

DELEGATED APPLICATION REPORT

SITE ADDRESS: 200-202 Broad Street

APPLICATION NUMBER: 220519/EPA

PROPOSAL: Change of use of the first, second and third floors and part of the ground floor from Class E (Class E (commercial, business and service) to C3 (dwelling houses) to comprise 9 self-contained flats. Prior Notification under Class MA, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

TARGET DATE: 7th June 2022

Introduction

200-202 Broad Street is a four-storey building (with basement) on a corner plot at the crossroads of Oxford Road, Broad Street, West Street and St Marys Butts. The building comprises a class E(c) (bank) at ground floor level with ancillary office spaces above.

The site is located within the Reading Central Area, Central Core, Office Core and Primary Shopping Area of the town centre as defined by Policy CR1 of the Reading Borough Local Plan 2019. Both the Oxford Road and West Street frontage of the building are designated Primary Frontages within the town centre as defined by Policy CR7. The site is also located within area of archaeological potential and an air quality management area. The building is not listed, and the site is not within a Conservation Area.

Proposal

Prior approval is sought under Class MA Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for the change of use of the first, second and third floors and part of the ground floor of the building to 9 self-contained flats.

Information Submitted

The completed application form, including a written summary of the proposed development and the developer's contact details

Drawings and Documents ref.

- 20033/P-1(--)020 - Existing Elevation A Oxford Road
- 0033/P-1(--)02 - Existing Elevation B West Street
- 20033/P-1(--)022 - Existing Elevation C & D Service Yard
- 20033/P-1(--)011 - Existing First Floor Plan
- 0033/P-1(--)012 - Existing Second Floor Plan
- 20033/P-1(--)013 - Existing Third Floor Plan
- 0033/P-1(--)009 - Existing Basement Plan

- 20033/P-1(--)010 - Existing Ground Floor Plan
- 20033/P-1(--)014 - Existing Roof Plan
- 20033/P-1(--)030 - Existing Section A-A
- 20033/P-1(--)031 - Existing Section B-B
- Location Plan - Current Title Plan - BK352396
- 20033/P-1(--)200 - Proposed Elevation A - Oxford Road
- 20033/P-1(--)201 - Proposed Elevation B - West Street
- 20033/P-1(--)202 - Proposed Elevation C & D Service Yard
- 20033/P-1(--)111 Rev A - Proposed First Floor Plan
- 20033/P-1(--)112 Rev A - Proposed Second Floor Plan
- 20033/P-1(--)113 Rev A - Proposed Third Floor Plan
- 20033/P-1(--)109 - Proposed Basement Plan
- 20033/P-1(--)110 - Proposed Ground Floor Plan
- 20033/P-1(--)114 - Proposed Roof Plan
- 20033/P-1(--)300 - Proposed Section A-A
- 20033/P-1(--)301 - Proposed Section B-B
- Town Planning Bureau Planning Supporting Statement ref. TPB-555-ST2

Received by the Local Planning Authority on 6th April 2022

Policy Context

Legal context

The application has been submitted to determine whether prior approval is required in accordance with Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Class MA involves 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.

Before development can be carried out under Class MA, the developer must submit a Prior Notification to determine if 'Prior Approval' of the Local Planning Authority is required in respect of the following matters:

- (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 the impact on the local provision of the type of services lost.
- (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building

Class MA requires development to be completed within a period of 3 years starting with the prior approval date. 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.

If the Local Planning Authority determine that Prior Approval is required, Paragraph W of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that the Local Planning Authority should, when determining an application, have regard to the National Planning Policy Framework (NPPF), 'so far as relevant to the subject matter of the prior approval, as if the application were a planning application' (Paragraph W, para 10b).

Planning History

181338OPA - Change of use of 1st, 2nd and 3rd floors from Class B1(a) (offices) to C3 (dwellinghouses) to Comprise 11 flats. Prior Notification under GPDO Class O - Refused

980922FUL - Change of use from A1 retail to A2 financial and professional services - Granted

Consultations

RBC Transport - No objection.

RBC Environmental Health - A noise assessment should be submitted.

Publicity

A site notice was displayed at the application site.

Appraisal

The proposal comprises the change of use of the building from Class E to Class C3 (dwellinghouse) with the proposal to be considered against the criteria and conditions contained within Part 3, of Class MA.1. (1) (a)-(g), of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

In addition, in order to qualify for assessment under Class MA, all applications submitted under this class from 6th April 2021 must comply with Department for Communities and Local Government's Technical Housing Standards - Nationally Described Space Standards, minimum space standards. As the application was received after the 6th April 2021 there is a requirement to comply with these minimum space standards. It can be confirmed that the proposed units comply with these minimum space standards as illustrated in the accompanying plans.

Criteria MA.1.-(1)

(a) Vacancy qualification- *“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;*

Complies.

(b) Previous use qualification - *“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;”*

It can be confirmed that the use of the building has been Class E (Commercial, Business & Service) for a continuous period of at least 2 years prior to the date of the application for prior approval.

(c) Floorspace qualification - *“if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;”*

Complies.

(d) Land designation criteria - *“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;”*

The site does not form part of a site of special scientific interest, listed building nor land within its curtilage, a Scheduled monument or land within its curtilage, safety hazard area, nor military explosive storage area.

(e) Landscape designation criteria - *“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;”*

It can be confirmed the site is not within a landscape designation criteria.

(f) Agricultural tenancy criteria - *“If the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;”*

It can be confirmed the site is not occupied under an agricultural tenancy.

(g) Previous use criteria - *“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.*

Complies. The proposed development is not of a description falling within Class O.

Conditions

MA.2.—(1) Confirms that 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; 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.
- (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building

and the provisions of paragraph W (prior approval) apply in relation to that application.

Assessment of MA.2.—(1)

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

The Council's Transport Team raise no objection to prior approval being given as the change of use is not considered to have a material increase or a material change in the character of traffic in the vicinity of the site (as required by paragraph W(5)(a) given the scale of the development, the location and extensive parking restrictions in the area.

(b) Contamination risks in relation to the building

No groundworks are required as part of the change of use. The Environmental Protection team did also not raise any concerns over contaminated land. The proposal is deemed acceptable in this respect.

(c) Flooding risks in relation to the building

The site is not located within Flood Zones 2 or 3 and as such the proposals are acceptable in flood risk terms.

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

The surrounding area is a mixture of commercial and residential use. Some level of noise is expected within a town centre location. The Environmental Protection Team recommend a noise assessment is submitted including mitigation measures. There are residential units close to the site and Officers are satisfied that this requirement can be secured by way of a suitably worded planning condition. This

approach was taken when considering prior notification application ref. 181338 for the same site.

(e) where— (i) the building is located in a conservation area, and (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;

The site is not located within a conservation area.

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses

Statutory Instrument 2020:632 introduces the requirement that consideration is given in respect to the provision of adequate natural light in all habitable rooms. This requires examination of the detailed floor plans and a judgement to be exercised as to whether appropriate levels of light can be achieved to rooms used for sleeping or living. This excludes bathrooms, service rooms, corridor, laundry rooms and hallways.

As a starting point, where the application relates to prior approval as to adequate natural light, the LPA must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses (paragraph W (2A)). This is not a matter for the LPA's discretion, as refusal is mandatory in such circumstances. The LPA's discretion under paragraph W(3) to refuse an application where the proposed development does not comply with any of the relevant conditions, limitations or restrictions applicable to the development permitted is removed in respect to the provision of adequate light in the case of Class MA, in view of the absolute requirement to refuse the application where adequate natural light is not provided in such a case.

The procedure for applications for prior approval under Part 3 W is as follows:

(2A) 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 dwelling houses.

The existing layout of the building does not provide adequate natural light for the proposed residential dwellings. The bedrooms to flats 3, 6 and 9 located at first, second and third floor of the building would not be served by very small former bathroom windows or in some cases no windows at all. In light of this failure to provide adequate natural light, the applicant has submitted a separate full planning application (ref. 220534) for associated physical works to provide full windows to these rooms

The proposed floor plans submitted with this prior approval application show that if full application 220534 was granted and subsequently implemented, each habitable room would be provided with at least one large window to ensure adequate levels of light are achieved for the future occupants of those units proposed. However, application 220534 has not been granted nor implemented.

Paragraph 13 of Part 3 W states:

(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 LPA is at liberty to attach conditions reasonably related to the matter for which prior approval relates, however, the LPA are of the view that Paragraph 13 of Part 3 W does not allow necessary operational development to be secured in order to provide adequate natural light, where adequate natural light is specifically not provided in such cases. This would conflict with Paragraph 2A of Part 3 W, as set out above.

Whilst there is no reason a prior approval application and a planning application for operational development (which falls outside of those prior approval matters) cannot be considered simultaneously, a condition attached to a prior approval application securing operational development through a separate planning application is considered to go beyond the narrow interpretation of what is "reasonably related to the subject matter" of the prior approval under W (13).

Furthermore, the LPA is unable to require completion of any such operational development in order to provide adequate natural light for the residential conversion under Class MA. A condition imposed to require the completion of any operational development in accordance with a separate planning permission could also result in the consequence of having a prior approval application for change of use which cannot be implemented as the operational development for which the prior approval is reliant upon has not itself been implemented within the requisite time period. The LPA has no mechanism to guarantee operational development is completed within a 3-year time period. Thereby sufficient time to commence, market and occupy the change of use permitted under any such prior approval application is unable to be guaranteed (Class MA must be undertaken and occupied within 3 years in order to constitute the implementation of the actual change of use).

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. This means any such a condition is unlikely to meet the 6 tests.

The submitted plans indicate the provision of additional windows to serve the bedrooms of proposed flats 3, 6 and 9, but permission cannot granted or secured via

condition through the prior approval process for operational development, and therefore these openings cannot be installed without obtaining and implementing express planning permission under full application 220534, which falls outside the scope of the prior approval process.

The LPA do recognise that associated physical development under 220534 is required to implement the proposed change of use under this prior approval application. However, as described, the LPA are also of the view that the associated physical development under 220534 is required in order to allow the building to comply with a matter for which prior approval relate. In this case, adequate natural light.

The LPA have no dispute over a whether such works, or any other works for that matter, constitute development and require separate planning permission. However, the proposed works (insertion of windows) would need to occur and be completed, prior to the assessment of this Prior Approval application under Class MA. This is in order for any Prior Approval application to qualify in meeting the relevant prior approval matter for which the application relates and be granted unconditionally.

Paragraph 130 f) of the NPPF (2021) requires LPAs to create places that promote health and well-being, with a high standard of amenity for future users. Policy CC8 of the Reading Local Plan requires new development not to cause a detrimental impact on the living environment of existing residential properties or unacceptable living conditions for new residential properties in terms of access to sunlight and daylight. As the bedrooms of 3 residential units would not have adequate naccess to natural light, the development would therefore give rise to unacceptable harm on the living conditions of future occupiers.

The proposal would not secure the provision of adequate natural light in all habitable rooms of the dwelling houses and would therefore not accord with the requirements of condition (f).

(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

The site is not within a core employment area or located 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.

The development does not result in the loss of services provided by a registered nursery, or health centre maintained under the relevant sections. Whilst the site had previously been in use as a healthcare facility, the site is currently vacant and therefore no service would be lost.

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

A Fire Statement would be required if the development involves the development of an existing 'relevant building'. This new criteria applies to a building which satisfies the height condition in paragraph (3) of the Procedure Order and contains— (a) two or more dwellings; or (b) educational accommodation. Paragraph (3) states the height condition is that— (a) the building is 18 metres or more in height; or (b) the building contains 7 or more storeys.

Whilst the development contains 9 new dwellings, the height of the building is less than 18m and fewer than 7 storeys.

Conclusion

The development subject of this prior notification fails to meet criteria Class MA.2.(2) (f) (provision of adequate natural light) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Recommendation:

Prior Approval is required and **REFUSED**

Informatives:

- 1) Drawings/ Documents considered
- 2) Option to withdraw