

Supporting Statement

General Permitted Development Order Class MA: Change of Use from Class E (office) to Class C3 (dwellinghouses)

**First and Second Floors, 105-109 Montague Street, Worthing, BN11
3BP**

Prepared for
Danworth Holdings Ltd

Prepared by
Sarah Sheath BSc (Hons) DipTP MRTPI

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FINAL

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APPENDICES

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1. INTRODUCTION

1.1. dowsettmayhew Planning Partnership is instructed by Danworth Holdings Ltd to submit an application for prior approval for the change of use of the first and second floors of 105-109 Montague Street, Worthing, from Class E (offices) to Class C3 (dwellinghouses) under Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

1.2. Class MA of Part 3 of the Schedule 2 of the the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended, permits:

“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.”

1.3. Under condition MA.2(2) of Class MA, it is a requirement that before beginning development permitted under Class MA, the developer must apply to the local planing authority for a determination as to whether the prior approval of the authority will be required as to:

- (a) transport impacts of the development, particularly to ensure safe site access;
- (b) contamination risks in relation to the building;
- (c) flooding risks in relation to the building;
- (d) impacts of noise from commercial premises on the intended occupiers of the development;
- (e) where -
 - (i) the building is located in a conservation area, and
 - (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;
- (h) where the development involves the loss of services provided by -
 - (i) a registered nursery, or
 - (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006,

the impact on the local provision of the type of services lost; and

(c) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

1.4. The provisions of Paragraph W, with respect to Class MA, require an application to be accompanied by the following:

- A written description of the proposed development;
- A plan indicating the site and showing the proposed development;
- A statement specifying the net increase in dwellinghouses proposed by the development;
- A floor plan indicating the total floor space in square metres of each dwellinghouse, the dimension and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses;
- The developer's contact address;
- The developer's email address if the developer is content to receive communications electronically; and
- Where the regulations require the Environment Agency to be consulted, a site-specific flood risk assessment,

together with any fee required to be paid.

1.5. In light of the above requirements, the application comprises the following:

- Application form, which includes appropriate contact details;
- This Supporting Statement, which includes a written description of the proposed development and confirmation of the net increase in dwellinghouses proposed;
- First Floor Plan as Existing (01);
- Second/Roof Plan as Existing (02);
- Partial Ground Floor Plan as Existing (03);
- Section AA as Existing (04);
- Section BB as Existing (05);
- Elevations as Existing (06);
- Block & Site Location Plans (TA 1591/10);
- Proposed Ground Floor Plan (TA 1591/11);

- Proposed First Floor Plan (TA 1591/12A);
- Proposed Second Floor Plan (TA 1591/13);
- Proposed West / Side Elevation (TA 1591/14);
- Proposed South/Front Elevation (TA 1591/15);
- Proposed East/Side Elevation (TA 1591/16);
- Proposed North/Rear Elevation (TA 1591/17);
- Proposed Section BB (TA 1591/18);
- Proposed Section CC (TA 1591/19);
- Proposed Section DD (TA 1591/20);
- Internal Daylight Report; and
- Flood Risk Assessment.

1.6. This Supporting Statement sets out a brief summary of the site and its surroundings, the planning history of the site; the requirements of Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) England Order 2015, as amended, and considers whether the prior approval of the Authority for the change of use of offices to dwellinghouses is required.

1.7. It is intended that this application be considered alongside the associated full planning application, which separately seeks consent for the external works required to facilitate the proposed change of use, as shown on the submitted plans and drawings. The applicant is fully agreeable to a Grampian condition preventing the occupation of any dwelling approved under this application until all windows shown on the approved plans have been fully installed in accordance with the associated full planning permission. A similar condition was used recently in the approval of a proposal at Pharos House, 67 High Street, Worthing (NOTICE/0004/25). It is therefore suggest that the following wording would be appropriate:

“The residential units hereby approved shall not be occupied until all the windows approved under planning application [insert application reference] have been installed in full. The windows shall thereafter be retained in accordance with the planning permission for the lifetime of this development.

Reason: To ensure the provisions of adequate natural light in all habitable rooms.”

1.8. Attached at Appendix 1 is an appeal decision (APP/B5480/W/23/3331558) which supports the applicants approach to the concurrent submission of the two associated applications. As set out therein the Inspector notes:

- 1.9. *“The national Planning Practice Guidance indicates that developers will need to consider whether physical works required to implement a change of use constitute development and ensure they have planning permission if necessary. Therefore, if operational development is required to support a change of use, the guidance effectively states that applicants should ensure that they have the correct planning permission for this. It does not, however, specify when any such planning permission should be secured. Moreover, whilst Paragraph W(2)(b) of Schedule 2, Part 3 of the Order requires a plan indicating the site and showing the proposed development, it does not state whether or not any required operational development should be shown.*
- 1.10. *It is also pertinent in this case that the need for operational development which would require planning permission is not listed as a disqualifying factor under Paragraph MA.1 of Class MA of the Order. Neither the Order nor the guidance specifies when planning permission should be secured for any operational development.*
- 1.11. *Therefore, having regard to the description of development before me, the proposed change of use would not be outside of the scope of development permitted under Class MA.”*

2. SITE AND SURROUNDINGS

- 2.1. The building the subject of this application is a large two storey structure with a smaller second floor plant room located towards the front of the building. The site is located within the town centre of Worthing. The building dominates a large plot some 0.07 hectares in size, to the south of Montague Street, north of Augusta Place, and west of Prospect Place. To the immediate west of the building is a narrow service passage, with cottages beyond.
- 2.2. The existing building is a flat roofed, brick built structure understood to have been constructed in the 1960s.
- 2.3. The ground floor is currently occupied by CHEC Worthing, a healthcare centre providing Ophthalmology, Gastroenterology, Dermatology and Ear, Nose and Throat services.
- 2.4. This first floor has previously been occupied as offices in association with the entire building’s former use as a Job Centre, but has been vacant since early 2024.
- 2.5. The building is slightly set back from the main Montague Street frontage, with a large projecting canopy over the ground floor. At the rear is a small forecourt/servicing/parking area.
- 2.6. Montague Street itself is a pedestrianised street, designated within the Worthing Local Plan as part of the main Primary/Secondary Shopping Area.
- 2.7. The site also falls within the Montague Street Town Centre Character Area and both the Montague Street and Marine Parade and Hinterland Conservation Areas.
- 2.8. The buildings along Montague Street are a mixture of styles and are generally two or three storey heights. Along Prospect Place to the east, the facing buildings are predominately three storey town houses, with additional accommodation in their roof spaces. Numbers 10-18

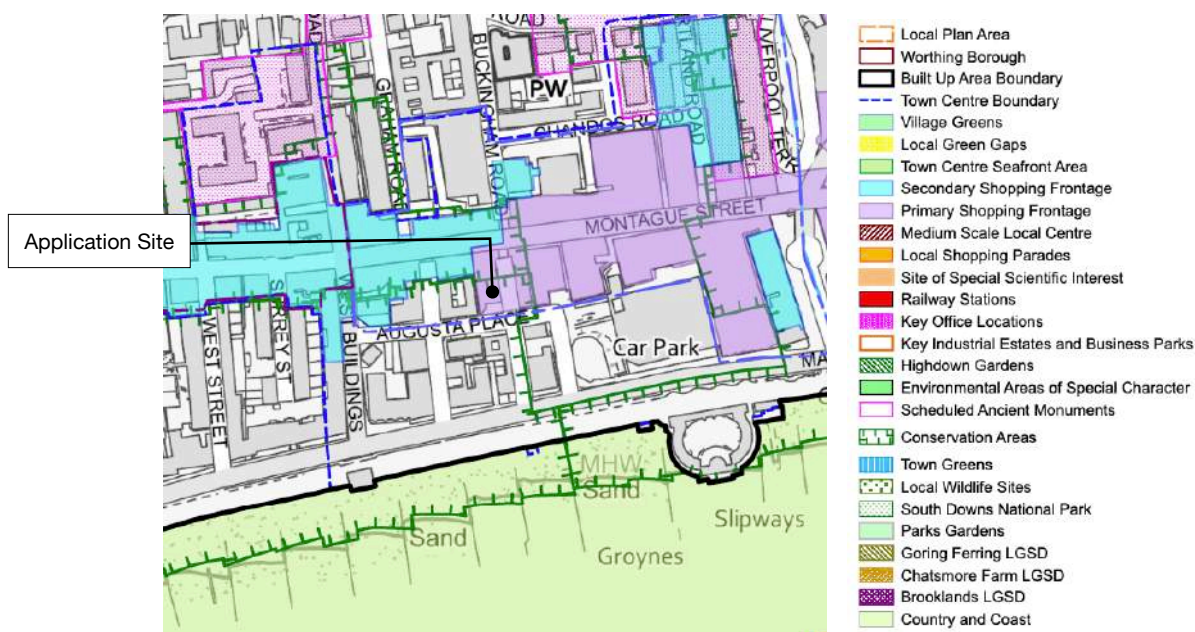


Figure 1 - Extract from Worthing Local Plan 2023 Town Centre Insert Map

Prospect Place are Grade II listed, as is 101-103 Montague Street, which sits on the corner of Prospect Place immediately adjacent the site.

- 2.9. Augusta Place to the south, hosts a mix of residential and commercial buildings. Augusta House, which fronts the seafront, is prominent in views from the rear of the application site being eight stories in height.
- 2.10. To the immediate west of the site, is a modern courtyard mews development of residential dwellings, the rear elevations of which abut the intervening service passage.

3. PLANNING HISTORY

3.1. A review of the Local Authority's online planning register reveals the following most recent applications relate to the application site:

- **09/0728/FULL** - Installation of a new shop front to front and side elevations (Retrospective) - Approved 21st October 2009.
- **09/0729/ADV** - Installation of an internally illuminated sign on the existing projecting canopy over ground floor shop front (Retrospective) - Approved 21st October 2009
- **AWDM/1763/18** - Demolition of existing building and redevelopment set over 4no. floors, comprising A1 retail floor space at ground floor, 26no. 1, 2 and 3 bedroom units with communal courtyard and balconies at 1st floor to West elevation, cycle store, underground surface-water tanks and associated landscaping - Approved 1st May 2019.
- **AWDM/0526/20** - Approval of Details Reserved by Condition 20 i) (Asbestos Removal) of previously approved AWDM/1763/18 - Approved 24th April 2020

4. PROPOSED DEVELOPMENT

- 4.1. It is proposed that the existing first floor office accommodation and associated second floor space be converted to provide a net increase of 13 residential dwellings. It is proposed that the following schedule of accommodation be provided:

Unit 1 - 1b1p - 45.1 sqm

Unit 2 - 1b2p - 54.6 sqm

Unit 3 - 1b2p - 51 sqm

Unit 4 - 1b1p - 44.4 sqm

Unit 5 - Studio - 38sqm

Unit 6 - 1b1p - 47.2 sqm

Unit 7 - 1b2p - 56.3 sqm

Unit 8 - 1b2p - 54.1 sqm

Unit 9 - Studio - 44.4 sqm

Unit 10 - 1b2p - 55.9 sqm

Unit 11 - 1b1p - 38.6 sqm

Unit 12 - Studio - 41 sqm

Unit 13 - 1b1p - 39 sqm

- 4.2. The entrance to the proposed units will be from the rear of the site, via the existing door in the Augusta Place frontage.
- 4.3. No on site parking is to be provided.

5. TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015, AS AMENDED, CLASS MA (MA.1)

- 5.1. Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, relates to changes of use.
- 5.2. Class MA of Part 3 specifically relates to permitted development with respect to the change of use of commercial, business and service uses to dwellinghouses.
- 5.3. MA.1 of the GPDO, as amended, states that development is not permitted by Class MA:

- (b) unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;
- (d) if land covered by, or within the curtilage of, the building -
 - (i) Is or forms part of a site of special scientific interest;
 - (ii) Is or forms part of a listed building or land within its curtilage;
 - (iii) is or forms part of a scheduled monument or land within its curtilage;
 - (iv) Is or forms part of a safety hazard area; or
 - (v) Is or forms part of a military explosives storage area;
- (e) if the building is within -
 - (i) an area of outstanding natural beauty;
 - (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;
 - (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.

5.4. In response to the requirements of Class MA.1, it is confirmed that:

- Prior to the occupation of the ground floor of the building by the CHEC in November 2024 the entire building was temporarily occupied as a job centre (Class E). Attached at Appendix 2 are the sale particulars for the building from November 2021 confirming its use at that time. Prior to its use as a Job Centre, the building had been occupied by Poundland and operated as a retail unit (Class A1) for a number of years. The building has been used

for both Class A1 and Class E purposes for a continuous period well in excess of 2 years prior to the submission of this application.

- None of the land covered by, or within the curtilage of the building:
 - is or forms part of a site of special scientific interest;
 - is or forms part of a listed building or land within with curtilage;
 - is or forms part of a scheduled monument or land within its curtilage;
 - is or forms part of a safety hazards area; or
 - is or forms part of a military explosives area.
- The site does not fall within an Area of Outstanding Natural Beauty; an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981; the Broads; a National Park; or a World Heritage Site;
- The site is not occupied under an agricultural tenancy; and
- There is no Article 4(1) direction that affects the site.

6. TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT (ENGLAND) ORDER 2015, AS AMENDED, CLASS MA (MA.2)

6.1. MA.2 of the GPDO, as amended, confirms development under Class MA 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 impacts of the development, particularly to ensure safe site access;
- (b) contamination risks in relation to the building;
- (c) flooding risks in relation to the building;
- (d) impacts of noise from commercial premises on the intended occupiers of the development;
- (e) where -
 - (i) the building is located in a conservation area, and
 - (ii) the development involves a change of use of the whole or part of the ground floor,the impact of that change of use on the character or sustainability of the conservation area;
- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;

(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;

(h) where the development involves the loss of services provided by-

(i) a registered nursery, or

(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006,

the impact on the local provision of the type of services lost; and

(i) where the development meets the fire risk condition, the fire safety impact on the intended occupants of the building;

6.2. While the application site does fall within a designated conservation area the proposal does not involve the change of use of the ground floor of the building. Accordingly, there is no need for any consideration of the impact of the proposed change of use on the character and sustainability of the area.

6.3. The site falls within a town centre location, not an area understood to be considered important for general or heavy industry, waste management, storage and distribution or a mix of any such uses. Accordingly there is no requirement to consider the impact of such uses on the intended occupiers.

6.4. Likewise the proposals do not result in the loss of any services provided by a registered nursery, or a health centre maintained under section 2 or 3 of the National Health Service Act 2006. Accordingly there is no requirement to give any consideration to the loss of these types of services.

6.5. The fire risk condition referred to by MA.2(2)(i) relates to a building which will -

(a) contain two or more dwelling houses; and

(b) satisfies the height condition in paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

6.3. The height condition referred to is that (a) the building is 18 metres or more in height; or (b) the building contains 7 or more storeys. The building is significantly less than 18 metres in height and is only 2 storeys in height. There is therefore no requirement to consider the fire safety impact on the intended occupiers.

7. TRANSPORT IMPACTS OF THE DEVELOPMENT

7.1. Paragraph 110 of the NPPF states that “significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes”. Paragraph 116 goes on to state: “Development should only be

prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios”.

- 7.2. Whilst there is a small service yard at the rear of the site, it is proposed to deliver the new dwellings without any dedicated onsite parking. This is a highly sustainable town centre location within walking distance of shops, services and public transport.
- 7.3. As noted by the highway authority when recently considering a similar prior approval application at 97-99 Montague Street (NOTICE/0015/25), there are comprehensive parking restrictions in place on nearby roads, prohibiting parking in places that would be detrimental to highway safety. In that instance the Highway Authority did not anticipate that nil parking provision in association with the proposed change of use would result in a highway safety concern or parking capacity issues. It was noted that the location of the development within a sustainable location in Worthing would mean that occupants would not be reliant on the use of a car.
- 7.4. It is recognised that the proposals for 97-99 Montague Street were of a smaller scale (just 4 self contained units were proposed) but the principle remains identical.
- 7.5. It is also relevant to note that, if retained in a Class E use, associated trip numbers could be significantly higher than proposed by this change of use.
- 7.6. The currently building offers some 470 sqm of office floor space, which could potentially accommodate up to 39 persons¹ who would not benefit from any dedicated parking or cycle parking facilities. The proposal will comprise 13 residential units in total, accommodating 19 persons resulting in a significant reduction in occupation when compared to the current lawful use of the premises, with a resultant reduction in trip generation.
- 7.7. Given the reduction in the number of potential users of the site, it is submitted that there will be no material increase or material change in the character of traffic in the vicinity of the site. Given the highly accessible location of the site it is not anticipated that the proposal will cause a concern from a highway safety perspective and will instead provide thirteen highly sustainably located new residential dwellings in a town centre location.

8. CONTAMINATION RISK IN RELATION TO THE BUILDING

- 8.1. The application relates to the first and second floor of an existing building only and there are no proposals to break ground as part of the conversion works.
- 8.2. The planning history for the site reveals that the use of the building has always been either for retail or office use. These are not uses that would generate significant contamination.
- 8.3. It is noted from the planning history of the site that following approval of application AWD/1763/18 a subsequent application was submitted seeking the discharge of condition 20 of that consent which related to historic contamination of the site and the removal of asbestos. In support of that discharge of conditions application an “Asbestos Refurbishment and Pre-Demolition Survey Report” was

¹ Using Homes and Communities Employment Density Guide, 2015 - 12 sqm per FTE

submitted to the Council for consideration. This report identifies the presence of asbestos in the building and on review of this report the Council's Environmental Health Officers commented:

- 8.4. *"Prior to any demolition works the applicant should ensure all asbestos containing material identified within this report is removed in accordance with the appropriate legislation."*
- 8.5. Since the submission of this report the building has been the subject of extensive refurbishment. In the event that asbestos is still found to be present in the building it is submitted that given the removal of asbestos is strictly controlled by regulations outside of the planning regime, there are sufficient controls in place to ensure there would be no contamination risks in relation to these proposals.

9. FLOODING RISKS IN RELATION TO THE BUILDING

- 9.1. The application site falls largely within Flood Zone 1 as determined by the Environment Agency Flood Maps for Planning, however a small portion of the site at the rear, falls within Flood Zone 2. Accordingly the application is supported by a Flood Risk Assessment (FRA) that has been prepared by Aegaea.
- 9.2. As can be seen the FRA concludes that the risks of flooding in relation to the building are low. The proposals do not increase the footprint of the building which itself falls entirely within Flood Zone 1, and all of the proposed development is taking place at first floor and above.

10. IMPACTS OF NOISE FROM COMMERCIAL PREMISES ON THE INTENDED OCCUPIERS OF THE DEVELOPMENT

- 10.1. For the purposes of the consideration of this application it is understood that "commercial premises" are interpreted as premises normally used for the purpose of any commercial or industrial undertaking and includes any premises licensed under the Licensing Act 2003 or any other place of public entertainment.
- 10.2. The site falls within a town centre location where there are numerous commercial premises in close proximity to the application site. The majority of these commercial premises are retail units, many with residential units over, and are therefore likely to already be mindful of maintaining a neighbourly presence.
- 10.3. As a town centre location it is highly likely that anyone choosing to live in the proposed dwellings would expect a lively/vibrant environment. Nonetheless it is recognised that a scheme of soundproofing for the protection of the residential units would ensure no harm is caused to the amenity of future occupiers. These are details that can be secured by means of a suitably worded condition and was how this matter was dealt with at 97-99 Montague Street.

11. THE PROVISION OF ADEQUATE NATURAL LIGHT IN ALL HABITABLE ROOMS OF THE DWELLINGHOUSES

- 11.1. The GPDO defines "habitable rooms" as any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.

- 11.2. The accompanying planning application to this prior approval submission seeks the insertion of a number of windows along the east and west elevation of the existing building along with the enlargement of existing openings at second floor. The purposes of these openings is to ensure the proposed dwellings a provided with adequate natural light (and outlook) in all habitable rooms.
- 11.3. To further support the proposals the application is submitted with a Daylighting Report prepared by XDA Consulting Ltd. This provides an assessment of the proposals against BRE Guidelines. The report concludes that all of the proposed flats are able to achieve good internal daylight levels in accordance with these guidelines.

12. CONCLUSION

- 12.1. It is submitted that there are no flooding or contamination risks in relation to this proposal and that the transport impacts and potential noise from commercial premises are acceptable. In addition, the proposed flats would receive adequate natural light to all habitable rooms.
- 12.2. On this basis prior approval for the proposed change of use can be granted in accordance with the details submitted.

Appendix 1

Appeal Decision Appeal Decision APP/B5480/W/23/3331558





Appeal Decision

Site visit made on 4 April 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 JUNE 2024

Appeal Ref: APP/B5480/W/23/3331558

127-133 High Street, Havering, Hornchurch, RM11 1TX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Parkhall Estates against the decision of the Council of the London Borough of Havering.
 - The application Ref is J0009.23.
 - The development proposed is the change of use from snooker hall (Class E(d)) to dwellinghouses under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Class MA of Schedule 2, Part 3, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) grants planning permission for the 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 subject to a number of requirements and conditions.
3. The Council refused prior approval as they considered that the proposed development included works which would not constitute permitted development, would not provide adequate natural light in all habitable rooms of the dwellinghouses, there would be significant adverse highways impacts in relation to refuse and cycle storage, and there would be unacceptable impacts of noise from commercial premises on the intended occupiers of the development. I consider these to be the main issues in the appeal.
4. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.
5. I have also dealt with another appeal¹ on this site. That appeal is the subject of a separate decision.

¹ APP/B5480/W/23/3331568

Main Issues

6. The main issues are therefore whether or not prior approval should be granted having regard to 1) the limitations of Class MA, 2) whether or not adequate natural light would be provided in all habitable rooms of the dwellinghouses, 3) the transport impacts of the development with regard to access, refuse storage and cycle storage, and 4) the impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

Limitations of Class MA

7. A prior approval proposal under Class MA does not grant permission for operational development and this needs to be addressed separately. The appellant has submitted a separate application for planning permission to undertake works to the property and this is subject to a separate appeal.
8. The Council consider that the proposal would not constitute permitted development as works are shown that are out with the scope of constituting permitted development. The proposed development is however for the change of use from snooker hall (Class E(d)) to dwellinghouses and the appellant has clearly indicated the separate and distinct aspects of the application subject to the prior approval application and those which are subject to the separate planning application. Whilst they are separate applications, there is an evident link between the two.
9. The national Planning Practice Guidance² indicates that developers will need to consider whether physical works required to implement a change of use constitute development and ensure they have planning permission if necessary. Therefore, if operational development is required to support a change of use, the guidance effectively states that applicants should ensure that they have the correct planning permission for this. It does not, however, specify when any such planning permission should be secured. Moreover, whilst Paragraph W(2)(b) of Schedule 2, Part 3 of the Order requires a plan indicating the site and showing the proposed development, it does not state whether or not any required operational development should be shown.
10. It is also pertinent in this case that the need for operational development which would require planning permission is not listed as a disqualifying factor under Paragraph MA.1 of Class MA of the Order. Neither the Order nor the guidance specifies when planning permission should be secured for any operational development.
11. Therefore, having regard to the description of development before me, the proposed change of use would not be outside of the scope of development permitted under Class MA.

Natural light

12. Paragraph MA.2(2)(f) requires that before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required

² Paragraph: 055 Reference ID: 13-055-20140306

- as to, amongst other things, the provision of adequate natural light in all habitable rooms of the dwellinghouses.
13. **The term 'habitable rooms' is defined in Part 3, paragraph X and Part 20, paragraph C.(1) as meaning 'any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms'.**
 14. The local planning authority refused to grant prior approval for the development as they considered that the development would not provide adequate natural light to all habitable rooms, namely two bedrooms.
 15. Paragraph W(2A) of Part 3 of the Order states that 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.
 16. The evidence shows that the bedrooms do not meet the BRE criteria. This is confirmed in the analysis entitled 'Adequate Daylight'. The order does not define **what is considered as 'adequate' or adequate natural light'**. The evidence before me, and the requirements of the Order, do not however in this case lead me to conclude that adequate natural light is provided in all habitable rooms of the proposed dwellinghouses, even if the BRE guidance suggests a degree of flexibility. The fact that the affected rooms are secondary bedrooms does not alter the fact that they are habitable rooms or resolve the conflict with the requirement for adequate natural light in all habitable rooms.
 17. I acknowledge that in planning decisions, the BRE guide is advisory, and it is not an instrument of planning policy nor is it mandatory. It is, however, recognised as the principal guidance when considering daylight and is an appropriate method to use when considering the amount of daylight received by a proposed development. Principally, the aim of the guide is to ensure good conditions in the local environment.
 18. The Framework outlines that local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in the Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards). The Framework also outlines that developments should create places with a high standard of amenity for future users.
 19. In this appeal, having regard to the requirements set out in the Order, the submitted evidence and the relevant content of the Framework, I find that the development would not provide adequate daylight to all habitable rooms. The flexibility in the Framework applies where it would otherwise inhibit making efficient use of the site, and there is no clear justification that the appeal scheme is the sole means to achieve this.

Transport Impacts

20. The appeal property is located within a relatively busy town centre location. I observed on my site visit that the town centre is served by several bus routes

and the appeal site is reasonably close to Emerson Park Station. The site therefore has good public transport accessibility.

21. No vehicle parking is currently available on site and none is proposed. Given the good accessibility to public transport and the previous commercial use, I do not consider that the lack of parking provision would lead to unacceptable transport impacts.
22. **The Council do not raise an objection to the proposed development being 'car-free' however** they have commented that there is no undertaking from the appellant in order to prevent future residents obtaining residents parking permits. I acknowledge that the Council consider a legal agreement would serve a better purpose in giving clarity to future occupants that they are not entitled to a residential parking permit, however this does not lead me to conclude that a planning condition could not be imposed to achieve the same means, and the submitted evidence shows that this approach has been used elsewhere.
23. The proposed ground floor plan shows that refuse and cycle storage would be located within the courtyard to the rear of the building. This is accessed via an alleyway from North Street. I observed on my site visit that there are also currently some refuse containers in this area serving the commercial properties and the existing residential units in the building. There is nothing to suggest that the current arrangement causes harm in terms of transportation impacts.
24. The Council have raised concerns in relation to some of the detailed elements of the refuse and cycle storage facilities. I am satisfied that the size of the courtyard when considered against the quantum of development and existing uses which operate from the building, the development would not have an unacceptable transport impact. It would have been reasonable to impose a planning condition requiring further details of these matters were the appeal to have been allowed, but there is no substantive evidence to show that there would be harm to transportation as a result of the development.
25. Based on the submitted evidence, and for the reasons given above, I therefore conclude that the proposed development would not result in unacceptable transport impacts. It would comply with the requirement of the Framework that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Noise Impacts

26. The appeal site is located in a relatively busy town centre location. To the rear of the site are two supermarkets and their car parks, and the rear of other commercial premises which are accessed via Leather Lane.
27. I observed on my weekday afternoon site visit that both the frontage and rear of the appeal site were relatively busy areas with noise primarily emanating from traffic and general comings and goings. I noted the location of the Fatling Public House and its outdoor area in relation to the appeal site. There was also some noise from extractor systems mounted to the rear of commercial premises. I appreciate that my site visit was a snapshot in time and that the noise environment may be different at different times.
28. There are several residential properties above commercial units in the area, including some which are closer to the Fatling Public House than the proposed

properties. Whilst residents in town centre locations such as this are entitled to acceptable living conditions, they can reasonably expect to experience a degree of noise which would be greater than some suburban locations, including during the evening and nighttime.

29. The appellant has submitted a noise report³ which concludes that future occupants would not be subject to unacceptable noise from commercial properties. The Council consider that the report, being undertaken during the week, does not present an accurate reflection of the noise environment which would be different at weekends, and refers to previous complaints being received due to noise from the public house.
30. I acknowledge that noise levels may fluctuate at different times, however given the town centre location, the separation that exists between the public house and the appeal site, when combined with the intervening residential properties and taking on board the findings of the report, I do not consider that residents would be exposed to unacceptable noise from commercial properties.
31. The Council raised concerns in relation to the impact on existing commercial **uses by way of complaints from future residents having regard to the 'agent of change' principle**. This is not however one of the criteria to be considered in an application for prior approval where the consideration of noise impacts is limited to the impacts of noise from commercial premises on the intended occupiers of the development and not the impact of intended occupiers on commercial premises.
32. The Council also raised concerns in relation to the impact of traffic noise. Whilst the specific noise from traffic directly associated with a commercial premises may be a relevant matter for consideration, noise from passing traffic on a roadway would not constitute noise from a commercial premises. This is therefore not a matter to consider in an application for prior approval.
33. I therefore conclude that the intended occupiers would not be subject to unacceptable impacts of noise from commercial premises.

Other Matters

34. The appellant has referred to the fact that the Council are unable to demonstrate a five-year supply of deliverable housing sites. The appellant suggests that the lack of a five-year housing land supply outweighs the shortfall in the ability to meet BR209(2022) guidelines.
35. As the application is not an application for planning permission, these matters are not, however, included in the matters for consideration as set out in the prior approval procedure. As prior approval means that a developer must seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed, the decision maker cannot consider any other matters, such as the provision of housing or the housing land supply, when determining a prior approval application.

Conclusion

36. Although I have found that the proposal would be capable of being considered under Class MA, would not have unacceptable transport impacts, and that

³ Environmental Noise Survey and Noise Impact Assessment Report - 23045/NIA

intended occupants would not be exposed to unacceptable noise from commercial premises, the development would not provide adequate natural light in all habitable rooms of the dwellinghouses.

37. Therefore, for the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR

Appendix 2

Property Sales Details - November 2021



LOT 21 - Worthing

Commercial Auction - 2nd November 2021

allsop



Freehold Job Centre and office Investment

105-109 Montague Street, Worthing, West Sussex, BN11 3BP

LOT 21 - Worthing Freehold Job Centre and office Investment

105-109 Montague Street, Worthing, West Sussex, BN11 3BP

GUIDE PRICE *

£2M+

Gross Initial Yield 7%

Commercial - 2nd November 2021

Online

Bidding will open at 11.00 am for ALL lots. Lot 1 closes from 12.00 midday



Key Features

- Let to Instant Managed Offices Limited until 2026 (1)
- Under-let to The Secretary of State for Housing, Communities and Local Government
- The property has just been refurbished by the tenants and has recently opened as a Job Centre Plus
- Existing building comprises 1,285.5 sqm (13,837 sq ft) GIA
- Planning Permission Granted for a Mixed Use Development comprising 26 Residential Flats plus Commercial Space. Total Proposed Scheme extending to approximately 2,140 sq m (23,035 sq ft)
- VAT is applicable
- **Six Week Completion Available**

Current Rent Reserved

£140,000 p.a.

Tenure

Freehold

null

Location

- ★ Worthing is a popular seaside town located on the south coast, some 12 miles west of Brighton
- ▲ The town benefits from good road communications via the A27 and A24, the nearby Richmond Road \(\A259\) leads onto the A24
- ✚ The property is situated on the south side of Montague Street at its junction with Prospect Place
- 🚉 Worthing Rail station is situated 0.7 miles to the north and provides regular services to London Victoria \(\text{fastest journey 1 hr 32 mins}\)
- 🏪 Occupiers close by include Greggs, o2, Sports Direct, TUI, Holland & Barrett, Poundland, Clarks, Claire's and River Island
- 🌊 The Beach and Seafront Promenade less than 100 metres to the south

Additional Information

- The site area is approximately 0.08 hectares (0.20 acres) and to the rear there is a car parking area/loading forecourt.
- The tenant has just finished a comprehensive refurbishment at a cost, we understand from the vendor, which exceeded £2m

Planning

- Local Authority: Adur & Worthing Council Email: planning@adur-worthing.gov.uk Website: www.adur-worthing.gov.uk

The property benefits from planning consent for the 'Demolition of existing building and redevelopment set over 4 no. floors, comprising A1 retail floor space at ground floor, 26no. 1, 2 and 3 bedroom units with communal courtyard and balconies at 1st floor to West elevation, cycle store, underground surface-water tanks and associated landscaping.'
Reference - Ref:AWDM/1763/18
Date Granted - 1st May 2019

VAT - VAT is applicable to this lot.

Allsop

Philip Parsons.
Tel: 020 7543 6891
Email: philip.parsons@allsop.co.uk

Sellers Solicitor

Andrew Nayager.
Brecher LLP
Tel: 0207 563 1000
Email: anayager@brecher.co.uk

Joint Auctioneer

Max Pollock.
Eightfold Property
Tel: 07764794936
Email: max@eightfold.agency

Present Lessee	Accommodation	Approx GIA		Lease Details	Current Rent (PA)	Next Review / Reversion
Instant Managed Offices Limited ⁽²⁾ (under-let to The Secretary of State for Housing, Communities and Local Government) ⁽³⁾	Ground	560.7 sq m	6,035 sq ft	5 years from 15.04.2021 Tenants option to break 15.04.2024 ⁽¹⁾ IR& I subject to a schedule of condition ⁽⁴⁾	£140,000 p.a.	Reversion 2026
	First	586.8 sq m	6,316 sq ft			
	Second	138 sq m	1,485 sq ft			
	Total	1,285.5 sq m	13,837 sq ft			

(2) For the year ended 31.07.2020 Instant Managed Offices Limited reported a turnover of £65,171,000, a pre-tax profit of £8,757,000, shareholders funds and a net worth of £38,069,000 (Source Experian 05.10.2021)

(3) The property has been under-let to The Secretary of State for Housing, Communities and Local Government) for a term of years from 06.09.2021 to 07.04.2026, with a tenants option to break on 08.04.2024 on giving 9 months notice at an initial rent of £140,000 p.a. The under-lease contains a Utilities Cap. The vendor has entered into an Agreement whereby if the Headlease is forfeited due to a breach caused by Instant, then it will enter into a new lease directly with the undertenant for the remainder of the Headlease term on the same terms as the Headlease.

(4) The demise of the lease excludes the load-bearing and exterior walls (including any separating the building on the Premises from any adjoining building), any structural parts (including the foundations), the roofs and the guttering of the building on the Premises. The Tenant is under an obligation to keep the premises in no worse state of repair, condition and decoration than that shown in the Schedule of Condition attached to the Lease.

The tenant has a rent free period which expires on the 14th October 2021 which is prior to completion.

N.B. Not inspected by Allsop floor areas provided by the Vendors Architect

Featured 1



Featured 2

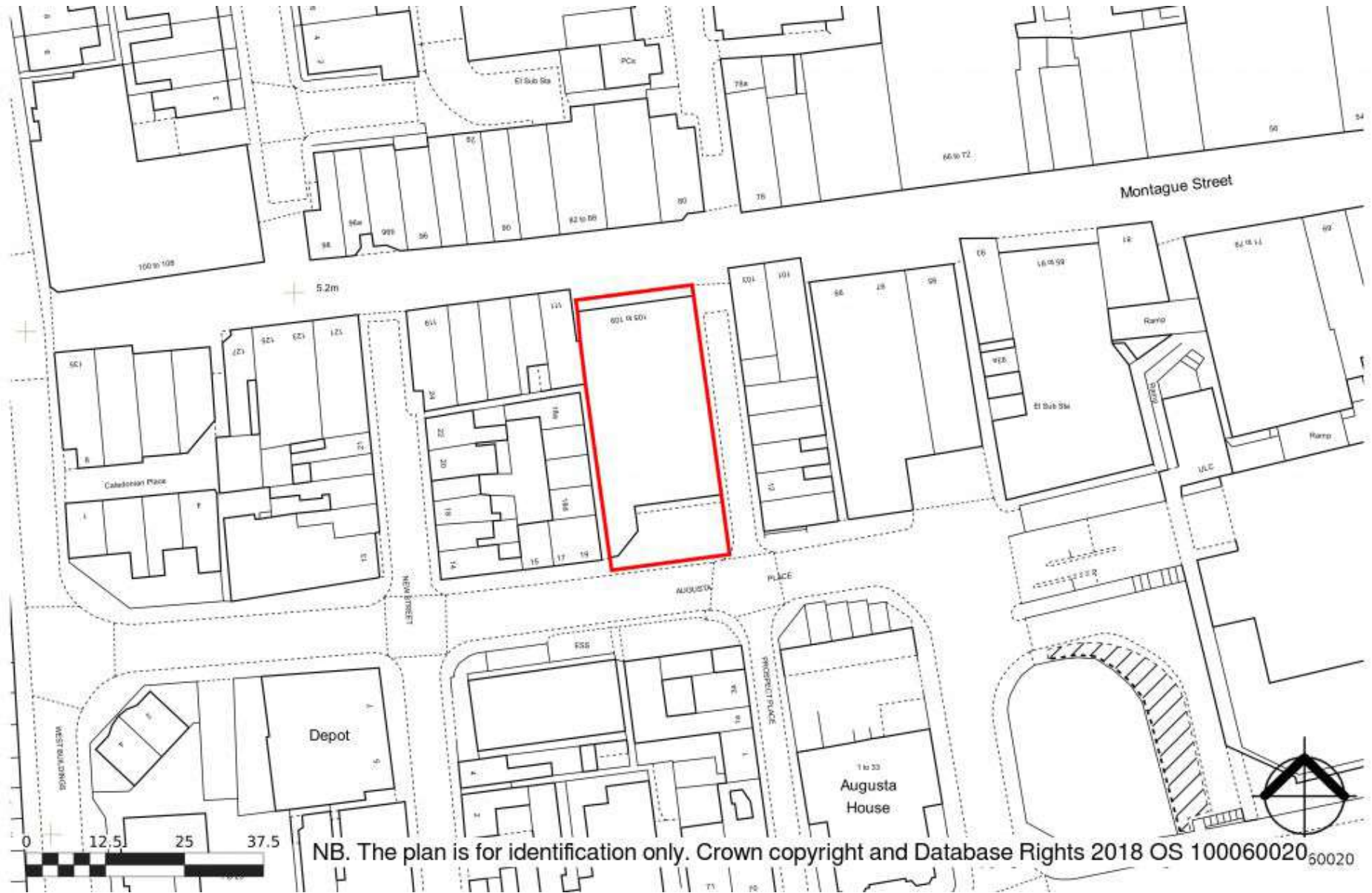


Featured 3



105-109 Montague Street, Worthing, West Sussex BN11 3BP

Pro map





Disclaimer

-- ****Important notice - Pre-registration approval to bid, guide prices, reserves, additional charges and other matters****

Pre-registration approval to bid

Allsop now require all bidders who wish to bid at our Auctions to register beforehand. All checks required by current anti-money laundering legislation must be satisfactorily completed as part of this process before prior approval to bid will be given. Please use the links on our website to pre-register.

Following approval to bid, the buyer named in your registration cannot be changed without consent (for which a charge might be made).

Guide Prices

1. A guide price (to include a range of prices), is not an indication of the anticipated eventual selling price or a valuation; it is an indication of the minimum price ("the Reserve") at which (or range of prices within which) the seller might be prepared to sell. The eventual sale price can and frequently does, exceed the guide price.
2. Where a range is given, the Reserve will sit within that range and will not exceed the top end of the range. Where a single figure Guide Price is given, the Reserve will be within 10%, upwards or downwards, of that figure.
3. The guide price may be subject to change up to and including the day of the auction. The latest published guide price (or range of prices) is displayed on our website and you should check the website regularly for updates and on the day of the auction.
4. All guide prices are quoted "subject to contract".
5. Please note the guide price for the Lot does not include:
 - any Buyers' Fee charged by the auctioneers;
 - VAT on the sale price;
 - SDLT or any other Government taxes;
 - additional costs and fees charged by the seller or third parties that might apply to some Lots and/or some buyers.
1. If a guide price is listed as "TBA", it means no guide price has been set at present. Please do not call our office about this - the guide price, or range of prices, will be published online immediately it becomes available and you should check the auction website regularly for updates and on the day of the auction.

Reserve Prices

2. The reserve price is the minimum price at which the Lot can be sold.
3. Whilst every effort is made to ensure that the advertised guide prices are up-to-date, it is possible that the reserve price set for any Lot may exceed the previously quoted guide price. This is because the seller may fix the final reserve price just before the Lot is offered for sale and you should check the website regularly for updates and on the day of the auction.

Buyers' fees, Seller's fees and additional charges

4. For each Lot, a Buyers' Fee is payable on the fall of the hammer to Allsop LLP as follows:
Residential Auctions
 - Lots sold for **£10,000 or more**: Buyers' Fee of **£2,000** inclusive of VAT
 - Lots sold for less than **£10,000**: Buyers' Fee of **£300** inclusive of VATCommercial Auctions
 - All Lots: Buyers Fee £1,500 excluding VAT
1. Additional charges and fees might be charged by the seller and/or other third parties. You are strongly advised to read the Special Conditions of Sale for the Lot prior to bidding to check for any additional charges and fees and to check the addendum which might also (but does not always) contain details of such amounts.

VAT may be chargeable in addition to the sale price for the Lot. The Lot Particulars and/or the Special Conditions of Sale will indicate whether VAT applies.

Other Matters

3. Please note that Lots may be sold or withdrawn at any time prior to auction.
4. Please note that the amount of Bidder Security (payable on application to bid at the auction) and the Buyer's Fee may each be varied from the standard amounts quoted. Please refer to the addendum, the Particulars and/or the conditions of sale.
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