

DELEGATED OFFICER REPORT

Application Ref: PN/23/95955

Site Address: 2 LEIGH ROAD, EASTLEIGH, SO50 9FH

Case Officer: Rachael Morris

Description: Prior Notification: Conversion of Class E units to 5.no 1-bedroom flats and 1.no 2-bedroom flats (Class C3) with the retention of Class E units to the ground floor frontage and first floor rear. Removal of portacabin at rear and erection of refuse/cycle storage.

Particular Site Constraints?	Yes ☒	No ☐
- Existing employment - Eastleigh Town, District and Local Centres and Neighbourhood Parades - Upper Market Street Block - Within the urban edge		

Planning History?	Yes ☒	No ☐
- Z/86023/000/00 - Front door position and front full length window position reversed – Permit – Nov 1976 - A/08602/004/00 - Illuminated projecting box sign – Consent - Jan 1977 - Z/08602/005/00 - Portakabin type building for storage – Permit – Nov 1983 - Z/08602/006/00 - Conversion to Offices, Installation of Shop Front – Permit – Jul 1986 - Z/08602/007/00 - Continued Siting of Temporary Offices – Temporarily approve – Aug 1986 - Z/08602/008/00 - Outline: Four Storey Rear Extension to Offices – Refuse – Nov 1986 - Z/08602/009/00 - Change of Use of Ground Floor from Offices to Retail – Refuse – Feb 1987 - A/08602/012/00 - Display of Illuminated Fascia Sign – Consent – Jul 1987 - A/08602/013/00 - Display of Illuminated Projecting Sign – Consent – Sep 1987 - A/08602/014/00 - Renewal of permission to provide temporary office accommodation – Permit – Jan 1989 - Z/08602/014/00 - Renewal of Temporary Permission for Office Accommodation – Temporarily approve – Jan 1989 - Z/08602/015/00 - Insertion of Windows – Permit – May 1990 - Z/08602/010/00 - Outline: Three Storey Rear Extension to Existing Offices – Grant outline – May 1992 - A/08602/017/00 - Display of Poster Hoarding 2.4 Metres By 1.9 Metres On East Elevation – Consent – Feb 1998		

Publicity:	Letters ☒	Site Notice ☐	Newspaper ☐
Representations:	None		
Parish Council:	No Comment		
Environmental Health:	With respect to the proposed amended layout and updated noise report, Noise Assessment by Hawkins Environmental ref: H3883 – NV – v3, dated 7/12/2023. We note that the proposed amended layout has moved the ground, first and second floor bedrooms that were on the east side of the building adjacent to the public house away from that facade, and replaced them with living rooms, kitchens etc. This moves the most sensitive rooms further away from the noisiest side of the property. Internal layout is still not optimal with bedrooms next to main entrance and stairwell, and bedroom over the Class E use and bathroom over		

	bedroom. We should also bear in mind that living rooms are also noise sensitive rooms. Whilst the layout is an improvement important matters raised in our previous comment have not been addressed: • The assessment of noise from the adjacent public house does not satisfactorily assess the range of permitted activities • No detailed assessment of noise impact within the property between the retained Class E and residential use is included • In assessing noise from the public house the daytime or evening average noise level has been used, this is a lower level of noise than that measured throughout most of the evening period and of more relevance in assessing the noise impacts from the public house in our view. • The assessment of noise impact from the commercial uses to the north of the site is not sufficiently detailed. • Some aspects of the proposed acoustic mitigation have not been provided in detail to demonstrate that satisfactory internal noise standards will be met. • Reference is made to the need to provide ventilation as opening windows will lead to excessive internal noise levels, however this is not clearly defined, e.g. specific details of how this will be achieved in practice, operational noise levels, and the specification for ventilation flow rates etc. Not an acoustic matter directly, but relevant to the siting of air inlets as required by the need for mechanical ventilation, but given the location of the development site adjacent to an Air Quality Management Area and other commercial uses which produce odours (kitchen extracts), no consideration of where air inlets for ventilation should be located has been included, so as to ensure satisfactory internal conditions. Unfortunately, therefore for the reasons above we are of the view that the applicant has not demonstrated that satisfactory internal noise standards will be met, nor that the agent of change principle has been demonstrated to be complied with.
Planning Policy:	Whilst not forming part of the conditions that apply for assessing the proposal against, the site is covered by criteria 1.a.ii. in Policy E3, Eastleigh town centre. This supports the redevelopment of this block to the east of Upper Market Street whereby retail use on the lower and ground floor and residential uses on upper floors along with a number of other noted uses will be acceptable. It is observed that the retail use is proposed to be somewhat reduced to what appears to be either two very small units (which could raise questions on their likely viability being under 30sq.m each) or one small unit in terms of the available floorspace. It is also observed that the ground floor frontage onto Leigh Road would be retained, which along with the proposed flats on the first and second floors, will help to maintain the vitality and viability of Eastleigh town centre. It is also noted that each of the proposed flats will meet the national space standards in accordance with Policy DM30, Internal space standards for new residential development. One of the most important conditions for consideration which applies to this proposal is the provision of adequate natural light in all habitable rooms for the proposed flats. Criteria 1.a.i in Policy DM1, General criteria for new development is relevant with regards to the existing windows and whether there will be adequate outlook, daylight

	and natural ventilation provided in each of the habitable rooms. This should provide a good degree of residential amenity for the future occupants.
Southampton Airport:	No objection. Given the nature of the proposed development it is possible that a crane may be required during its construction. We would, therefore, draw the applicant's attention to the requirement within CAP 1096 the Guidance to crane users on the crane notification process and obstacle lighting and marking.

Site Visit:	Yes ☒	No ☐
Details: 12/10/2023		

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:

National Planning Policy Framework Planning Practice Guidance

Development Plan:

The Eastleigh Borough Local Plan 2016-2036 The most relevant policies are Strategic policies S1 and S2; and Development Management policies E3, DM2, DM3, DM6, DM8, DM11, DM13, DM14, DM15 and DM22.

Supplementary Planning Documents:

Quality Places; Residential Parking Standards; Character Area Appraisals.

Assessment:

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:

<u>Criteria</u>	<u>Assessment</u>
(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 applicant has confirmed that the office has been vacant 3 months.
(b) unless the use of the building fell within one or more of the classes specified in sub-	Sub-paragraph (2)(a) sets out following classes of the Use Classes Order: (i) Class A1 (shops) (ii) Class A2 (financial and professional

paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval	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 was used as a 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 approx. 290 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 (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	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.
(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	The proposed development does not fall within Class O of this Part (offices to dwellinghouse). The use of the space is currently within Class E.

(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.	
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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.

The site is located in a town centre and is well served by Eastleigh Bus Station, Eastleigh Train Station and local facilities. Cycle storage is also being provided. In a central location, the use for private motor vehicle would not be required.

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.

The proposals within this application do not include the breaking of ground.

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.

The concern relating to flood risk is limited as the current built form will not change.

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

Policy DM1 of the 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.

Policy DM8 of the Eastleigh Borough Local Plan (2016-2036) states that development will not be permitted if it is likely to cause loss of amenity or impact on public health or other unacceptable environmental impacts through: air pollution (including odours or particulate emissions); noise or vibration.

Whilst the scheme was amended to reduce the number of units from 7.no to 6.no through the addition of 1.no 2-bedroom unit, which helps to move most sensitive rooms further from the noisiest side of the property, this still does not provide an optimum layout in the context of the whole building.

Moreover, other concerns raised by the council's Environmental Health have not been addressed. This includes the potential for noise coming from the public house and their potential activities; the impact between the retained Class E unit and the residential use; a lack of assessment to the commercial activities to the north of the site; lack of information to show internal noise standards will be met; and no detail about how ventilation will be achieved in practice with specification for ventilation flow rates.

Therefore, it cannot be concluded that the impact of noise from commercial premises would have an acceptable impact to residential amenity and as such, potential harm could be caused through this proposed conversion. This is not in accordance with policies DM1 or DM8 of the Local Plan.

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 not result in a loss of a nursery or health centre.

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 7.no 1-bedroom flats all below 7 storeys/18m in height 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 6.no 1-bedroom flats which would have all have a floor space of between 37-49 metres squared and 1.no 2-bedroom flat with a floor space of 85 metres squared. The proposed 1-bedroom units would need to be between 37-50 metres squared and the 2-bedroom units would need to be 61-70 metres squared for a single-storey dwelling (as set out within the National Described Space Standards).

The proposed units meet the minimum standards required but the 1-bedroom units only meet this for a single occupancy and not for two people. However, occupancy levels cannot be controlled through a planning condition. Nonetheless, the proposed units do meet minimum space standards and so is acceptable.

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.

Paragraph W

The application procedure has been followed in accordance with paragraph W.

No site notice was displayed as all adjoining neighbours were consulted, in accordance with paragraph W.(8).

Climate Change and Equalities 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, development plan and adopted local plan policy 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 adopted 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, 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 reduce/limit impacts on climate emissions as a result of the development or its use.

Equalities Implications:

Section 149 of the Equalities Act 2010 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

Conclusion:

Recommendation:	PRIOR APPROVAL GRANTED	PRIOR APPROVAL REFUSED
	☐	☒
• Insufficient information has been provided to demonstrate that the proposals would not have an adverse impact upon on the living conditions within the proposed		

residential flats and as such is contrary to Policies DM1 & DM8 from the Eastleigh Borough Local Plan (2016-2036)