

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242027
Site Address:	68 - 70 Peach Street, Wokingham, Berkshire
Expiry Date:	10 October 2024
Site Visit Date:	30 August 2024
Proposal: Prior approval submission for proposed change of use of the commercial premises on the first floor to 2 no. dwellings.	

PLANNING CONSTRAINTS/STATUS

Water Utility Consultation Zones
Conservation Area – Wokingham Town Centre
Contaminated Land Consultation Zone
Heathrow Aerodrome Consultation Zone
Affordable Housing Thresholds
Scale and Location of Development Proposals – Wokingham (Major Development Location)
Great Crested Newt Consultation Zone
District Town and Local Centres
Major Transport Schemes
Primary Shopping Area
SSSI Impact Risk Zones
Thames Basin Heaths SPA Mitigation Zones – 5km Linear Mitigation Zone
JCEB Mineral Safeguarding Areas

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 a building and any land within its curtilage within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellings) of Schedule 1 to that order.
Article 4	Provides that the planning authority may give direction to restrict the effect of Article 3

PLANNING HISTORY		
Application No.	Description	Decision & Date
990474	Proposed Erection Of Internally Illuminated Fascia Sign And Projecting Sign (Retrospective)	Approved 27/05/1999
980981	Proposed Installation Of New Shop Front And Automatic Telling Machine	Approved 21/12/1998
062579	Proposed change of use of pay phone box to ATM & pay phone.	Approved 07/04/2006
141855	Proposed change of use from Open A1 retail to D2.	Approved 13/02/2015
151159	Advertisement application for new signage, to include 1no fascia sign, 1no hanging sign and 2no other signage.	Approved 06/07/2015

CONSULTATION RESPONSES
Internal
WBC Environmental Health – No objection subject to condition(s) WBC Drainage – No objections WBC Highways – No objections WBC Built Heritage Officer – No objections WBC CIL – General CIL commentary
External
None consulted

REPRESENTATIONS	
Parish/Town Council	The Committee thought the documentation for this application was sparse and would like to see bin storage and cycle storage included in the application.
Ward Member(s)	No comments received
Neighbours	No comments received

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	Has the use of the building fallen within Class E (commercial, business and service) 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 1 st 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?		N/A

Site Description:

The application site consists of a two storey flat roofed building that connects to the rear of nos.68-70 Peach Street. Access to the site is via Cross Street to the rear of the existing commercial units, with the units accessed from a ground floor door in the existing car park/commercial yard that serves the units that front Peach Street to the south.

Application Description:

This application seeks approval for the proposed change of use of the building's first floor into 2no. residential flats.

PART MA.2 APPRAISAL

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 –

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

No parking provision is proposed for the 2no. flats. The lack of such does not warrant a reason for refusal as the site is located within a highly sustainable location, meaning access to alternative modes of transport are readily available. It should also be noted that MA.2 (a) does not require an assessment of the development's parking provision, rather consideration for how it would impact highway safety and ensure safe access.

In this context, there is an existing access to the site via Cross Street and due to its low speed limits, the Council's Highways Officer has raised no objection to its continued use in association with the dwelling. Overall, the proposals would have no notable transport impacts and complies with MA.2 (a).

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

The site does fall within a potentially contaminated land consultation area but the development proposed does not involve any external changes to the building which may affect residents. The Council's Environmental Health Officer has indicated that they have no objection to the proposal. It is therefore acceptable in this regard.

(c) Flooding risks in relation to the building

The building is located within Flood Zone 1 with low risk from surface water flooding. No external works are proposed and as such the Council's Drainage and Flood Risk Officer has raised no objection to the proposals.

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

No noise impact assessment has been submitted with this application.

The site would be immediately adjacent to several commercial units, with Flat 1's windows all facing onto the rear parking area/yard that serves them. The Case Officer's visit to the site concluded that this area is likely to be consistently busy during most times of the day by reason of the vehicle movements associated with the businesses. The yard is also used to facilitate deliveries to and collect waste from the businesses which would involve large vehicles unloading and loading within it, causing adverse noise spikes (potentially within unsociable hours) within immediate proximity to Flat 1's windows:



Whilst Flat 2's windows all face northwards and therefore less impacted by the commercial operations of the adjacent units, Flat 1 would be immediately impacted by the noise emissions of the adjacent commercial units, to the detriment of the occupier's amenities.

The Council Environmental Health Officer (EHO) has commented that a noise impact assessment is required in order to fully understand the impacts of the commercial premises on the 2no. dwellings proposed. However, they have suggested that these measures could be secured via a pre-commencement condition to satisfy the requirements of Class MA(d).

Potential mitigation measures suggested by the EHO are likely to include double or triple glazing and mechanical ventilation. Without them, it is unlikely that the development can ensure that all noise implications are mitigated so that internal ambient noise levels for the dwellings meet the BS8233 sound insulation and noise reduction for buildings design range 'good' for living accommodation. However, IF this application was acceptable in all other respects, a condition could be added to secure these measures, notwithstanding the fact that a noise impact assessment has not been submitted to support these proposals.

Hence, IF the application were to be approved, subject to compliance with any suitable noise mitigation condition, the proposal would comply with MA.2(d).

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

The site falls within the Wokingham Town Centre Conservation Area. No external changes are proposed to the building and the Built Heritage Officer has concluded that the proposals would have no legible impact on the character or sustainability of the Conservation Area.

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

Aside from the noise concerns raised above, Flat 1's windows would exclusively face west/south-west. Combined with the number of windows proposed to serve each of the flat's rooms, the proposals would ensure the provision of adequate natural light to the dwelling.

On the other hand, Flat 2's windows exclusively face northwards and are largely obscured by trees that are outside of the application red-line and subsequently out of the owners control (seen below), meaning it likely that inadequate levels of daylight would reach any of the flat's habitable rooms. The Council EHO has also raised concerns that a lack of natural light would be impactful on the amenities of the occupiers.



Flat 2's bedroom would also not have any windows and would instead include a slatted grate on the western elevation of the building (seen below) that would block almost all natural light to the room.



Overall, Flat 2 would not receive an adequate provision natural light in all of its habitable rooms, to the detriment of the occupiers' amenities. The proposals therefore fail to comply with MA.2(f). It would not be reasonable to impose a condition to secure suitable windows for this proposal given that this would potentially change the appearance of the building. This would require assessment under a full planning application and no such approval has currently been granted, nor is guaranteed to be granted if an application were to be submitted.

The above viewpoint mirrors that taken in a recent appeal against Dartford Borough Council (APP/T2215/W/23/3318539) where the Inspector stated the following:

"32. Based on the current condition of the building, adequate natural light would not be provided to all habitable rooms. Some degree of work to its exterior, including repairs to, reglazing or replacement of existing windows, removal of vegetation and removal of boarding across window openings, would thus be required. Given the small size of the existing dormer windows, natural light in the large open plan kitchen/living/dining area of Unit 5 would also be unduly constrained without installation of the rooflights shown on the plans.

33. Such works may require their own permission. There is however no evidence before me of such permission having been granted or, alternatively, any formal confirmation (such as a Lawful Development Certificate) to demonstrate it would not be required. If permission would be required, it cannot be assumed it would be granted.

34. Furthermore, as Class MA permits the change of use of the building only, planning conditions cannot be used to require the implementation of other operations to facilitate the change of use in this instance. There is thus no mechanism before me to ensure that any such work would take place in the

event the appeal was allowed.”

Other conditions of MA.2 (g-i)

These are not applicable in this case as the site is not within 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 the change of use will not impact on the local provision of registered nurseries or health centres. The development does not meet the fire risk condition.

And the provisions of paragraph W (prior approval – where relevant)

*The application must be accompanied by—
a written description of the proposed development, which, in relation to development proposed under Class C, M, MA, N or Q of this Part, must in the same application include any building or other operations;*

A plan indicating the site and showing the proposed development.

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);

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;

the developer’s contact address;

the developer’s email address if the developer is content to receive communications electronically; and

where sub-paragraph (6) requires the Environment Agency to be consulted, a site specific flood risk assessment,

Together with any fee required to be paid.

A written description as contained in the application form and supporting planning statement along with the relevant plans, assessments, fee and contact details. Contact details were provided and the correct fee was paid.

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

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 applicable to the development in question.

It is possible to assess the application based on the details provided.

Where the application relates to prior approval as to transport and highways impacts of the development, 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 Council's Highways Officer raises no objection on highways or traffic grounds. There is no increase for on-site parking spaces and as such, there is unlikely to be any increase in traffic generation.

(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(8) where the development is 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 Council's Drainage Officer has no objection to the proposal. The Environment Agency do not need to be consulted.

The local planning authority must give notice of the proposed development 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 describes the proposed development; provides the address of the proposed development; specifies the date by which representations are to be received by the local planning authority; or by serving a notice in that form on any adjoining owner or occupier.

Letters were sent to neighbouring properties on 15th August 2024.

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 assessments of impacts or risks, statements setting out how impacts or risks are to be mitigated; or details of proposed building or other operations.

In relation to sub paragraph (3), this is noted.

The local planning authority must, when determining an application, 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 in July 2021, so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and in relation to the contamination risks on the site, 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 if they determine that the site will be contaminated land, refuse to give prior approval.

No representations have been received.

Class MA is also subject to the following requirements:

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

(b) any building which has changed use under Class MA 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.

These are noted.

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
Recommendation:	Prior Approval Refusal
Date:	26 September 2024
Earliest date for decision:	6 September 2024

Recommendation agreed by: (Authorised Officer)	
Date:	26/09/24