

DELEGATED OFFICER REPORT

Application Ref: PN/22/93015

Site Address: 25 Shaftesbury Avenue, Chandler's Ford, Eastleigh, SO53 3BR

Case Officer: Summer Sharpe

Description: Change of use from Commercial, Business and Service (use Class E) to Dwellinghouse (use Class C3).

Particular Site Constraints?	Yes ☒	No ☐
- Within urban edge		

Planning History?	Yes ☒	No ☐
Planning App no.	Proposal	Decision
<u>Application Site</u> Z/05045/002/00	Demolition of existing extension and erection of new single storey extension	Permitted (May 1982)
Z/07853/001/00	Erection of single storey dwelling at rear of 25A Shaftesbury Avenue after demolition of existing building.	Refuse (1998)
F/05/54758	Change of use from D2 ballet school to D1 child day care centre.	Permitted (October 2005)
F/06/56856	Alterations to roof of existing single storey rear element (retrospective)	Permitted (November 2006)
<u>93 Bournemouth Road</u> <u>F/12/70661</u>	Change of use from domestic dwelling (C3) to a children's day nursery (D1).	Permitted (June 2012)

Publicity:	Letters ☒	Site Notice ☐	Newspaper ☐
Representations:	None received.		
Parish Council:	None received.		
Hampshire Highways:	In regard to application PN/22/93015, there is no objection to the proposals from a highway perspective. The current use has at times allegedly been the cause of obstruction and parking complaints, and so the removal of the facility will be of benefit to local residents. Indeed, the proposed change of use is what was envisaged when application F/12/70661 gained approval for the change of use of its linked site at 93 Bournemouth Road. At the time, the Planning Application Supporting Statement (section 4.4) outlined the Bournemouth Road site as essentially being a relocation of the nursery from 25 Shaftesbury Road. As such, from a highway perspective, the change of use from Commercial, Business and Service (use class E) to Dwellinghouse (use class C3) is welcomed.		
Environmental Health:	It is an unusual existing site use as business in residential back land and one which if planned today would be of concern to us regarding noise for example. As now proposed, residential back lands are sometimes disrupting to existing dwellings via the entrance and artificial lighting which can be required for security purpose. We would not object to this current application if it would result in nett negative pollution impact to existing dwellings, assuming of course the existing land use is legal. The type of mitigation we would look for is close boarded fencing around the perimeter of at least 2m height and control of obtrusive light and use of warm		

	light colour. Eyelid type lighting fixtures can be the solution in situations like these. Also, hard paving. A proportionate construction and environmental management plan would also be required.
Contaminated Land:	It is understood that this prior notification application does not include the breaking of ground. As such, and as long as this remains the case, we have no objections to this application and neither do we wish to make any comments.
Ecology:	The property is located in a residential part of Chandler's Ford and I have no records of protected species which would be relevant to this application. Given the location, the single-storey nature of the property and the proposed works (which appear to be internal) it is highly unlikely this change of use will impact upon protected species. As such, there are no ecological constraints to this proposal. In the extremely unlikely event that a bat is found should permission be granted, works should stop immediately and Natural England informed: https://www.bats.org.uk/advice/im-working-on-a-building-with-bats/ive-found-a-bat-during-works

Policy:

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 3 (Changes of use), Class MA (commercial, business and service uses to dwellinghouses).

As per the Conditions MA.2, the following matters are to be assessed: transport, land contamination, flood risk, noise impact, provision of natural light, impact of residential within the area, the loss of the service provided, and fire risk. These matters would be assessed against the below policies:

Development Plan:

Eastleigh Borough Local Plan 2016-2036

Policies: S1 (Delivering sustainable development), S2 (approach to new development), DM1 (General development), DM3 (climate change), DM6 (sustainable drainage), DM8 (Pollution), DM11 (Nature Conservation), DM13 (Transport), and DM14 (Parking).

National Planning Policy Framework (2021)

Nationally Described Space Standards (2015)

Site Visit

Yes ☒

No ☐

30 June 2022.

Assessment:

Site & Surroundings

The application site comprises a single storey building located to the north of Shaftesbury Avenue, and to the north-west of no.25A Shaftesbury Avenue. The property is set back from Shaftesbury Avenue by a long narrow driveway. The building itself is also long and narrow, predominantly forming no.25A Shaftesbury Avenue's western boundary.

As indicated by the type of application submitted, the site was last in use as a nursery. The surrounding area along Shaftesbury Avenue (south) and The Crossways (north) are characterised by residential dwellings. To the west is Bournemouth Road (B3043) which has a mixed character, with some residential, commercial and industrial uses.

Proposal

The application proposes the change of use from Commercial, Business and Service (use Class E) to Dwellinghouse (use Class C3), under the prior approval process set out within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Assessment Against Schedule 2, Part 3, Class MA of the GPDO

MA.1 Development is not permitted by Class MA if:

The following matrix makes an assessment of the proposal against the criteria of Class MA:

Criteria	Assessment
(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	The agent has submitted a 'Prior Notification Compliance Statement', which states that the building has been vacant since March 2020. This has been corroborated with Council Tax, their records note that the use ceased in 2018, and has since been used to store equipment.
(b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval	Sub-paragraph (2)(a) sets out following classes of the Use Classes Order: (i) Class A1 (shops) (ii) Class A2 (financial and professional services) (iii) A3 (food and drink) (iv) Class B1 (business) (v) D1(a) (non-residential institutions – medical or health services) (vi) Class D1(b) (non-residential institutions – creche, 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 Sub-paragraph (2)(b) states: on or after 1 September 2020, Class E (commercial business and service) of Schedule 2. The application site was classified as a day nursery (D1(b)), which was then re-classified as Class E, within The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.
(c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres	The floor space of the existing building changing use under Class MA measures 97.5 square metres, thus falling within 1,500 square metres.
(d) if land covered by, or within the curtilage of, the building – (i) is or forms part of a site of special scientific interest (ii) is or forms part of a listed building of land within its curtilage	The application site is not and does not form part of; a site of special scientific interest, a listed building nor curtilage of, scheduled monument nor curtilage of, a safety hazard area, nor military explosives storage area.

(iii) is or forms part of a scheduled monument or land within its curtilage (iv) is or forms part of a safety hazard area (v) is or forms part of a military explosives storage area	
(e) if the building is within – (i) an area of outstanding natural beauty (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981 (iii) the Broads (iv) a National Park (v) a World Heritage Site	The building is not within; an area of outstanding natural beauty, nor an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981, the Broads, a National Park nor a World Heritage Site.
(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained	The application site is not occupied under an agricultural tenancy.
(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 1 August 2021 and (ii) the development would not have been permitted under Class O immediately before 1 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.	The proposed development does not fall within Class O of this Part. The application site does not fall within Class B1(a) (office) usage, it falls within Class E (formerly D1(b) (nursery)) thus not being able to benefit from a prior approval under Class O of the GPDO.

Conditions MA.2:

Development under Class MA is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for determination as to whether the prior approval of the authority will be required as to:

- (a) Transport impacts of the development, particularly to ensure safe site access;
- (b) Contamination risks in relation to the building;
- (c) Flooding risks in relation to the building;
- (d) Impacts of noise from commercial premises on the intended occupiers of the development;
- (e) Where -
 - (i) the building is location 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;
- (h) Where 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
- (i) Where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building

(a) Transport and highways impacts of the development

Policy DM13 of the Eastleigh Borough Local Plan (2016-2036) requires that development is or could be well served by public transport, cycling and walking and it includes measures which minimise its impact on the existing highway network. Policy DM14 requires that an appropriate level of car parking be provided in accordance with the Council's adopted standards. The policy provisions are consistent with the requirements of the NPPF and in particular those of paragraphs 107 and 108.

Due to the nature of the proposals, the Local Highways Authority have been consulted. They noted that there the current nursery usage has allegedly caused obstruction and parking complaints, therefore the change of use to residential would be considered to benefit local residents.

Further to access, the site (3no. bedroom dwelling) would need to provide 2no. vehicular off-street parking provisions in accordance with the Residential parking standards SPD. From the submitted location plan, it shows a long driveway, and therefore this is considered to be sufficient to park 2no. vehicles on site and would therefore be acceptable in this regard.

(b) Contamination risks in relation to the building

Policy DM8 of the submitted Eastleigh Borough Local Plan (2016-2036) stipulates that development will not be permitted if it is likely to cause loss of amenity or impact upon public health or other unacceptable environmental impacts; including land contamination.

The proposals within this application do not include the breaking of ground. As such, and as long as this remains the case, the Contaminated Land Officer would raise no objections to this application. As such, the proposal would be acceptable in this regard.

(c) Flooding risks in relation to the building

Policies DM3 and DM6 of the submitted Eastleigh Borough Local Plan (2016-2036) stipulate that new development must provide sustainable drainage systems (SuDs) wherever feasible, naturalised filtration should also be included.

It is noted that Shaftesbury Avenue does fall within a flood risk area, however, the application site itself does not fall within a flood risk area, and therefore the concern relating to flood risk is limited.

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

Policy DM1 of the submitted Eastleigh Borough Local Plan (2016-2036) amongst other matters, stipulates that all new development should not have an unacceptable impact upon residential amenities of both new and existing residents. Further, Paragraph 185 (a) of the NPPF requires development to *mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life*. Paragraph 187 of the NPPF states: *Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should*

not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.

The application site is located within an area characterised by residential properties. The application site is the stand alone 'commercial' unit within the immediate vicinity, therefore the change of use from a nursery to residential would be acceptable given the existing surroundings. As such, there would be no adverse impact of noise on the future occupiers.

(e) Where -

(i) the building is location in a conservation area, and

(ii) the development involves a change of use of the whole or part of the ground floor

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

The application site is not located within a conservation area, and therefore this criterion is not applicable.

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

From the submitted plans it is noted that each bedroom and the kitchen/ living space would benefit from windows. It would therefore be concluded that the habitable rooms of the dwellinghouse would be provided adequate natural light.

(g) The impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;

The application site does not fall within an area which the LPA considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses.

(h) Where 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 proposals would result in the loss of a registered nursery. However, from a review of the planning history and Council Tax records, it is noted that approved planning application "F/12/70661" sought to relocate the existing nursery at 25 Shaftesbury Avenue to 93 Bournemouth Road. The Council Tax records support this usage at 93 Bournemouth Road, noting that business rates were set up in January 2013 and are still in place. The application site has also not been in use as a nursery since around 2018. Therefore whilst 25 Shaftesbury Avenue would no longer provide a registered nursery, 93 Bournemouth Road provides and has provided this service since 2013. It would therefore be concluded that there has been a displacement of services and not a net loss.

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

The GPDO introduced this criterion from 1 August 2021, which sets out the requirement for developers to obtain the prior approval of the local planning authority as to certain matters relating to fire safety. Articles 4 and 9 amend Class MA of Part 3, and other classes of the Town and Country Planning (General Permitted Development) (England) Order 2015 to require the submission of a statement about the fire safety design principles, concepts and standards that have been applied to the development. This

specifically relates to the creation of new dwellings in buildings which will contain 2 or more dwellinghouses where the height condition of planning gateway one is met (18m or more, or 7 or more storeys). Where a prior approval application is made pursuant to these provisions, the local planning authority must consult the Health and Safety Executive.

The proposal would result in the creation of 1no. single storey dwelling and therefore the Health and Safety Executive has not been consulted, nor is this criterion applicable.

Articles 3 and 4

Article 3, paragraph 9A sets out that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse, where the necessary space standards are not met. The application proposes 1no. 3no.bedroom dwelling which would have a floor space of approx. 97.5 metres squared. The proposed unit would exceed 74-95 metres squared set out within paragraph 9A and would exceed the size requirement for a 3no.bedroom 6no. person unit (as set out within the National Described Space Standards). (All bedrooms exceed single occupancy 7.5 meters squared, with only one bedroom exceeding double occupancy 11.5 metres squared).

Other Matters: SPA Mitigations

Prior to commencement of any development, it is a requirement that the applicant satisfies their obligations under Regulations 73-77 of the Conservation of Habitats and Species Regulations 2017 (as amended), in strict accordance with Article 3(1) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Failure to comply with this will mean that the development will have been unlawfully implemented. In this instance appropriate mitigation is required to offset the development's impacts on European Protected Sites, and specifically in this case, the European protected Solent Complex (SPA, SAC and Ramsar sites), River Itchen (SAC) and New Forest National Park (SPA, SAC and Ramsar sites), in terms of both the recreational disturbance and from additional output of nutrients (nitrates and phosphates) arising from a net gain of residential accommodation.

The applicant would need to set out their proposed method of mitigation, as to how they will address the impact of the proposed development upon the European Protected Sites. The LPA would then collate this information and prepare a Habits Regulations Assessment to submit Natural England for their review.

Equalities Act:

Section 149 of the Equalities Act 2021 created the public sector equality duty. Section 149 states:

- A public authority must, in the exercise of its functions, have due regard to the need to:
 - a. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibit by or under this Act;
 - b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

When making policy decisions, the Council must take account of the equality duty and in particular any potential impact on protected groups. It is considered that this application does not raise any equality implications.

Climate Change:

In July 2019, the Council declared a Climate Change and Environmental Emergency. In doing so it agreed, among other this, to: (a) put in place measures to ensure the Council's own operations and functions achieve carbon neutrality by 2025; (b) work with partners to aim for all projects and services delivered in the Borough to achieve carbon neutrality by 2030; (c) ensure that the Council's procurement policy recognises carbon neutrality as one of its primary considerations; and (d) recognise the urgency of action to mitigate and adapt to climate change in every decision taken by the Council. This is underpinned by the Climate and Environment Emergency Strategy 2020-2030 and the supporting Climate and Environmental Emergency Action Plan – Update June 2020.

The declaration of the Climate Change and Environmental Emergency demonstrates a strong commitment from the Council to achieve net zero. The NPPF and development plan do not set this as a specific target, but it is a material consideration to be considered alongside all other material considerations. In any case addressing climate change is a core part of the NPPF and Local Plan policy. The need to support the economy is part of the Strategic Environmental Assessment for the Local Plan, as is an assessment of climate impacts.

The NPPF aims for the need for housing to be met, and Policy S2 of the Local Plan sets a target for 14,580 dwellings to be provided by 2036. The NPPF and Policies, S1, DM2, and DM3 of the Local Plan and energy and water elements of the adopted Environmentally Sustainable Development SPD require development to be sustainable in terms of resource use, climate change and energy use. When considering the impact of climate change, the proposed development is expected to be resilient to the potential effects of climate change and is expected to limit impacts on climate emissions as a result of the development or its use.

Conclusion:

In light of the above analysis, the proposed development would comply with Class MA of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and would be lawful subject to the resolution of correct SPA mitigations prior to the implementation of the development.

Recommendation:

**PRIOR APPROVAL REQUIRED
& GRANTED ☒**

REFUSE ☐