Development Control – Delegated Officer Report

Application Number: NOTICE/0001/17 Recommendation – Prior Approval required & Approved

Site: 106 Stoney Lane

Proposal: Application for permitted development for prior approval for change of use of ground floor shop (A1) to provide studio flat with associated alterations.

Site and Surroundings:

The application relates to a ground floor commercial premises on the southern end of a small parade in an outer residential suburb of Shoreham. The first floor is put over to a self-contained flat (no. 110). The rear yard is used as the amenity space for Flat No. 110.

The planning history of the site indicates the entire building is recognised as a single planning unit with an authorised use as A1 Shop. The shopfront fascia reads 'snack bar' but by virtue of a site visit, the business was akin to a cold filling sandwich bar with only limited food consumption on site.

The retail use of this particular unit is subject to saved local plan policy AS5.

Description of Development

The proposal is for the conversion of the ground floor of the building to provide for 1 no. studio flat.

Under the current General Permitted Development Order (GPDO), it is permitted development to change use from an A1 (shop) to a wholly class C3 (residential) use subject first to prior approval being granted. As part of the prior approval process there are a number of matters to be considered. These include matters relating to highways and transport, 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.

No works to convert the premises into flats had commenced at the time of the site visit.

Date of Site Visit: 21-03-2017

Neighbours Checked: Y

Additional Neighbour Notifications (List Addresses): None

Relevant Planning History:
ADC/0224/08

Change of use from Taxi Office to Class A1 shop (sandwich shop)
Approved Condition 01-07-2008

Relevant Planning Policies:
National Planning Policy Framework
Saved Local Plan policies: AG1, AS5

Representations (summarised)
None

Consultation Responses (summarised):

West Sussex County Council Highway Authority: *No highway grounds to resist the prior approval. The ground floor snack bar use (sale of food for consumption off the premises) will be changed to a single studio flat. From an inspection of local mapping there is hardstanding fronting the site accessed via crossover shared with neighbouring properties. This off street parking provision does not appear to be included with the proposals. Nevertheless, there is junction protection in the vicinity at the mini roundabout junction of Stoney Lane with Middle Road. The LHA do not consider that additional on street parking as a result of the proposal would result in a highway safety concern.*

Adur & Worthing Councils Environmental Health: *no adverse environmental health comments.*

Adur & Worthing Councils Engineers: *The property is slightly raised above the road so the proposal should be fine, but I think it would be prudent to require that flood proofing measures are incorporated in the design. Site lies in flood zone 1, and appears from the EA surface water maps to be susceptible to surface water flooding. Whilst there is no recorded history of flooding it is known that Stoney Lane certainly does suffer from surface water flooding, with the road conveying significant flows during heavy rain.*

Planning Assessment

Class M – retail and specified sui generis uses to dwellinghouses
Permitted development
M. Development consisting of—
(a) a change of use of a building from—
(i) a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order,
(ii) a use as a betting office, pay day loan shop or launderette, or
(iii) a mixed use combining use as a dwellinghouse with—
(aa) a use as a betting office, pay day loan shop or launderette, or
(bb) a use falling within either Class A1 (shops) or Class A2 (financial and professional services) of that Schedule (whether that use was granted permission under Class G of this Part or otherwise), to a use falling within Class C3 (dwellinghouses) of that Schedule, and

(b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

Development not permitted

M.1 *Development is not permitted by Class M if—*

(a) the building was not used for one of the uses referred to in Class M(a)—

(i) on 20th March 2013, or

(ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use;

(b) permission to use the building for a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order has been granted only by this Part;

(c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres; (d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M;

(e) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

(f) the development consists of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order); or

(g) the building is—

(i) on article 2(3) land;

(ii) in a site of special scientific interest;

(iii) in a safety hazard area;

(iv) in a military explosives storage area;

(v) a listed building; or

(vi) a scheduled monument.

Conditions

M.2*—(1) Where the development proposed is development under Class M(a) together with*

development under Class M(b), development is permitted subject to the condition

that 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 and highways impacts of the development,

(b) contamination risks in relation to the building,

(c) flooding risks in relation to the building,

(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use— (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or Class A2 (financial and professional services) of that Schedule or, as the case may be, a building used as a launderette, but only where there is a reasonable prospect of the building being used to provide such services, or (ii) where the building is located in a key shopping area, on the sustainability of that shopping area, and (e) the design or external appearance of the

building, and the provisions of paragraph W (prior approval) of this Part apply in relation to that application. (2) Where the development proposed is development under Class M(a) only, development is permitted subject to the condition that 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 the items referred to in sub-paragraphs (1)(a) to (d) and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

(3) Development under Class M is permitted subject to the condition that— (a) development under Class M(a), and under Class M(b), if any, must be completed within a period of 3 years starting with the prior approval date; and (b) a building which has changed use under Class M is to be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse.

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 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, 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-paragrapth, '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; (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(**a**) to be consulted, a site specific flood risk assessment, together with any fee required to be paid.*

(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, 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 Agency 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 adjoining owner or occupier.

(9) The local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include— (a) assessments of impacts or risks; (b) statements setting out how impacts or risks are to be mitigated; or (c) details of proposed building or other operations.

*(10) The local planning authority must, when determining an application— (a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8); (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(**a**), so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and (c) in relation to the contamination risks on the site— (i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental*

*Protection Act 1990(**b**), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(**c**), and (ii) if they determine that the site will be contaminated land, refuse to give prior approval.*

(11) The development must not begin before the occurrence of one of the following— (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required; (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.

(12) The development must be carried out— (a) where prior approval is required, in accordance with the details approved by the local planning authority; (b) where prior approval is not required, or where sub-paragraph (11)(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1), unless the local planning authority and the developer agree otherwise in writing.

(13) The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

The application proposal meets the tests of O1 since;

- The site is not part of any area excluded from the Order;
- The premises were occupied lawfully as retail shop (A1) immediately before 30th May 2013 without material interruption and A1 (Shop) remains the lawful use.
- The site does not form part of a safety hazard area; a military explosives storage area; nor is the building listed or a scheduled monument.

Consideration of the planning merits of NOTICE/0001/17 is restricted to those matters set out in O2 namely:

<u>Transport and highways impacts</u>

The site is located in an existing urban area on a good bus service. Although there would be no parking provision, the Highway Authority is not concerned at the parking provision in this case. In their view the site is sustainably located and a residential use is likely to generate less traffic than the former retail use.

There is ample space available on site to provide covered and secure cycle parking for both flats without reliance upon a condition.

<u>Contamination</u>

The site is not known to be contaminated according to Council records.

Flooding

The site is outside of a designated Environment Agency Flood Zone. It is identified as being susceptible to surface water flooding. Further flood proofing measures would be beneficial but not believed necessary to secure in this application. This is because the Council's drainage engineer notes the building is built on raised ground. There is also a stepped threshold into the shared entrance space serving the new flat and the neighbouring shop of some 150mm. In such circumstance no risk to the future occupiers from flooding would result.

Adequate provision of services

The retail use is currently the subject of saved local plan policy (AS5).

Whilst this policy presumes to not normally permit changes to non A1 (retail) uses, it goes on to state:-

"… Proposals for non-retail uses will be treated on their merits and will be assessed in relation to the need for the proposed use compared to retail use of the particular premises concerned."

This policy dates from 1996 and is a product of its time. It was formed in response to evidence of shopping patterns of some 20 years ago, which have undergone significant change over the intervening years.

The Council is currently forming a new up to date local plan. In this emerging plan, the retail use has no policy protection. This reflects its diminished importance in catering for local shopping needs to the community as a whole.

According to the planning agent, *'over the past few years the demand of small commercial shops/cafés in this location has become far less due to the creation of the larger sores (Tesco & Next) located at the top of Stoney Lane'*.

Although no evidence of marketing has been provided, the planning agent goes on to state; '*historically the commercial units have been difficult to re-let or sell, the far right shop was vacant for 18 months but has recently become a financial office whilst the shop next door has been vacant for years with very little/no interest. The existing snack bar has now become empty and the landlord has carried out some market research on the demand for commercial premises in this location and as proven next door there is very little interest.'*

Design

The physical works are considered a good design solution to providing a sympathetic conversion; the new ground floor windows are in proportion with

those at first floor and are suitably aligned with a cill. All are necessary to allow a sympathetic conversion.

Conclusion

Prior Approval is required because of the relevant issues raised above and is recommended for granting subject to the conditions below.

1. Approved plans

DELEGATED

Case Officer Sign: Matthew Porter Date: 21-3-17

Authorising Officer Sign: Peter Barnett Date: 22 March 2017