Expiry Date - 10/08/2023

Development Control – Delegated Officer Report

Application Number: NOTICE/0007/23 **Recommendation – Prior Approval Required and Granted**

Site: **Premium House The Esplanade Worthing West Sussex**

Proposal: **Application for permitted development for prior approval for change of use from Class E at first, second, third and fourth floors to 16 No. 1 bed dwellings (Class C3).**

Date of site visit: 12.07.2023

Neighbours checked: Y

Additional neighbour notifications: N

Site and Surroundings

The application relates to a 5-storey building consisting of 4 floors (1st, 2nd, 3rd and 4th) of vacant offices located above ground-floor service accommodation and an undercroft towards the front of the building used as Worthing Hand Car Wash & Valeting Centre. Attached to the east side (sharing the same wide, vehicle access from Brighton Road (A259) is a single-storey building, used as a vehicle repair garage and MOT centre. Attached to the south side is a 6-storey residential flat block, Esplanade Court. The application property currently shares a U-shaped car park with Esplanade Court, accessed from The Esplanade. Twenty-three car parking spaces are available to Premium House (included within the 'blue-lined' area). A communal garden area on the east side of the car park fronting the promenade is outside of the blue-lined area (for use by residents of The Esplanade).

The site is located within EA Flood Zone 2/3.

Proposal

An application for Prior Approval is sought under the provisions of the Town and Country Planning GPDO 2015 Schedule 2 Part 3 Class MA for a change of use of the upper floors from commercial, business and service use (Class E) to provide 16no 1-bedroom flats units.

Planning History

None relevant.

Consultations

WSCC: No objection, commenting:-

"*West Sussex County Council (WSCC), in its capacity as Local Highway Authority (LHA), have been consulted on the above Prior Notification Application. The Local Highway Authority (LHA) acknowledge the permitted change of use from commercial to residential subject first to prior approval being granted. As part of the prior approval, the LHA can consider only 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.*

Site Context
The application site is Premium House, located along and accessed from A259 Brighton Road. Prior approval is sought for the conversion of existing commercial premises to residential use, under PD rights (Class MA). Four flats per floor are proposed at 1st, 2nd, 3rd and 4th floors with access and non-habitable use at ground floor level.

Traffic Generation and Highway Capacity
No traffic flow information has been provided with the current application. However, from experience of other similar proposals, the LHA recognise that commercial uses generate more vehicular movements compared with residential uses. As such, there is no expectation for this proposal to give rise to any increase or material change in the character of traffic in the vicinity of the site.

Parking
No parking is included within the site boundary. The prior notification process does not enable parking provision or other matters relating to accessibility to be considered. Nevertheless, some parking is to be retained for the residential use.

Conclusion
Based on the information submitted there would be no highway grounds to resist the prior approval under National Planning Policy Framework (NPPF) paragraph 108."

WSCC Fire & Rescue Service: Having viewed the plans for the planning application no. NOTICE/0007/23 for the Application for permitted development for prior approval for change of use from Class E at first, second, third and fourth floors to 16 No. 1 bed dwellings (Class C3); evidence is required to show that all parts inside all flats are within 45 metres of the location of a fire appliance in accordance with Approved Document B (AD-B) Volume 1 B5 section 13. This is to be measured along the hose lay route, not in a direct line or arc measurement. Any areas not within the 45 metre distance will need to be mitigated by the installation of sprinkler or water mist system complying with BS9251 or BS8458 standards.

Officer response: Sprinklers will be used. A note has been added to Drawing: 23026-P-111-B.

Environment Agency

Initially objected, commenting:-

The submitted FRA does not comply with the requirements for site-specific flood risk assessments, as set out in paragraphs 20 to 21 of the Flood Risk and Coastal Change Planning Practice Guidance and its site-specific flood risk assessment checklist. The FRA does not therefore adequately assess the flood risks posed by the development. In particular, the FRA fails to take the impacts of climate change into account as there is no assessment of the impact of climate change using appropriate climate change allowances.

No objection following the submission of a revised FRA, commenting:-

We are satisfied that our previous objection (as per our letter dated 24 July 2023) can be removed provided that the following condition be attached to any planning permission granted, and that the details in relation to the condition be submitted and approved by the Local Planning Authority.

Condition – Flood risk

The development shall be carried out in accordance with the submitted Flood Risk Assessment ('Revised Flood Risk Assessment', dated 27 July 2023) and the following mitigation measures it details:

- All habitable accommodation must be restricted to 1st floor level and above.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

The condition is in line with the Planning Practice Guidance (PPG) to the National Planning Policy Framework (NPPF) for Flood Risk and Coastal Change.

Southern Water:

Further to your recent prior approval request for the above site, Southern Water have the following observations to make in respect of the proposed development:-

It is possible that a sewer now deemed to be public could be crossing the development site. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site.

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

In situations where surface water is being considered for discharge to our network, we require the below hierarchy for surface water to be followed which is reflected in part H3 of the Building Regulations:-

- Reuse
- Infiltration
- Watercourse
- Storm Sewer
- Combined Sewer.

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

Adur and Worthing Councils:

EHO (Public Health): No objection subject to the noise mitigation recommended in the applicant's acoustic report being implemented.

Private Sector Housing: No objections on PSH grounds.

Representations: None received.

Relevant Planning Legislation and Policies

Town and Country Planning General (Permitted Development) Order 2015 (As Amended)
Worthing Local Plan: SP1, SP2, SP3, DM1, DM2, DM5, DM15, DM20, DM22
Revised National Planning Policy Framework (HCLG 2021)
National Planning Practice Guidance (CLG)

Legislation

The application is made under the Prior Approval procedure and the consideration is restricted to the limitations, restrictions and conditions 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 subparagraph (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 198155;
(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 following conditions.
(2) 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 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,
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 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 .

Planning Assessment

The starting point for consideration of the proposal is whether it can lawfully take advantage of the procedures under Class MA.

Planning permission for the erection of a 5 and 6-storey building comprising 4 floors of offices (8,800 sq ft) and 10 flats on 5 floors with single-storey petrol station, service and lubrication bays and showroom and car parking for 36 cars was granted in 1967 (WB/705/67 refers). A condition of planning permission restricts the use of the building such that the aggregate floor area of the office premises does not at any time exceed 10,000 sq ft. There is no restriction on the change of use from or loss of office floor space.

Limitations MA.1

MA.1(a) A letter has been received (from Newlands Property) in support of the application confirming that the building has been vacant since February 2023.

MA.1(b) Prior to becoming vacant the accommodation was used as offices (Class E(g)(i)) by Smartest Energy.

MA.1(c) The floor area of the offices changing use is approximately 1,060sqm and does not exceed 1,500 square metres.

MA.1(d) 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.

MA.1(e) The building is not within an AONB, a National Park, the Broads, or a World Heritage Site or area specified under Section 4(3) of the Wildlife and Countryside Act.

MA.1(f) The building is not occupied under an agricultural tenancy.

MA.1(g) The application post-dates 1 Aug 2022.

Conditions MA.2

Transport and safe site access

The site is sustainably located in easy walking distance of the various shops and services available within the Town Centre and Brighton Road local shopping parade, and with good public transport links by bus and train (within 30 minutes walking distance of Worthing rail station).

The County Highway Authority is satisfied that the proposal would have safe site access (unchanged) and raises no adverse transport impacts.

Cycle storage provision is shown on the ground-floor. Some parking may be available for future residents (although this is located outside the 'red lined area' of the application site). The County Highway Authority has raised no objection to this. The site is located within the CPZ where measures are in place to control on-street parking on nearby roads.

Provision has been identified on the ground-floor for bin storage. This would need to satisfy Building Regulation requirements in terms of ventilation and a wash-down floor.

Contamination risks

The site is within the grounds of a former petrol filling station on land identified as potentially contaminated. However, the proposals involve a change of use on the upper floors of the building with no breaking of ground or access to any external amenity space provision. No contamination risks are envisaged.

Flooding risks

The area is within EA Flood Zone 2/3. The EA has raised no objection to the revised FRA subject to a condition that all habitable accommodation must be restricted to 1st floor level and above.

Impact of noise from commercial premises in the intended occupiers

The application is supported by an Environmental Noise Survey and Assessment by Acoustic SE (Project J3652 Issue: 3 dated 06.06.2023)

A ProPG Stage 1 Assessment of the location identifies sound pressure levels at the site are at the top of the medium risk category, approaching the high-risk category. An assessment has been carried out to ascertain the mitigation measures needed for the proposed development to meet the relevant noise criterial.

The proposed measures include:-

1. An internal partition to be installed along the eastern façade (Flat A on each floor) to cover 6no of the existing 8n windows (whilst keeping the glazing in place on the exterior).

2. Secondary glazing. For Flat A on each floor this would comprise a cavity of at least 200mm and a pane of glass which is 10mm thick minimum. For Flats B, C and D the secondary glazing need only have a 100mm cavity anda 4mm pane of glass.

3. An alternative ventilation method to opening windows is required. Although windows should remain openable upon the residents choosing, the required air changes to satisfy Approved Document F would need to be achieved with the windows closed. It is recommended a MVHR is used for background ventilation purposes. The sound pressure level from the systems (within the rooms they serve) should be designed to meet CIBSE Guidance Mechanical Ventilation Noise:-
   - Bedrooms: Mechanical services noise to be ≤ NR25dB
   - Lounge: mechanical services noise to be ≤ NR30dB

   Any ducting associated with HVHR installation to be mounted on anti-vibration mounts.

The EHO is satisfied that a satisfactory noise environment will be provided subject to these recommendations.

<u>The provision of adequate natural light to all habitable rooms</u>

All habitable rooms would be provided with an adequate standard of natural light.

<u>Article 3(9A)</u>

All 1-bedroom 1-person units would have a minimum GIA of 37sqm (with shower room). All 1-bedroom 2-person units would have a minimum GIA of 50sqm. This meets the Government's Technical Housing Standards.

<u>Other</u>

The building is not within a Conservation Area.

Ducting for the MVHR system is positioned internally and will terminate on the roof.

Consideration has been given to whether the installation of the internal partition wall on the eastern side (Flat A each floor) would amount to a material effect on the external appearance of the building. It was noted on site that the existing windows (to be retained) have integrated 'between glass' louvred blinds. These would be retained in a closed position to reduce thermal gain. A section drawing has been provided showing the existing suspended ceiling removed, with a new plasterboard ceiling installed at a height to enable the partition to be constructed with sufficient space to be fixed at the top to spacer studwork above the window head (i.e. unseen). The partition wall would be constructed as panels with external facing plasterboard, skim finished and painted warm white to match the existing blinds. The external appearance of the building would appear no different than if the existing integrated window blinds were in the closed position. Consequently it is considered there would be no material effect on the external appearance of the building as a result of the proposed change of use.

The building is not a 'relevant' building for the purposes of Part 3, Class MA(2)(i) i.e. the fire risk condition, as the height from the top-most occupied floor FFL to the lowest ground level is less than 18 metres.

The proposal does not involve the loss of a registered nursery or a health centre.

Recommendation

Prior Approval Required and Granted subject to Conditions:-

1. Approved plans
2. Works for implementing the development shall not commence until precise details of the proposed sound reduction and ventilation measures based on the mitigation strategy detailed in the submitted Environmental Noise Survey and Assessment J3652 Issue 3 necessary to protect the proposed noise sensitive development from external commercial noise and to prevent overheating have been submitted to and approved in writing by the local planning authority. The scheme shall achieve the sound reduction levels specified in the Report and shall include full details of proposed secondary glazing, internal wall treatment and an MVHR system. The noise level of any ventilation units when in use should not exceed the levels specified in BS8233:2014 and all duct work should be fitted on anti-vibration mounts. Following approval of the scheme and prior to first occupation of any dwelling unit, a test shall be undertaken and the results submitted to the local planning authority to demonstrate that the attenuation measures proposed in the scheme are effective and protect the residential unit from noise.

Reason: To protect future occupiers from noise disturbance in accordance with The National Planning Policy Framework and Worthing Local Plan Policy DM22 and the Planning Noise Advice Document Sussex.

3. At no time throughout the lifetime of the development shall there be any habitable accommodation within the building lower than 1st floor level.
   Reason: To reduce the risk of flooding to the proposed development and future occupants in accordance with the relevant policies of the NPPF and policy DM20 of the Worthing Local Plan.

Informative

- Hours of construction
- Southern Water – advice
- New Address

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

Case Officer: Jo Morin Date: 05.09.2023

Authorised by: Gary Peck Date: 6 September 2023