with the rear garden area of the site which has a rear pedestrian access and can be secured by condition to encourage alternative modes of transport.

(b) contamination risks in relation to the building,

The site has not been identified as potentially contaminated.

(c) flooding risks in relation to the building,

No objection or concerns have been raised by the Council's Drainage Consultant.

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

The site is within a shopping parade with commercial premises immediately adjacent where there will be activity throughout the day, and with a delivery/service area at the rear of the Co-op which lies further to the south. The upper floor is in residential use like others in the terrace. The supporting information includes a noise assessment which considers that the side is not subject to an adverse commercial soundscape. The Council's Environmental Health Officer has raised no objection on noise grounds.

(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 site 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 ground floor shop into a one bedroom dwelling. Each of the rooms would receive natural light from the 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

Not applicable

(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.

Not applicable in this case.

In addition, Article 2(9a) and (9b) of the GPDO states the following:

9A) Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse—

(a)where the gross internal floor area is less than 37 square metres in size; or

(b)that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.

(9B) The reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it.

The proposed dwelling is shown to have an overall GIA of more than 37 square metres and would meet that nationally described space standard including bedroom size and built-in storage area.

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. Cycle parking

Informative

1. PSH – hazards/inner rooms
2. CIL
3. New address
4. Southern Water connection

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

Case Officer: Rebekah Hincke Date: 11.07.2024

Authorised by: Louise Prew Date: 12/07/2024