

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242098
Site Address:	Pinewood Campus, Nine Mile Ride, Wokingham, Berkshire, RG40 3EW
Expiry Date:	10 October 2024
Site Visit Date:	23 September 2024
Proposal: Prior approval submission for proposed change of use of the commercial building to 109 no. dwellings.	

PLANNING CONSTRAINTS/STATUS

Affordable Housing Thresholds
Archaeological Sites Consultation Zone
Bat Roost Habitat Suitability
CLH Oil Pipeline Consultation Zone
Contaminated Land Consultation Zone
Farnborough Aerodrome Consultation Zone
Great Crested Newt Consultation Zone
Green Routes and Riverside Paths Consultation Zone
Heathrow Aerodrome Consultation Zone
JCEB Areas of Search for Sand and Gravel
JCEB Mineral Safeguarding Areas
Landscape Character Assessment Area
Nuclear Consultation Zone
Overhead cables 15m buffer
PRoW Within WB Consultation Zone
Scale and Location of Development Proposals
SSSI Impact Risk Zones
Thames Basin Heaths SPA Mitigation Zones
Water Utility Consultation Zones

PLANNING POLICY/LEGISLATION

Town and Country Planning Act 1990 (as amended)

Section 55	Provides that 'development' includes the carrying out of building operations on land, and 'building operations' includes structural alterations or additions to buildings.
Section 57	Planning permission is needed for all development of land.
Section 187a	Enforcement for breach of conditions

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Section 7	Prior approval applications: time periods for decision
Article 3	In conjunction with Schedule 2, Part 3, Class MA grants planning permission for the change of use of an existing building in Use Class E (commercial, business and service) to a use falling within Use

	Class C3 (dwelling houses) of the Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (as amended)
Article 4	Provides that the planning authority may give direction to restrict the effect of Article 3

PLANNING HISTORY

Application No.	Description	Decision & Date
F/2005/4373	Proposed redevelopment of the site to provide B1 office units, a nursing home (C2) with access, servicing, car parking, landscaping and associated works.	Approved 20/07/2005
F/2006/9192	Proposed redevelopment of site to provide offices within use class B1 together with landscaping, servicing, car parking and associated works.	Approved 08/02/2007

CONSULTATION RESPONSES

Internal

WBC Environmental Health – no objection, subject to conditions
WBC Drainage – no objection
WBC Highways – no objection, subject to conditions
WBC CIL – development will be CIL liable

External

The Environment Agency – no comments received
Thames Water – no objection, subject to conditions

REPRESENTATIONS

Wokingham Without Parish Council	<i>“Wokingham Without Parish Council have no objection subject to the planning officer reviewing the parish council's reservations about this development for the following reasons:</i> <i>1) The site is in a designated countryside location</i> <i>2) The increase in density of housing in Wokingham Without</i> <i>3) This development is not in the existing local plan</i> <i>4) There is a lack of infrastructure in the area</i> <i>5) The increase in traffic using Nine Mile Ride</i> <i>In addition the parish council would like to request that all woodland on the site is placed under a TPO to protect the trees.”</i> <u>(Officer comment:</u> Case Law has established that the local planning authority can only have regard to matters relevant to the subject matter of the prior approval. The concerns raised, with the exception of the traffic impacts, are not relevant to the matters that the local planning authority can assess under
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	this type of application. Traffic impacts have been assessed in the report under sub-paragraph MA.2.(2)(a) and no concerns arise in this regard. The Council's Trees and Landscape Team has been made aware of the request to include trees under a Tree Preservation Order.)
Ward Member(s)	Cllr Sèona Turtle made the following comment: "In my view the proposed development should be considered unacceptable as it is clearly in the countryside and part of the reason for approving the South Wokingham SDL plan is that it promised to protect ad hoc building of residential homes which were not already part of the approved local plan. Also I would like to request that any other building on the Johnson & Johnson site are protected from any future change of use to residential units in particular the original Pinewood Sanatorium Chapel which is on consecrated land." <i>(Officer comment:</i> Case Law has established that the local planning authority can only have regard to matters relevant to the subject matter of the prior approval. The location within Countryside and non-allocation for residential development within the current Local Plan or the Local Plan Update are not matters that officers can have regard to as part of this application. The local planning authority is unable to control through this application any other proposals, including within this site. Whilst the site is located within Countryside, this does not prevent an applicant submitting a planning application for determination.)
Neighbours	One comment has been received raising the following issues: • Erosion of settlement gap • Outside settlement area and not allocated for residential development • Inaccuracies in relation to frequency of train service • Lack of financial contributions to enhance bus service • Impact of the proposed diversion of bus service 194 • Potential for the proposal to enable parking areas not included in the red line to be put forward for residential development • Unsustainable location in relation to proximity to shops and school • Potential lack of secondary school places <i>(Officer comment:</i> Case Law has established that the local planning authority can only have regard to matters relevant to the subject matter of the prior approval. The concerns raised

	are not relevant to the matters that the local planning authority can assess under this type of application.)
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PART MA.1 APPRAISAL			Yes	No
s.55	1	Does it constitute development?	✓	
s.191	2	Would it be contrary to an enforcement notice?		✓
s.187a Art.3(4)	3	Would it be contrary to any condition imposed by any planning permission granted or deemed to be granted?		✓
Art.3(5)	4	Are the building operations involved in the construction of the original building lawful?	✓	
Art.4	5	Is there an 'Article 4 Direction' in effect for the site?		✓
Sch.2 Pt. MA	6	Does it consist of a change of use from a use falling within Class E (commercial, business and service) to a dwellinghouse?	✓	
MA.1(1)(b)	8	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	✓	
MA.1(1)(d)	10	Is the land covered by, or within the curtilage of, the building (i) In a site of special scientific interest; (ii) A listed building; (iii) A schedule monument; (iv) In a safety hazard area; or (v) In a military explosives storage area?		✓
MA.1(1)(e)	11	Is the building within (i) An area of outstanding 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?		✓
MA.1(1)(f)	12	Is the site occupied under an agricultural tenancy?		✓
MA.1(1)(g)	13	Before 1 August 2022, (i) The proposed development is of a description falling within Class O as that Class had effect immediately before 1 st 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		N/A

		has not since been cancelled in accordance with the provisions of Schedule 3?		
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Site Description:

The application site comprises an existing office building which is currently occupied by Johnson & Johnson as a commercial office building (Use Class E). The building is three storeys in height, with a flat roof and is broadly of rectangular shape with a courtyard sited within the centre of the building.

The site is accessed off Nine Mile Ride and is surrounded by an area of woodland and forms part of Pinewood Campus. There are no other buildings immediately adjacent to the site.

Application Description:

Prior approval is applied for in respect of the proposed change of use of the building to 109no residential units (Use Class C3).

Permitted Development:

It needs to be established whether the proposed change of use would fall within the parameters of Class MA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Class MA allows for development consisting of a change of use, full or partial, of a building and any land within its curtilage within Use Class E (commercial, business and services) of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C3 (dwelling houses) of the Schedule 1 to that Order.

In their Covering Letter dated 9 August 2024, the applicant confirmed that the building subject of this application has been in continuous use falling within Use Class E (previously Use Class B1) for the requisite period of 2 years prior to application being made. Whilst no evidence has been submitted to demonstrate this has been the case, the search of Valuation Office Agency's records identifies that the site has been valued for Business Rates purposes as "offices and premises" from at least 1 April 2017 to present. The Council's Business Rates records show that Johnson & Johnson have been liable to pay Business Rates for these since 3 February 2009 until present and that there has been no period when the property was not occupied.

PART MA.2 APPRAISAL

MA.2.(2) states that development under Class MA is permitted subject to the developer applying to the local planning authority for a determination as to whether the prior approval will be required as to –

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

The application is accompanied by a Transport Statement ITL200169-0001 Rev B which was submitted following discussion with the applicant as to the quantum of proposed vehicular parking spaces. The revised Transport Statement, along with the revised Site Location and Proposed Site Plans, indicate that it is proposed that 147 of the existing parking spaces would serve the proposed development (109 allocated parking spaces, 22 visitor spaces and 16 unallocated spaces). There are proposed 140 cycle spaces, 60 within the existing building and 80 cycle hoops located externally within a sheltered area.

The WBC parking standards are set out in Appendix 2 of the MDD LP. This provision would exceed the WBC cycle parking standards that require a minimum of 147 vehicle and 122 cycle parking spaces. Therefore, no concerns are raised on grounds of insufficient parking provision (Conditions 6 and 7 refer).

The application proposes to utilise the existing access off Nine Mile Ride, which joins the existing cycle and pedestrian routes along Nine Mile Ride. Therefore no concerns are raised in terms of highway access arrangements.

In terms of the impact on the highway capacity, in their Transport Assessment the applicant submitted TRICS Trip Rates and Trip Generation data. Whilst these varied from the trip rates requested from the Highways Officer, in either case the overall trip rates generated by the proposed residential use would be significantly lower than those generated by the existing office use.

The WBC Highways officer has reviewed the proposal and raised no concerns on transport impacts grounds. Therefore, it is considered that there would be no detrimental impact on the wider highway network as a result of the proposed development.

(ii) Contamination risks in relation to the building

Section 78A(2) of Part 2A of the Environmental Protection Act 1990(a) states that 'contaminated land' is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land that:

- (i) significant harm is being caused; or
- (ii) significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused.

The site falls partially within the potentially contaminated land consultation area (sections of the access road and the south-east portion of the site).

The application is accompanied by the Contamination Risk Assessment 224171-MNP-XX-ZZ-RP-S-0003 Rev P02, which concludes that the risk associated with the former use as a hospital appear to be low and that historic studies for the areas where some contamination could be present show no evidence of contamination. Furthermore, it also confirms that ground gas risk is expected to be low given the historic testing.

The WBC Environmental Health Officer has reviewed the proposal and raised no objections subject to a condition relating to unexpected land contamination found during site clearance, groundwork or construction. Given that neither site clearance, nor groundworks or construction is proposed, it is not considered necessary to impose this condition.

(iii) Flooding risks in relation to the building

The NPPF and National Planning Practice Guidance establish a framework for assessing the probability of flooding and the suitability of land for different uses, depending on their level of vulnerability. The application site lies in its entirety within Flood Zone 1 which identifies an area where the probability of flooding is low (less than 0.1% annual probability/1 in 1,000) and all forms of development, including the proposed 'more vulnerable' residential use are appropriate.

The application is accompanied by Flood Risk Assessment 784-B067697 Rev P03. The proposal would result in introduction of 'more vulnerable' residential use in place of 'less vulnerable' office use, in terms of vulnerability classification. It is noted that Flood Zone 3 is located to the west of the site, however, the building subject of this application is located over 125m away from it and sits 2-3m above the nearby Flood Zone 3. Moreover, no changes to the footprint of the building are proposed. As such, the proposal would not result in displacement of flood water or require flood mitigation measures, nor would it result in an increase in the surface water run-off.

Whilst no comments have been received from Environment Agency, the WBC's Drainage and Flood Risk Officer has raised no objection to the proposal. Thames Water has been consulted on this application and requested that conditions are imposed to prevent adverse impact on sewer network, to mitigate the risk of flooding (Conditions 8 and 9 refer). Therefore, it is considered that the proposal would not result in an increase of flood risk nor that it would be at risk from fluvial or pluvial flooding, subject to details further details being submitted to demonstrate that the proposals would not result in an increased risk of flooding.

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

In terms of potential impacts on future sensitive noise receptors (residential units), the application site is not adjacent to commercial buildings that could pose a risk in terms of generating unacceptable noise levels. To the east of the site is located Pinewood House that incorporates land in equestrian use. To the north, the site is adjacent to agricultural fields and to the west there is located Pinewood

Centre which incorporates a range of uses, including indoor sports and recreation and café.

Whilst the Covering Letter accompanying the application did not identify these as commercial premises, these uses fall within the definition of commercial premises. Notwithstanding, Pinewood Centre is located in excess of 250m to the east of the building and as such, it is considered that it presents a low risk of adverse noise impacts on future occupiers of the building. Approximately 350m to the north-east is located Newlands Farm Industrial Estate. Given the proximity of the site to Newlands Farm, no concerns are raised on grounds of noise.

The WBC Environmental Health Officers has reviewed the proposal and raised no objection subject to conditions requiring attenuation of any plant/machinery and restricting hours of construction. Given the proximity of the site to Pinewood House and the anticipated works to subdivide the building into apartments, it is considered reasonable to impose the condition restricting hours of construction. Attenuation of any plant, machinery and equipment is proposed to be secured by condition to protect future occupiers of the building (Conditions 4 and 5 refer).

(v) The impact of that change of use on the character or sustainability of the conservation area

The site does not fall within a Conservation Area and as such this assessment is not applicable in this case.

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

The application was accompanied by Daylight and Sunlight Report Rev V1 ("Light Report") which outlines the assessment of the expected levels of natural daylight and sunlight within the proposed residential units. The assessment has been carried out in compliance with guidance from Site Layout Planning for Daylight & Sunlight published by BRE ("BRE Standards"). The application is also accompanied by floor plans and elevations showing the proposed windows, in accordance with requirements of Paragraph W.(2)(c) of the Town and Country Planning (General Permitted Development (England) Order 2015 (as amended). The BRE Standards set out that levels of light should be assessed in living rooms, kitchens and bedrooms

Daylight

The BRE Standards recommend that one of the two methods of calculating daylight provision:

- illuminance method (which involves climatic data for the location of the site to calculate the illuminance from daylight at each point on an assessment grid on the reference plane at an at least hourly interval for a typical year); or
- daylight factor method (which involves the computation of the daylight factor at each calculation point on an assessment grid to arrive at illuminance at a point on the reference plane in a space, divided by the illuminance on an

unobstructed horizontal surface outdoors, using the International Commission on Illumination standard overcast sky).

The illuminance levels recommended in the UK National Annex are 100lux in bedrooms, 150lux in living rooms and 200lux in kitchens. These are median illuminances to be achieved over 50% of the assessment grid for at least half of the daylight hours.

The submitted Light Report has been prepared using the illuminance method and all 109 apartments were assessed. It should be noted that the proposals do not comprise separate kitchen and living rooms and the open plan kitchen/living rooms have been assessed against the recommendations of 150lux for living rooms rather than 200lux for kitchens. The BRE Standards outline that where a room has a shared use, the highest target should apply. It also states that LPAs could use their discretion in terms of the target luminance levels for these shared spaces to avoid introducing small separate kitchens in a design. As such, it is considered that the target of 150lux for open plan kitchen/living room is acceptable in this instance.

The results of the assessment of all 252 habitable rooms across 109 apartments, contained in the Light Report, indicate that all rooms except 3 (i.e. 98.81% of habitable rooms) would meet the BRE Standards targets. The open plan living space of flats 0.25 and 0.30, and a bedsit room of flat 0.26 would achieve the median illuminances below the recommended 50% of the assessment grid for at least half of the daylight hours. The availability of daylight to these rooms would be due to location of the the apartments (facing the courtyard and located on the ground and first floor levels in a three storey building). Notwithstanding, given that the median illuminance achieved would range between 45%-47% for the assessment grid, the departure from the recommended standard is considered to be marginal and that adequate levels of daylight would be achieved in this instance.

Sunlight

To quantify the access to sunlight, the BRE Standard refers to BS EN 17037, which recommends that a space should receive a minimum of 1.5 hours of direct sunlight on a selected date between 1st February and 21st March with cloudless conditions. It is suggested that 21st March (equinox) be used. The medium level of recommendation is three hours and the high level of recommendation four hours. For dwellings, at least one habitable room, preferably a main living room, should meet at least the minimum criterion.

The submitted Light Report outlines that out of 109 apartments that have been assessed, 72 would have at least one room that would receive at 1.5 hours of direct sunlight. The remaining apartments (37no) are orientated in a way where none of windows serving each of these apartments would be located within ninety degrees of south. Therefore, the proposal would fail to comply with the BRE Standards for sunlight in these 37 apartments (i.e. the 33.95% of total apartments proposed).

It is noted that the BRE Standard states that the developments should be designed to minimise the number of dwellings whose living rooms face solely north, northeast or northwest, unless there is some compensating factor such as an appealing view to the north. It is also noted that the guidance contained within the BRE Standard is primarily intended for the use when designing new buildings (rather than being intended to rigidly apply to proposals to conversions of existing buildings). It is also noted that the majority of the north-facing apartments would offer views onto either high quality landscaped open space (to the north of main entrance and within the landscaped courtyard) or mature woodland, which offers a degree of mitigation of the limited access to sunlight for these apartments. Notwithstanding, the information submitted demonstrates approximately 66% of the proposed units would achieve the recommended sunlight exposure, it is considered that, overall, the proposal would provide adequate levels of sunlight to the proposed dwellings.

Conclusion

As set out in preceding paragraphs, approximately 99% of rooms within the proposed apartments would meet the BRE Standard targets for daylight and approximately 66% of apartments would meet BRE Standard target for sunlight. As such, it is considered that adequate natural light would be provided in habitable rooms of the proposed apartments.

(vii) 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 not used for general or heavy industry, waste management, storage and distribution or a mix of such uses, therefore, this assessment is not applicable in this case.

**(viii) 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**

The development will not lead to a loss of a registered nursery or a health centre, therefore, this assessment is not applicable in this case.

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

Paragraph MA.3 states that “*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 2015 (“DMPO”).*

Paragraph (3) of Article 9A of the DMPO states that *“The height condition is that-*

- a) The building is 18 metres or more in height; or*
- b) The building contains 7 or more storeys. “*

Paragraph (7) of Article 7 of the DMPO states that *“For the purpose of paragraph (3)-*

- a) the height of a building is to be measured from ground level to the top floor surface of the top storey of the building (ignoring any storey which is a roof-top machinery or plant area or consists exclusively of machinery or plant rooms);*
- b) when determining the number of storeys a building has-*
 - (i) any storey which is below ground level is to be ignored; and*
 - (ii) any mezzanine floor is a storey if its internal floor area is at least 50% of the internal floor area of the largest storey in the building which is not below ground level.”*

The height of the building for the purpose of condition M.2(i) is 8.2m (measured from the ground floor to the floor level of the top storey). As such, the proposal does not meet the fire risk condition; therefore, this assessment is not applicable in this case.

MA.2.(3) states that *“An application for prior approval for development under Class MA may not be made before 1 August 2021”.*

This application has been made on 14 August 2024, therefore, in compliance with conditions in paragraph MA.2.(3).

MA.2.(4) states that *“The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph (...)”.* Paragraph W.(2) sets out procedural requirements for prior approval under Part 3 and inserts amendments to that paragraph W. (incorporated here for ease):

- (2) *The application must be accompanied by-***
 - (a) *a written description of the proposed development, which, in relation to development proposed under Class M, N or Q of this Part, must in the same application include any building or other operations;***
 - (b) *A plan indicating the site and showing the proposed development;***
 - (ba) *in relation to development proposed under Classes G, M, MA, N, O, P, PA and Q of this Part, a statement specifying the net increase in dwellinghouses proposed by the development (for the purposes of this sub-paragraph, “net increase in dwellinghouses” is the number of dwellinghouses proposed by the development that is additional to the number of dwellinghouses on the site immediately prior to the development);***
 - (bb) (...)**
 - (bc) *in relation to development proposed under Class G, M, MA, N, O, PA or Q of this Part, a floor plan indicating the total floor space in***

sqm of each dwellinghouse, the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses;

(c) the developer's contact address;

(d) the developer's email address if the developer is content to receive communications electronically; and

(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;

together with any fee required to be paid.

A written description is contained in the application form, which is accompanied a covering letter, relevant plans and information as to the increase in the number of dwellings, necessary assessments/reports, developer's details and an appropriate fee.

(2ZA) (...)

(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 dwellinghouses

This is noted.

(3) The local planning authority may refuse an application where, in the opinion of the authority-

(a) the proposed development does not comply with, or

(b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with the conditions, (...) limitations or restrictions specified in this Part as being applicable to the development in question.

Sufficient information has been provided to allow the LPA to assess the proposal and to establish whether the proposed development complies with conditions, limitations and restrictions outlined within Part 3.

(4) Sub-paragraphs (5) to (8) and (10) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval.

This is noted.

(5) Where the application relates to prior approval as to transport impacts of the development, particularly to ensure safe site access, on receipt

of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult

- (a) where the increase or change relates to traffic entering or leaving a trunk road, the highway authority for the trunk road;***
- (b) the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority; and***
- (c) the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway.***

The WBC Highways Officer has been consulted on the proposal given the likely changes in the character of traffic in the vicinity of the site. Revised plans have been received by the local planning authority on 7 October 2024 to address concerns relating to on-site parking provision.

- (6) Where the application relates to prior approval as to the flooding risks on the site, on receipt of the application, the local planning authority must consult the Environment Agency where the development is:***
- (a) In an area within Flood Zone 2 or Flood Zone 3; or***
 - (b) in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.***

The application site lies wholly within Flood Zone 1 and has no known critical drainage problems. Notwithstanding, the Environment Agency has been consulted, however, no comments have been received.

- (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.***

The application does not relate to prior approval as to fire safety impacts as the development does not meet the fire safety condition. Therefore, the Health and Safety Executive has not been consulted on the proposal.

- (7) The local planning authority must notify the consultees referred to in sub-paragraphs (5), (6) and (6A) specifying the date by which they must respond (being not less than 21 days from the date the notice is given).***

The Highway Authority and Environmental Agency have been notified on 19 and 20 August 2024 respectively and 21 days notice from that date has been given to provide a response.

- (8) The local planning authority must give notice of the proposed development-**
- (a) by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which –**
 - (i) describes the proposed development;**
 - (ii) provides the address of the proposed development;**
 - (iii) specifies the date by which representations are to be received by the local planning authority; or**
 - (b) by serving a notice in that form-**
 - (i) on any adjoining owner or occupier; and**
 - (ii) where the proposed development relates to part of a building, on any owner or occupier of the other part or parts of the building.**

Neighbour letters (including owners or occupiers of adjoining land) notifying of the proposed development have been issued on 19 August 2024. Notification letters specified the description of the proposed development, its address and the date by which representations were to be received by the local planning authority (and not less than 21 days of the notice).

- (9) The local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include –**
- (a) assessments of impacts or risks;**
 - (b) statements setting out how impacts or risks are to be mitigated; or**
 - (c) details of proposed building or other operations.**

This is noted and, following the receipt of additional revised plans on 7 October 2024, sufficient information has been submitted to determine the application.

- (10) The local planning authority must, when determining an application-**
- (a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8);**
 - (b) have regard to the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government July 2021, so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and**
 - (c) in relation to the contamination risks on the site-**
 - (i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990, and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012, and**
 - (ii) if they determine that the site will be contaminated land, refuse to give prior approval.**

Representations that have been received have been considered in the assessment. Case law (*Cab Housing Ltd & Ors v Secretary of State for Levelling Up, Housing and Communities & Ors* [2022] EWHC 208 (Admin)) has established that the local planning authority can only have regard to matters relevant to the subject matter of the prior approval. The other concerns raised are not relevant to the matters that the local planning authority can assess under this type of application. There are no other particular assets of the NPPF that would be able to be considered relevant to the subject matter of the prior notification application. The considerations related to contamination risk are noted.

- (11) The development must not begin before the occurrence of one of the following-**
- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;**
 - (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or**
 - (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.**

The application site is currently in use as office (Use Class E), therefore, the proposed development has not yet commenced.

- (12) The development must be carried out-**
- (a) where prior approval is required, in accordance with the details approved by the local planning authority;**
 - (b) where prior approval is not required, or where sub-paragraph (11)(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1), unless the local planning authority and the developer agree otherwise in writing.**

As prior approval is required and is granted, the development must be carried out in accordance with details submitted in the application (Condition 2 refers).

- (13) The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.**

This is noted. The proposed conditions 2 (approved details), 4 (hours of construction), ~~and~~ 5 (attenuation of plant and machinery), 6 (parking management strategy), 7 (cycle parking), 8 (surface water capacity) and 9 (foul water capacity) are reasonably related to the subject matter of this prior approval application, as outlined in preceding paragraphs of this report. Conditions 1 (time limit) and 3 (use as a dwellinghouse) are imposed

by virtue of Class MA, Part 3, Schedule 2 of the General Permitted Development Order 2015 (as amended).

- (14) When computing the number of days in sub-paragraph (8)(a), any day which is a public holiday must be disregarded.**

Not applicable as the notification requirements of paragraph 8 were carried out under the procedure set out pursuant to sub-paragraph (8)(b).

MA.2.(5) contains wording upon which prior approval under class MA is conditional: “Development must be completed within a period of 3 years starting with the prior approval date.”

The proposal would require structural alterations to subdivide the building into apartments, therefore this condition is implied (Condition 1 refers).

MA.2.(6) contains wording restricting the use of the building: “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.”

A condition to this effect is imposed (Condition 3 refers).

Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) also states:

- (9A) Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse-**
- (a) where the gross internal floor area is less than 37 square metres in size; or**
 - (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.**
- (9B) The reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it.**

The application was accompanied by the proposed floor plans and Schedule of Accommodation, which demonstrate that all proposed units would comply with the Nationally Described Space Standards.

- (10) Subject to paragraph (12), Schedule 1 development or Schedule 2 development within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”) is not permitted by this Order unless-**
- (a) the local planning authority has adopted a screening opinion under regulation 6 of those Regulations that the development is not EIA development within the meaning of those Regulations;**

- (b) the Secretary of State has made a screening direction under regulation 5(3) of those Regulations that the development is not EIA development within the meaning of those Regulations; or
- (c) the Secretary of State has given a direction under regulation 63(1) of those Regulations that the development is exempted from the application of those Regulations.

Any development listed in Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 does not constitute permitted development unless the local planning authority has adopted a screening opinion to the effect that an Environmental Impact Assessment is not required. The application would fall within the category (b) Urban development projects of development described in Column 1 of Schedule 2 as “10. Infrastructure projects”. Column 2 of that Schedule lists applicable thresholds and criteria for the proposal to fall within the definition of “Schedule 2 development” as:

- (i) more than 1 hectare of urban development which is not dwellinghouse development; or
- (ii) the development includes more than 150 dwellings; or
- (iii) the overall area of the development exceeds 5 hectares.

The proposal is for 109 dwellings and the overall area shown within the red line plan measures approximately 2.5 hectares. Therefore, as none of the criteria are met, the proposal does not constitute a Schedule 2 development.

CONCLUSION:

The proposal would comply with the provisions of Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It is recommended that prior approval is granted subject to conditions as outlined in the report.

Thames Basin Heaths Special Protection Area (“SPA”)

The application site is located approximately 1.4km from Broadmoor to Bagshot Woods and Heaths Special Protection Area. Proposals for residential development within the 5km buffer zone of the Thames Basin Heaths Special Protection Area are likely to have significant effect on the integrity of the SPA which is a “European site” within the meaning of Regulation 8 of the Conservation of Habitats and Species Regulations 2017 (“Habitat Regulations”).

Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that planning permission is granted for the classes of development described as permitted development in Schedule 2 subject to the provisions of this Order and regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017.

Regulation 75 of the Habitat Regulations states:

“It is a T of any planning permission granted by a general development order made on or after 30th November 2017, that development which—

(c) *is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and*
 (d) *is not directly connected with or necessary to the management of the site,*
must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority)."

Regulation 77 of the Habitat Regulations states:

"General development orders: approval of local planning authority

- (1) An application to the local planning authority for approval, as mentioned in regulation 75, must—*
 - (a) give details of the development which is intended to be carried out; and*
 - (b) be accompanied by—*
 - (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 76; and*
 - (ii) any fee required to be paid.*
- (2) For the purposes of its consideration of the application the local planning authority must assume that the development is likely to have a relevant effect.*
- (3) The authority must send a copy of the application to the appropriate nature conservation body and must take account of any representations made by it.*
- (4) If in its representations the appropriate nature conservation body states its opinion that the development is not likely to have a relevant effect, the local planning authority must send a copy of the representations to the applicant.*
- (5) The sending of the copy of the representations to the applicant under paragraph (4) has the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 76(4).*
- (6) In any other case in which the application has been sent to the appropriate nature conservation body, the local planning authority must, taking account of any representations made by the appropriate nature conservation body, make an appropriate assessment of the implications of the development for the European site or European offshore marine site in view of that site's conservation objectives.*
- (7) In the light of the conclusions of the assessment the local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.*

Whilst the impact of the proposal for residential development under class MA on the SPA is outside of the scope of matters that can be considered by the local planning authority as outlined in section MA.2., it is noted that the development (i.e. the change of use from office buildings to residential units) cannot commence until an approval has been first granted by the local planning authority pursuant to Regulation 77 of the Habitat Regulations. Regulation 75 of the Habitats Regulations implies into the prior approval decision a condition that requires the proposal to demonstrate that it would not have an adverse impact upon the SPA. The procedure of obtaining such approval by the local planning authority is outlined in Regulation 77 of the Habitat Regulations. Informative 1 refers.

Community Infrastructure Levy (CIL):

When planning permission is granted for a development that is CIL liable, the Council will issue a liability notice as soon as practicable after the day on which the planning permission first permits development. Completing the assumption of liability notice is a statutory requirement to be completed for all CIL liable applications.

The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

RECOMMENDATION

Conditions agreed:	Not required – no pre-commencement conditions proposed
Recommendation:	Prior approval is required and is granted.
Date:	21 August 2024
Earliest date for decision:	11 September 2024

**Recommendation
agreed by:
(Authorised Officer)**

BJC

Date: 10.10.24