

DELEGATED OFFICER REPORT

Application Ref: PN/23/94742

Site Address: Foxcotte, Portsmouth Road, Bursledon, Southampton, SO31 8EP

Case Officer: Summer Sharpe

Description: Prior approval under Part 3 Class M for change of use from hot food takeaway into a ground floor 2-bedroom flat (use Class C3), including external alterations.

Particular Site Constraints?	Yes ☒	No ☐
- Within urban edge - Solent Mitigation & Disturbance Zone - Surface water flooding (to the south along Portsmouth Road)		

Planning History?	Yes ☒	No ☐
Application no.	Proposal	Decision
F/05/55817	Construction of 2 storey side extension to provide 1 retail unit at ground floor with 1st floor flat, removal of bay window & creation of new shop frontage. Change of use of existing residential room to new retail unit & alteration to & raising of roof with rear dormer windows to provide additional residential accommodation & new hard standing to front	Withdrawn (January 2006)
F/06/56679	Change of use of ground floor from residential to A5 (hot food takeaway), construction of new shop front & raising of roof with rear dormer windows	Permitted (June 2006)
X/10/67974	Variation to condition 4 of planning permission F/06/56679 to enable Saturday trading between 09.00 & 23.00hrs	Permitted (November 2010)
F/13/73156	Erection of 1no. shop (A1) & 1no. 1 bed flat above, following demolition of existing shop	Withdrawn (October 2013)
F/17/80349	Erection of 1no. 3 bed detached dwelling to rear	Permitted (July 2017)
DC/17/81153	Discharge of conditions 3, 4, 7, 8, 9 & 10 of planning permission F/17/80349 for the erection of 1no. three bed detached dwelling.	Discharged (November 2017)
F/18/82950	Construction of 1no. 3 bed detached house (revision of planning permission F/17/80349 involving alterations to roof to allow conversion into habitable accommodation).	Permitted (June 2018)

Publicity:	Letters ☒	Site Notice ☐	Newspaper ☐
Representations:	None received.		
Parish Council:	None received.		
Hampshire Highways:	No objection from a highway perspective. Whilst trip rates to the site will reduce, along with potential customer parking requirements, it may be prudent for the Case Officer to request details of where it is anticipated the future residents will park (in accordance with the EBC Parking Standards). Whilst it is unlikely that obstructive parking on the highway will result due to localised parking restrictions, there could be a loss of amenity for existing residents due to the longer stay nature of residential parking, and this should be considered given the historical parking issues in Lowford.		

EBC Environmental Health:	Although there is adverse noise from road traffic on Portsmouth Road and public use of pavement environs, we realise these are not grounds for refusal or enforcing sound insulation in planning for this change of class use. But housing colleagues may have some concern and we recommend they are consulted on the indoor environmental quality this application would deliver for a dwelling. There is the car wash on the other side of the road and for this we could ask for a noise impact assessment, but our concern is for the overall noise level during the daytime and at night. From our perspective, please ask the applicant to include for the following in its design and construction and an alternative means of ventilation to opening windows. Windows can be opening, but if the occupants' preference is for a quieter bedroom, this will help. For street fronting dwellings like these, we advocate a mechanical system drawing air from a less polluted side of the building, such as the rear. <i>"Prior to commencement of the development, a noise assessment shall be submitted to the Council for approval of external noise levels and details of the sound insulation of the building envelope, orientation of habitable rooms away from major noise sources and of acoustically attenuated mechanical ventilation as necessary to achieve internal room- and (if provided) external amenity noise standards in accordance with the criteria of BS8233:2014".</i>
EBC Contaminated Land:	None received.
HCC Flooding & Water Management:	As this application relates to a site which is a residential application less than 0.5 hectare in size and fewer than 10 dwellings, we would consider this as a minor application and outside of our remit.

Policy:

Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

As per the Conditions of M.2, the following matters are to be assessed: transport, land contamination, flood risk, whether it is undesirable for the building to change to a use falling with class C3 (dwellinghouse), the design or external appearance of the building and the provision of natural light. 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), DM14 (Parking), DM22 (Changes of use in retail frontages in Eastleigh town centre, district centres, local centres and neighbourhood parades), DM23 (residential development within urban areas), and DM30 (internal space standards).

National Planning Policy Framework (2021)

Nationally Described Space Standards (2015)

Supplementary Planning Documents:

Quality Places, and Trees and Development.

Site Visit

Yes ☒

No ☐

23 March 2023.

Assessment:

Site & Surroundings

The application site comprises a two-storey building located to the north of Portsmouth Road and the east of The Common. The site is set back from the road by hard standing. The building has a two-storey element to the west (separate and in use as an estate agents) and single storey element to the east (also separate and appears to be in use as a photography studio). The building, as a whole, is finished in facing brick work with white fenestration.

The site and immediate surroundings fall within the Lowford Village Centre. Along Portsmouth Road there are a variety of different uses comprising; Bursledon Community Centre, estate agents, car wash, local food store, takeaways, barbers, and dog grooming. The wider surroundings comprise residential.

Proposal

The application proposes the change of use from hot food takeaway to dwellinghouse (use class C3) under the prior approval process set out within Schedule 2, Part 3, Class M, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Assessment Against Schedule 2, Part 3, Class M of the GPDO:

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

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

Criteria	Assessment
(a) the building was not used for one of the uses referred to in Class M(a): (i) on 20 March 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use	The use of the building as a hot food takeaway was permitted in 2006. A variation of condition application to increase operating hours, on Saturdays, was permitted in 2010. From a site visit it was noted that there was signage relating to a hot food takeaway (specifically fish & chips), however the site did appear to be vacant. It would, however, be concluded that the site was last in use as a hot food takeaway.
(c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres	The cumulative floor space of the existing building changing use is 53m ² .
(d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M	The cumulative floor space of the existing building changing use is 53m ² , there is no other development which has sought or is seeking to change use under Class M.
(e) the development would result in the external dimensions of the building	The application proposes external alterations (which solely relate to the

extending beyond the external dimensions of the existing building at any given point	fenestration). The proposals would not increase/ alter the footprint of the existing unit.
(f) the development consists of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order)	The application does not propose any form of demolition.
(g) the building is: (i) on article 2(3) land (ii) in a site of special scientific interest (iii) in a safety hazard area (iv) in a military explosives storage area (v) a listed building, or (vi) a scheduled monument	The building is not located on article 2(3) land, nor within a site of special scientific interest, a safety hazard area, a military explosives storage area, is not a listed building, nor a scheduled monument.

Conditions M.2:

Development under Class M 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 and highways impacts of the development
- (b) Contamination risks in relation to the building
- (c) Flooding risks in relation to the building
- (d) Whether it is undesirable for the building to change a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use:
 - (i) on adequate provision of services of the sort that may be provided by a building falling within article 3(6)(c) (laundrette) of the Use Classes Order, but only where there is a reasonable prospect of the building being used to provide such services
- (e) The design or external appearance of the building
- (f) The proposed of adequate natural light in all habitable rooms of the dwellinghouses

(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. Whilst they have raised no objection, they have noted some historic parking issues within Lowford, as well as noting that it is for the Borough Council to assess the amount of parking provisions. The Council's Residential Parking Standards SPD sets out for a dwelling of this size 2no. parking provisions would be required. However, the SPD also goes on to note that within more sustainable places, the parking standards can be reviewed/ reduced. In this instance, given the sustainable local centre location of the site, with 2no. bus stops within the immediate vicinity, the LPA could reduce the parking provision requirements to 1.

Within the 'Covering Letter – Proposed Conversion' it states that parking provisions are proposed to be either along 'The Common Road' or in the 'Community car park'. The

Common is a narrow access track which provides vehicular access for a number of dwellings and facilitates several driveways. As a result, there are dropped kerbs, in addition to the narrow nature of the road, which limits the availability of on street parking. The Lowford Centre Car Park has a maximum stay limit of 4 hours thus is not intended for long stay parking.

Ultimately, the only location where vehicles could park unrestrictedly would be The Common. Whilst this is not a desirable location, it would provide the opportunity to park a vehicle for a long period of time, thus would not warrant reason for refusal.

(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 of impact upon public health or other unacceptable environmental impacts; including land contamination.

No comments have been received from the Council's Contaminated Land Officer; however, the proposals do not include the breaking of ground. As such, and as long as this remains the case the Council's Contaminated Land Officer is unlikely to raise any significant concerns.

(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 Portsmouth Road, to the immediate south of the site, falls within an area subject to surface water flooding, however, the application site itself does not fall within a flood risk area, and therefore the concern relating to flood risk is limited.

(d) Whether it is undesirable for the building to change a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use

The application site falls within the 'Lowford Village Centre' which is defined as a 'Local Centre' protected by Policy DM22 of the Local Plan. This Policy sets out (1) that within the ground floor of the core shopping zone, primary and secondary shopping frontages of (in this specific instance) 'local centres' *a change of use or redevelopment involving the loss of Class E use, community or leisure/ cultural uses under Classes E and F; or sui generis uses including pubs, drinking establishments and hot food takeaways; must demonstrate that; (a) the new use retains an active ground floor frontage, (b) it does not adversely affect amenity of an area of the appearance of the frontage, and (c) does not have a negative impact on the provision of services or on the sustainability of a key shopping area.* Section 3 goes on to note that *changes of use or redevelopment to residential will not be permitted within the defined shopping frontages/ centres other than in upper floors.* As such, Policy DM22 clearly sets out that the loss of this commercial unit would be undesirable.

Further, within the Bursledon Parish Section of the Local Plan, context and key issues are set out. Part of the supporting text includes the following description: *The Lowford Centre was completed in 2015, collocating a GP surgery, a parish run library, parish Council offices and community facilities run by the Bursledon and District Community Association, as well as increased parking to support the local centre. Education facilities are adequate to meet local needs and the primary schools are understood to be operating at capacity. The settlement has village halls and other meeting places.* This sets out that Lowford Village Centre functions well and has a variety of amenities to serve local residents.

The history of the site is noted, whereby planning application “F/06/56679” permitted the change of use from residential to a hot food takeaway (former use Class A5, now categorised as sui generis). It should be noted that the application site fell within the Lowford Village Centre, as identified within the previous Local Plan (Eastleigh Borough Local Plan Review (2001 – 2011)). There were a couple of Policies relevant to this decision: Policy 133.TC of the former Local Plan sought to ensure that development of the centres were appropriate, laying out specific criteria for development to meet, some of which includes; *not undermining the commercial coherence of existing centre, provides a continuous visible retail frontage, avoids creating blank frontages, shows that all storeys are designed for active use such as housing or office use, enhances and adds vitality to the centre, by providing a varied and interesting design and forms to Policy 59.BE and enhances community safety.* In addition to this, Policy 139.TC set out that: *Proposals for the development of or change of use of the ground floor of premises from A1 to A2, A3, A4 and A5 use, will be permitted in the local parades/ village centres identified on the proposals map provided that no more than 35% of the total shopping frontage length of the centre would be given over to non-A1 retail uses as a result.*

Whilst it is acknowledged that the application site was formerly residential (pre-2006) it's change of use, to hot food takeaway, was fully supported within the previous Local Plan, complying with relevant Policies and was considered to enhance the vitality of the Lowford Village Centre. It's change of use back to residential is, however, not supported and would be contrary to Policy. Furthermore, no supporting information has been provided to support the loss of this unit as a hot food takeaway and its conversion to residential. Therefore, there is a lack of evidence to demonstrate that the proposals would not result in an adverse impact upon the vitality and viability of the Lowford Village Centre.

In addition to the above, concern has been expressed by the Council's Environmental Health Officer (EHO) with regard to noise. It is noted that residential properties are more noise sensitive, therefore, the introduction of a residential unit within a busy local centre would raise concern, with immediate noise generating neighbouring uses comprising; estate agents, car wash, local food store, takeaways, barbers, and dog grooming. The introduction of residential, in this instance could therefore undermine the local business centre and could result in future complaints, which would be contrary to Paragraphs 185(a) and 187 of the NPPF. However, it is acknowledged that this Class of the GPDO does not set out considerations for the impact upon future occupiers, or the impact upon existing neighbouring amenities. Whilst these are not formally considered as part of this assessment, the LPA would raise this as a concern, that should future occupiers of the proposals complain to the Council regarding noise, this would have an adverse impact upon the nearby commercial units and ultimately the vitality and viability of the Lowford Village Centre and would also be contrary to Paragraph 187 of the NPPF.

The LPA would also note that the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 sought to reclassify uses, meaning that hot food takeaways (formerly Class A5) were recategorized as 'sui generis'. It is noted that planning permission would be required to change the use of a sui generis unit, however, the LPA would advise that they would generally be supportive of retaining local amenities and uses more compatible/ complimentary to the local area, in accordance with Policy DM22.

Ultimately, as a result of the lack of information provided, it has not been demonstrated that the proposals would not result in an adverse impact upon the vitality and viability of Lowford Village Centre. This would therefore be contrary to Policy DM22, thus would result in reason for refusal.

(e) The design or external appearance of the building

On the southern elevation, the application proposes the removal of the existing signage, and alteration of fenestration. The glazed expanse would be similar in terms of its size but

would have some part of the windows blanked out (at the bottom) and would have 2no. top hung elements which appear to be openable. To the eastern elevation there would be the introduction of 1no. windows and to the northern elevation the existing window would be replaced with obscure glazing. The proposed fenestration alterations are considered minimal and would therefore not have a significant impact upon the design or external appearance of the building.

Further to fenestration alterations, the application proposes the addition of cycle storage outbuilding. This would have a footprint of approx. 1.3m by 2.3m with a maximum height of approx. 1.5m. This would be situated within the north-eastern corner of the plot. Due to the size and siting, the proposals are not considered to have an adverse impact upon the design of external appearance of the building.

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

From the submitted floor plans, the layout does not appear particularly well considered. The 2no. bedrooms would be fronting the main road and the living space would be tucked behind. As a result, the bedrooms would be served by the existing 'shop frontage' comprising large glazing panels. Whilst the fenestration would be slightly altered, the size would remain similar, therefore affording adequate nature light to both bedrooms.

The application proposes the installation of 1no. window on the eastern elevation to serve the kitchen/ dining/ lounge area. This would be the only window serving this shared space; therefore, concern would be raised as to whether this could afford 'adequate' natural light. It is also noted there is an adjoining single storey element to the eastern elevation of the application site, and further east is a separate building. From the proposed window to the neighbouring site there is a distance of approx. 5.5m. Given the location of the window, separation distance and height of neighbouring unit, it is not considered that adequate natural light would be afforded to the kitchen/ dining/ lounge area. The proposals would therefore be contrary to paragraph (f) and Policy DM1 of the Local Plan.

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. 2no. bedroom dwelling which would have a floor space of 53 metres squared. The proposed unit would not meet the standards (61-70 metres squared) set out within paragraph 9A and would therefore not meet the size requirement for a 2no. bedroom 3no. person unit (as set out within the National Described Space Standards). (Whilst it is noted that the bedrooms would exceed single occupancy (7.5 meters squared), they would not meet 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 would be 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), and New Forest National Park (SPA, SAC and Ramsar sites), in terms of both the recreational disturbance and from additional output of nutrients (nitrates) arising from a net gain of residential accommodation.

In this instance, the proposals are not considered to be acceptable, and would therefore be recommended for refusal. Whilst acknowledging that the proposed development would have an adverse impact upon the European Protected Solent Complex (SPA, SAC and

Ramsar sites) and New Forest National Park (SPA, SAC and Ramsar sites), this would not form a reason for refusal, as these mitigations are secured via the GPDO.

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 prohibited 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 things, 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:

Reasons for Refusal:

- 1) Insufficient evidence has been provided to demonstrate that the proposals would not result in an adverse impact upon the vitality and viability of the Lowford Village Centre. The proposals are therefore contrary to Policies DM1 and DM22 of the Eastleigh Borough Local Plan (2016-2036) and the aims and objectives of the National Planning Policy Framework (2021).

- 2) The proposed window on the eastern elevation would fail to provide adequate light to a habitable room. The proposal would, therefore, fail to provide an appropriate standard of living environment for future occupiers contrary Policy DM1 of the Eastleigh Borough Local Plan (2016-2036) and the aims and objectives of the National Planning Policy Framework (2021).
- 3) The proposed change of use from hot food takeaway to dwellinghouse fails to provide an appropriate standard of internal living accommodation for future occupiers as required by the Town and Country Planning (General Permitted Development) Order 2015 (as amended), contrary to Policy DM30 of the Eastleigh Borough Local Plan (2016-2036), the Nationally Described Space Standards (2015) and the provisions of the NPPF (2021).

Recommendation:

**PRIOR APPROVAL REQUIRED
& GRANTED** ☐

REFUSE ☒