Development Control – Delegated Officer Report

Application Number: NOTICE/0016/14 **Recommendation – Prior Approval Not Required**

Site: **5A Southview Road, Southwick**

Proposal: **Application for permitted development for prior approval for change of use from offices (A2 Use Class) to 1 no. residential dwelling (C3 Use Class)**

Site and surrounds

The application site comprises a two storey detached brick building located to the west of 5 Southview Road with a small area to the south for the parking of one vehicle. The building is accessed via a shared driveway with vehicular access from Southview Road to the east.

Both ground and first floor levels of the building were previously used as offices in conjunction with a financial business. The building is self contained with the entrance door located to the south side of the building through the single storey flat porch to the east.

The site is surrounded by residential development, there are two flats in the two storey property comprising 5 Southview Road to the east, two storey terrace dwellings located to the north, a two storey detached dwelling to the south and a detached bungalow directly to the west.

It has been confirmed that the offices are now vacant.

Proposal

This is to convert the offices to 1 No. 2 bedroom residential dwelling. The drawings show that a new obscure glazed window first floor window would also be installed in the northerly side wall of the building.

Access is from the existing ground floor entrance door and staircase.

Site History

SW/61/89/TP/248 – Planning permission was granted in 1989 for a change of use from retail (Class A1) to office use (Class A2). A condition was imposed on this decision which specified:

"Notwithstanding the provisions of the Town & Country Planning (Use Classes) Order 1987, the premises shall be used solely as an accountant's office and for no other use.
Reason: In the interests of residential amenity and highway safety."

SW/81/90/TP/6615 – Planning permission was refused in 1990 for change of use from office to dwelling house. Planning permission was refused for two reasons: i) the proposal would have a substandard level of residential amenity and detract from the amenity of neighbouring residential properties and ii) adequate provision cannot be made on site for the parking of vehicles in a satisfactory manner to the standard required by the Local Planning Authority.

Consultations

Highway Authority

The WSCC Highways Officer has made the following comments in relation to this application:

"Taking into account the existing permitted A2 usage in terms of highway safety and level of activity of the site, it is unlikely that this proposal to change to C3 would have an adverse impact on the local highway network. The County Council would not wish to raise any highway concerns to this application."

Environmental Health (Noise)

The Council's Environmental Health Officer has advised she has no adverse comments in relation to this proposal.

Environmental Health (Contaminated Land)

The Council's Environmental Health Contaminated Land Officer has advised that the preliminary ground contamination risk assessment report submitted with this application is satisfactory to their department, bearing in mind the advice provided in Section 9: Recommendations. The report does not discuss the potential for asbestos in the building as this should be addressed separately through the asbestos register/survey.

Planning Assessment

Planning History

When planning permission was granted under application SW/61/89 for a change of use for Class A1 retail to Class A2 offices a planning condition was imposed on this decision which restricted the premises to "*be used solely as an accountant's office and for no other use."* The starting point in this assessment was therefore to assess whether the imposition of this condition restricted the property's permitted development rights in respect of any further changes of use from an accountant's offices.

Legal advice was sought from the Council's Solicitor who has clarified that Section 55(2)(f) of the TCPA 1990 states that a change of use within the same use class does not constitute development and therefore planning permission would not be required, therefore it could be argued that this

condition was added to require planning permission in this circumstance. It is unclear if the effect of the condition removes PD rights as well. The wording of the condition has not specifically restricted the use of the building with reference to any Classes within the Town & Country (General Permitted Development) Order 1995 (as amended) and it is not therefore clear which rights have been limited or withdrawn in this case.

Whilst the Council's Solicitor has confirmed that it could be possible to argue that the effect of the condition is to remove all PD rights, the Council would have to argue that this case is one of those exceptional circumstances whereby this condition does meet the tests for reasonableness and necessity, which may prove difficult given the cancelled and existing planning policy guidance.

Taking into account the legal advice given Officers therefore consider that in this particular case as the condition does not expressly exclude PD rights, then the use of the building would be able to be changed from A2 offices to C3 residential under its permitted development rights subject to the criteria within Class IA of Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995 (as amended) being met.

Assessment against the GPDO Criteria

Part IA of Schedule 2 of the General Permitted Development Order states:

Permitted development
IA. Development consisting of—
(a) a change of use of a building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order from—
(i) a use falling within Class A1 (shops) or A2 (financial and professional services) of that Schedule; or
(ii) a mixed use combining use as a dwellinghouse with 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 F of this Part or otherwise); 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
IA.1 Development is not permitted by Class IA where—
(a) the building was not used for one of the uses referred to in Class IA(a) on 20th March 2013 or, if the building 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 A2 (financial and professional services) of that Schedule has been granted only by this Part;
(c) the cumulative floor space of the existing building changing use under Class IA exceeds 150 square metres;
(d) the development (together with any previous development under Class IA) would result in more than 150 square metres of floor space in the building having changed use under Class IA;
(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);
(g) the building is—
(i) on article 1(5) 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

IA.2 (1) Class IA(a) development is permitted subject to the following conditions—
(a) a building which has changed use under Class IA 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;
(b) before beginning the development, the developer shall apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
(i) transport and highways impacts of the development,
(ii) contamination risks in relation to the building,
(iii) flooding risks in relation to the building, and
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—
(aa) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or
(bb) where the building is located in a key shopping area, on the sustainability of that shopping area,
and the provisions of paragraph N of this Part shall apply in relation to any such application.
(2) Class IA(b) development is permitted subject to the condition that before beginning the development, the developer shall apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the design or external appearance of the building, and the provisions of paragraph N of this Part
shall apply in relation to that application.
(3) Class IA development is permitted subject to the condition that the development shall begin within a period of three years beginning with the date on which—
(a) any prior approval is granted for that development, or
(b) the period of days referred to in paragraph N(9)(c) of this Part expires without the local planning authority notifying the developer as to whether prior approval for that development is given or refused,
whichever is the earlier."

The proposal would involve the change of use from Class A2 financial and professional offices to Class C3 a single residential dwelling. The proposal would also involve the insertion of a new obscure glazed first floor window in the northerly elevation of the building to provide light to one of the first floor bedrooms and this could be considered as a building operation reasonably necessary to convert the building to a dwelling house.

The provisions of the GDPO do not allow for a planning condition to require this northerly first floor window to be obscure glazed in perpetuity.

The supporting information indicates the site was last used for A2 offices and the site does forms part of a safety hazard area; a military explosives storage area; nor is the building is a listed building or a scheduled monument. The floor area of the building does not exceed 150 square metres and would not involve any demolition of the existing building.

Consideration of the planning merits of the application is restricted to those set out in Class IA.2 (1) (b) and (iv).

Transport

The site is sustainably located with relatively good access to a range of shops, schools, community and medical services, community and medical services, leisure facilities and public transport. There is only provision for the parking of one vehicle to the south of the building, yet there is on-street parking available within the surrounding roads.

No cycle parking facilities are shown which is disappointing but the net impact of the proposal is unlikely to be significant different from the situation when the site was in office use.

The Highway Authority has raised no objection.

Land contamination

The Council's Environmental Health Contaminated Land Officer has advised that the preliminary ground contamination risk assessment report submitted with this application is satisfactory to their department, bearing in mind the advice provided in Section 9: Recommendations. The report does not discuss the potential for asbestos in the building as this should be addressed separately through the asbestos register/survey. A condition will be added to the decision which requires the Applicant to forward a copy of the relevant asbestos report for the building to the Council's Environmental Health Contaminated Land department.

Flooding

The site is not in an area of Flood Risk and the change of use would have no implications on flooding within the local area.

Conclusion

Prior Approval application permitted subject to the following conditions:

1. The owners of commercial buildings have a duty to have the current asbestos register/records for the property. The relevant asbestos survey should therefore be submitted to the Council's Environmental Health Contaminated Land Officer prior to the commencement of any internal changes to the building.

DELEGATED

Case Officer: Rebecca Tier Date: 19th January 2015

Authorising Officer: Jo Morin Date: 20.01.2015