

DELEGATED APPLICATION REPORT

SITE ADDRESS:	1-3 Tidmarsh Street
APPLICATION NUMBER:	211527
PROPOSAL:	Change of use from Class E (workshop) to C3 (dwelling houses) to comprise 3 Flats. Prior Notification under Class MA, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015
TARGET DATE:	09/11/21

Introduction

The application site is a single storey building located on the western side of Tidmarsh Street. The surrounding area is residential.

The building has been used by Valpee Printers. The site is not Listed, nor in 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 for the change of use of the ground floor of an existing vacant Class E(i) building to 3 no. residential apartments (Class C3 dwellinghouses).

Information Submitted

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

Drawings/ Documents submitted:

MCA2021/201/106 Rev B - Proposed Roof Plan

MCA/2021/201/101 Rev A - Site Location Plan

MCA2021/201/102 Rev A - Block Plan

MCA2021/201/103 Rev A - Existing Plans

MCA/2021/201/104 Rev B - Existing Elevations

MCA2021/201/105 Rev B - Proposed Floor Plans

MCA2021/201/106 Rev B - Proposed Roof Plan

MCA/2021/201/107 Rev B - Proposed Elevations

Received 14th September 2021

Asbestos Refurbishment Survey Report - Surveyed on 2nd March 2021

Received 20th October 2021

Phase 2 Geo-Environmental Investigation dated 3rd March 2021

Received 26th October 2021

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 Actthe 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

210511/PNN - Notification of Prior Approval for a Change Of Use from Premises in Light Industrial Use (Class B1(c) and any land within its curtilage to Dwelling houses (Class C3). The proposed development comprises the change of use from Light Industrial (B1(c) to Residential (C3), comprising 4 dwelling units. Prior Notification under Class PA, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 - Application Returned

200498/PNN - Notification of Prior Approval for a Change Of Use from Premises in Light Industrial Use (Class B1(c) and any land within its curtilage to Dwelling houses (Class C3). The proposed development comprises the change of use from Light Industrial (B1(c) to Residential (C3), converting 150 sqm of Storage into 4 X 1-bed dwellings. Prior Notification under Class PA, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 - Prior Notification Refusal

Consultations

RBC Transport - Objection

RBC Environmental Health - No objections subject to a noise assessment to be secured via condition and a contaminated land survey being carried out.

Publicity

A site notice was displayed at the application site for the requisite period. The site notice was displayed between 1st - 22nd October 2021. No comments were received.

Appraisal

The proposal comprises the change of use of the building from Class E(i) 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;*

The building is vacant and has been for the required time period.

(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;”*

The former use of the site was B1(c) which falls within the B1 use class specified in subparagraph (2) for a continuous period of 2 years.

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

It can be confirmed that the floor area does not exceed 1500m².

(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;”*

(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.*

It can be confirm that the site has not been subject to development of a description falling with Class of this part immediately before 1st August 2021, nor would such development be prevented 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.

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 an objection to the application due to the proposed development not offering any off-road parking provision and the surrounding area not being restricted in terms of parking. As such, the scheme would result would increase competition for on street parking on a road that is currently unrestricted resulting in additional pressure for existing residents.

However, Officers acknowledge that the prior approval legislation can only be considered. Given the scheme is a car-free development, 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. It is not considered competition for parking in an unrestricted zone is not considered suitable basis to resist prior approval in this instance.

(b) Contamination risks in relation to the building

A Contamination Report was submitted alongside this application following comments raised by the Environmental Health team. The report concluded that:

Further investigations and remedial works are not considered necessary at this site. The underlying soils were largely clean apart from some minor ash inclusions which would never be seen by the new residents.

If however, this small site was ever to be cleared, as a whole or in part, to create a residential garden with open areas of soil where children might play or homegrown produce might be grown, then further assessment of the PAH compounds would need to be carried out once the soils were exposed after demolition.

Given the proposal only involves a change of use with no intrusive ground work, it is not considered the proposed residents would be at risk from contaminated land, as noted above. This application does not allow for the provision of amenity space. Should, in the future, any groundworks be undertaken or a garden created, the developer or residents should be aware that a further contamination investigation

may need to be carried out. Should the proposal have been considered acceptable in all other respects, this would have been included as an informative.

(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

Behind the application site sits a garage and car wash. Within the consultation response from Environmental Health it states that the proposed residents could be exposed to commercial noise from the premises. No supporting noise assessment was provided by the applicant to demonstrate the proposal is acceptable in terms of noise from commercial premises on the intended occupiers of the development. It is not considered acceptable to attach a condition requiring a noise assessment to be submitted as this is a matter the LPA has to consider and be satisfied with at the time of the application before prior approval is given.

As such, it has not been demonstrated that the proposal would be acceptable in terms of noise from commercial premises on the intended occupiers of the development. The proposal therefore fails to accord with condition (d).

(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 and so would not impact the character or sustainability of 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. 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 above assessment requires examination of the detailed floor plans and any relevant supporting evidence. A judgement must be reached based on the information submitted as to whether appropriate levels of light can be achieved for rooms used for sleeping or living. This excludes bathrooms, service rooms, corridor, laundry rooms and hallways.

The proposed floor plans submitted with this application show that new openings and windows would be installed on the dwelling. This prior approval application can only consider, and give prior approval for the change of use and not operational development. As such, the applicant has not demonstrated that sufficient light would be provided to habitable rooms based on the existing configuration of the site.

In the absence of a light report, and with floor plans indicating external alterations to openings and windows, it has not been demonstrated that the building could provide an adequate level of natural light to habitable rooms based on the configuration of the existing site. Therefore, the proposal fails to comply with criteria (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.

(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 3 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 (d) and (f) of Class MA 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