

Delegated Application Report

Address: 6 Malthouse Lane

Application No: 191899/CLP

Proposal: Certificate of Lawfulness for proposed change of use from office to residential, with internal partitions and new door and window from an existing opening

Target Date: 23/01/20

Case Officer: Connie Davis

Introduction & Proposal

Malthouse Lane links residential Charles Street with Chatham Street a main arterial route within the town. Malthouse Lane contains a mix of uses, however due to more recent development, for example at the junction with Chatham Street, its prevailing character is no longer commercial. The site is also within Abbey Ward and an Air Quality Management Area. The application site is stated to be in A2 use but no evidence has been provided to support this.

The proposal seeks to convert the first and second floors in to 2 x 1 bedroom flats under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Plans Submitted:

6MALTHOUSE/PL 01 - Existing Site Location Plan

6MALTHOUSE/PL 03 - Existing & Proposed

Received 2nd December 2019

Relevant Planning History:

90/0524 Demolish existing office building. Erect new office building with showroom - Application Permitted

97/0298/VC Continued use as office without compliance to condition 9 (personal use condition) - Application Permitted

Summary of Consultations:

No consultations were undertaken as it is not required for an application of this type.

Relevant Planning Policy & Guidance:

Section 10 of the Planning and Compensation Act 1991 established a procedure that enables anyone who wishes to do so, to apply to the local planning authority to determine whether a proposed use or operation, or an existing operational development or an existing use of land, or any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, is lawful, and if so, be granted a certificate to that effect.

A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future development. If granted by the local planning authority, the certificate means that enforcement action cannot be carried out to the development referred to in the certificate. However, the certificate will not protect from enforcement action by the planning authority if the specified use or development is then changed 'materially' without a planning application for it.

The certificate is not a planning permission. The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

The NPPG states that "In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. In determining an application for a prospective development under section 192 of the Town & Country Planning Act a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes."

Assessment:

Based on the information submitted by the applicant, it is considered that the proposal needs to be assessed under Schedule 2, Part 3, Class M of the Town and County Planning (General Permitted Development) (England) Order 2015.

Schedule 2, Part 3, Class M states:

Development consisting of— (a) a change of use of a building from—

- (i) a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order;*
- (ii) a use as a betting office or pay day loan shop, or*
- (iii) a mixed use combining use as a dwellinghouse with— (aa) a use as a betting office or pay day loan shop, or (bb) 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 G of this Part or otherwise), to a use falling within Class C3 (dwellinghouses) of that Schedule, 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:

M.1 Development is not permitted by Class M if—

(a) the building was not used for one of the uses referred to in Class M(a)—

(i) on 20th March 2013, or (ii) in the case of a building which was in use before that date but 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 Class A2 (financial and professional services) of the Schedule to the Use Classes Order has been granted only by this Part;

(c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres;

(d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M;

(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);

or (g) the building is—

- (i) on article 2(3) land;*
- (ii) in a site of special scientific interest;*
- (iii) in a safety hazard area;*
- (iv) in a military explosives storage area;*
- (iv) a listed building; or*
- (v) a scheduled monument.*

Conditions M.2—

(1) Where the development proposed is development under Class M(a) together with development under Class M(b), development 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 and highways impacts of the development,*
- (b) contamination risks in relation to the building,*
- (c) flooding risks in relation to the building,*
- (d) 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—*
 - (i) 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, Class 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*
 - (ii) where the building is located in a key shopping area, on the sustainability of that shopping area, and*
- (e) the design or external appearance of the building,*

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

(2) Where the development proposed is development under Class M(a) only, development 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 the items referred to in sub-paragraphs (1)(a) to (d) and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

(3) Development under Class M is permitted subject to the condition that—

a) development under Class M(a), and under Class M(b), if any, must be completed within a period of 3 years starting with the prior approval date; and

(b) a building which has changed use under Class M 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.

As described in condition M.2 (1), ‘the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required’ for the proposed change of use from A2 to C3.

This application is for a certificate of lawfulness of proposed use which has not consulted the relevant consultees, nor has a neighbour consultation been carried out. The applicant’s agent was advised of the need to submit a prior approval application as opposed to a certificate of lawfulness in order for the proposal to be further considered under the relevant class of the GPDO, however no response was received.

Recommendation: **REFUSE**

Reason: The applicant has failed to comply with Condition M.2 (1) of Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Informatives:

1. The Local Planning Authority, when making its decision, took into account the following drawings:

6MALTHOUSE/PL 01 - Existing Site Location Plan

6MALTHOUSE/PL 03 - Existing & Proposed

Received 2nd December 2019

2. The applicant’s agent was contacted numerous times via telephone but no response was received. In addition, an email was sent on 20/01/20 outlining the application would be refused if not withdrawn. Again, no response was received.