

27th JUNE 2023 PLANNING COMMITTEE

6A PLAN/2023/0395

WARD: Canalside

LOCATION: Grey Oriental Foods, 25 High Street, Woking, Surrey, GU21 6BW

PROPOSAL: Prior Approval under Class MA, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of part of building from Use Class E (Commercial, Business and Service) to a self-contained flat (Use Class C3).

APPLICANT: Thamesway Developments Ltd

OFFICER: David Raper

REASON FOR REFERRAL TO COMMITTEE:

The applicant is the Thamesway Developments Ltd which is a Council owned company and thus the application falls outside the Scheme of Delegation.

SUMMARY OF PROPOSED DEVELOPMENT

Prior Approval under Class MA, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of part of building from Use Class E (Commercial, Business and Service) to a self-contained flat (Use Class C3).

PLANNING STATUS

- Urban Area
- Woking Town Centre
- Primary Shopping Area
- Secondary Shopping Frontage
- Site Allocation UA6
- Thames Basin Heaths Special Protection Area (TBH SPA) Zone B (400m-5km)

RECOMMENDATION

REFUSE Prior Approval.

SITE DESCRIPTION

The proposal relates to a ground floor commercial unit in a two storey building with accommodation in the roof space in Woking Town Centre.

RELEVANT PLANNING HISTORY

- 83/1132 – Change of use of part of ground floor from betting shop to estate agents – Permitted

Officers are satisfied that Permitted Development rights on the proposal site are intact.

CONSULTATIONS

- **County Highway Authority (SCC):** No objection subject to conditions.

27th JUNE 2023 PLANNING COMMITTEE

- **Environmental Health:** No objection.
- **Contaminated Land Officer:** No objection subject to conditions.
- **Drainage and Flood Risk Engineer:** No objection.

REPRESENTATIONS

None received.

RELEVANT PLANNING POLICIES

N/A

PLANNING ISSUES

This application has been made to the Local Planning Authority for a determination as to whether the prior approval of the Local Planning Authority will be required and granted or refused for the change of use of the premises from Use Class E to 1x flat (Use Class C3). The application has been submitted under the provisions of Schedule 2, Part 3, Class MA (commercial, business and service uses to dwellinghouses) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Provisions:

Class MA – commercial, business and service uses to dwellinghouses

Permitted development

MA. 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.

Development not permitted

MA.1.—(1) Development is not permitted by Class MA—

- (a) 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; **Compliant***
- (b) 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; **Compliant***
- (c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres; **Compliant***
- (d) if land covered by, or within the curtilage of, the building—*
 - (i) is or forms part of a site of special scientific interest; **Compliant***
 - (ii) is or forms part of a listed building or land within its curtilage; **Compliant***
 - (iii) is or forms part of a scheduled monument or land within its curtilage; **Compliant***

27th JUNE 2023 PLANNING COMMITTEE

- (iv) *is or forms part of a safety hazard area; or* **Compliant**
- (v) *is or forms part of a military explosives storage area;* **Compliant**

- (e) *if the building is within—*
 - (i) *an area of outstanding natural beauty;* **Compliant**
 - (ii) *an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;* **Compliant**
 - (iii) *the Broads;* **Compliant**
 - (iv) *a National Park;* or **Compliant**
 - (v) *a World Heritage Site;* **Compliant**

- (f) *if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;* or **N/A**

- (g) *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* **N/A**

 - (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.* **N/A**

- (2) *The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—*
 - (a) *the following classes of the Schedule as it had effect before 1st September 2020—*
 - (i) *Class A1 (shops);*
 - (ii) *Class A2 (financial and professional services);*
 - (iii) *Class A3 (food and drink);*
 - (iv) *Class B1 (business);*
 - (v) *Class D1(a) (non-residential institutions – medical or health services);*
 - (vi) *Class D1(b) (non-residential institutions – crèche, day nursery or day centre);*
 - (vii) *Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;*

 - (b) *on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.*

Prior Approval:

The Local Planning Authority must consider whether prior approval is required. Under the procedure for applications for prior approval under Schedule 2, Part 3, Class MA (commercial, business and service uses to dwellinghouses) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) such proposals can only be considered by the Local Planning Authority insofar 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;

27th JUNE 2023 PLANNING COMMITTEE

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

Assessment:

Scope of Class MA:

Class MA permits “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” (emphasis added). The proposed plans identify external alterations including the replacement of the shopfront with two windows and masonry and on the rear elevation two doors would be replaced with a window and a roller shutter serving a proposed cycle store. These external alterations would require planning permission in their own right (there are no ‘Permitted Development’ rights for such alterations) and the proposed works go beyond the scope of works permitted by Class MA, which only permits the change of use of a building. The proposed habitable rooms would be reliant on these external alterations and no planning permission for these alterations exist, nor is it possible to permit these alterations under this Prior Approval application.

The proposed development includes building operations which goes beyond the scope of Class MA, which permits the change of use of buildings. The proposed works do not therefore fall within the limitations of Class MA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Unit Sizes:

Section 3(9A) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that “*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”.*

This provision was inserted by Statutory Instrument No.1243; the associated Explanatory Memorandum states that the above requirement came into effect on 06.04.2021 and applies

27th JUNE 2023 PLANNING COMMITTEE

to applications submitted on or after this date. The above therefore applies to the current application.

The proposal involves the creation of a two bedroom flat with an internal floor area of 96.3m² which exceeds the relevant requirement for a two bedroom, four person flat (70m²) in accordance with the National Technical Housing Standards (2015). The proposal therefore complies with Section 3(9A) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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

The Council's Parking Standards SPD (2018) sets minimum parking standards for residential developments. For two bedroom flats the minimum standard is 1x space per dwelling. No dedicated parking provision is identified however the SPD states that parking provision below the minimum standards can be considered in Woking Town Centre. The proposal site is in a particularly sustainable location in Woking Town Centre and in this instance the proposal is considered acceptable in parking terms. The County Highway Authority has undertaken an assessment on safety, capacity and policy grounds and raises no objection. There is sufficient scope for cycle and bin storage to the rear.

Considering the points discussed above, no objection is raised in terms of transport and highways impacts of the development subject to conditions. Overall the proposal is considered to result in an acceptable transportation impact.

(b) contamination risks in relation to the building;

The Council's Scientific Officer raises no objection on the basis that there would be no deep groundworks or residential gardens. The proposal is therefore considered acceptable in this regard.

(c) flooding risks in relation to the building;

The proposal site is within Flood Zone 1 and is not classified as being at risk from surface water flooding. The Council's Drainage and Flood Risk Engineer has reviewed the application and raises no objection. No objection is therefore raised on flood risk grounds.

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

The proposal site sits within a frontage of commercial buildings where ground floor units comprise a variety of commercial uses. No Noise Assessment has been submitted however the nearest commercial uses are an Estate Agents and Recruitment Agency (Use Class E) which are relatively innocuous uses in terms of noise. The Council's Environmental Health Team has reviewed the proposal and raises no objection.

No objection is therefore raised in terms of impacts of noise from commercial premises on the intended occupiers of the development subject to conditions.

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

N/A

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

Paragraph W(2A) of Part 3 states that "*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*".

27th JUNE 2023 PLANNING COMMITTEE

The two bedrooms of the proposed residential unit would be reliant on a relatively small window and a door on the rear elevation. Due to the high density urban location of the proposal site, these windows would be located in relatively close proximity to the three storey rear elevations of buildings to the north which are likely to restrict the amount of daylight available. The main living/dining and kitchen area would be reliant on a relatively small section of glazed shop front and this part of the flat would have a relatively deep and narrow floor plan. This is likely to restrict the amount of light available to this space and has the potential to create a gloomy and oppressive living environment. No Daylight and Sunlight Report has been submitted. The LPA cannot therefore be satisfied that the proposal would achieve adequate natural light in all habitable rooms.

It has not been demonstrated that there would be adequate natural light in all habitable rooms of the proposed dwelling. The proposal is therefore contrary to Paragraphs MA.2(2)(f) and W(2A) of Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

(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
N/A

(h) the impact on the local provision of the type of services lost where the development involves the loss of services provided by a registered nursery, or a health centre maintained under section 2 or 3 of the National Health Service Act 2006:
N/A

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

Paragraph MA.3 of Part 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”

Paragraph 3 of Article 9A (fire statements) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 states that:

“(3) The height condition is that—

(a) the building is 18 metres or more in height; or

(b) the building contains 7 or more storeys”

The building in question is not more than 18m or seven storeys in height and Paragraph MA.2(2)(i) is not therefore applicable.

Thames Basin Heaths Special Protection Area (TBH SPA):

The Borough of Woking lies within the development control remit of a Special Protection Area (The Thames Basin Heaths Special Protection Area (TBH SPA). Regulation 75 of The Conservation of Habitats and Species Regulations 2017 states that it is a condition of any planning permission granted by a general development order made on or after 30th November 2017 which (a) 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 (b) 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

27th JUNE 2023 PLANNING COMMITTEE

Planning Authority under Regulation 77 (approval of Local Planning Authority) of The Conservation of Habitats and Species Regulations 2017. Natural England has demonstrated that the new population arising from residential developments at a distance of up to 5km from the TBH SPA can have a “*significant effect*” by causing disturbance to the breeding of rare bird populations, due to the impact of residents’ recreational activities, particularly walking and walking with dogs. As such if prior approval were granted under Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) such approval would be conditional upon approval under Regulation 77 of The Conservation of Habitats and Species Regulations 2017 being received. An appropriate informative is therefore recommended to advise the applicant of this.

Following recent European Court of Justice rulings, a full and precise analysis of the measures capable of avoiding or reducing any significant effects on European sites must be carried out at an ‘Appropriate Assessment’ stage rather than taken into consideration at screening stage, for the purposes of the Habitats Directive (as interpreted into English law by the Conservation of Habitats and Species Regulations 2017 (the “Habitat Regulations 2017”). An Appropriate Assessment has therefore been undertaken for the site as it falls within 5 kilometres of the TBH SPA boundary. The Appropriate Assessment concludes that there would be no adverse impact on the integrity of the TBH SPA providing the SAMM financial contribution is secured through a S106 Legal Agreement. For the avoidance of doubt, sufficient SANG at Horsell Common has been identified to mitigate the impacts of the development proposal.

Local Finance Considerations:

The Community Infrastructure Levy (CIL) does not normally apply to the change of use of buildings because the existing floor space of in-use buildings can be taken into account in calculating the CIL liability. ‘In-use’ buildings are defined in the Community Infrastructure Levy Regulations (2019) (as amended) as being in lawful use for a continuous period of at least six months within the past three years. The applicant has confirmed that the building has been in lawful use and so the proposal is not CIL liable.

The proposal is SAMM (TBH SPA) liable in terms of the Thames Basin Heaths SPA Avoidance Strategy tariff; the required contribution would be **£897** based on 1x two bedroom flat however this figure may change subject to indexation.

CONCLUSION & RECOMMENDATION

It is therefore recommended that Prior Approval is required and REFUSED for the following reasons:

01. It has not been demonstrated that there would be adequate natural light in all habitable rooms of the proposed dwelling. The proposal is therefore contrary to Paragraphs MA.2(2)(f) and W(2A) of Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
02. The proposed development includes building operations which goes beyond the scope of Class MA, which permits the change of use of buildings. The proposed works do not therefore fall within the limitations of Class MA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

27th JUNE 2023 PLANNING COMMITTEE

Informatives

1. The plans and documents relating to the development hereby refused are the following which were received by the LPA on 27.04.2023:

L.01 (Location Plan)

B.01 (Block Plan)

P.01 (Proposed Site Layout)

P.02 (Existing Ground Floor Plans)

P.03 Rev.D (Proposed Ground Floor Plan)

P.04 (Existing Front and Rear Elevations)

P.05 (Existing Side Elevations)

P.06 Rev.B (Proposed Front and Rear Elevations)

P.07 (Proposed Side Elevations)

Application Form