

DELEGATED OFFICER REPORT:**Application Ref:** PN/24/97070**Site Address:** 10-12 BOTLEY ROAD, HEDGE END, SOUTHAMPTON, SO30 2HE**Case Officer:** Clare Martin**Description:** Prior Notification Application Under Class MA for the change of use from offices to 3no. dwellings

Particular Site Constraints?	Yes ☒	No ☐
• Within Urban Edge • Within Existing Employment Site		

Planning History?	Yes ☒	No ☐
<u>10 Botley Road</u> • Z/19077/3 – Change of use to office/ showroom – Permitted (July 1981) <u>12 Botley Road</u> • Z/39738 - Change of use from B1 Offices to Taxi Office (Sui Generis) – Permitted (April 2003).		

Publicity:	Letters ☒	Site Notice ☒	Newspaper ☐
Representations:	<u>Two letters of objection</u> • Site is within an industrialised area and it should remain as a commercial property and not be made into housing. • Three business operate from 14-16 Botley Road, (7 days a week, during the day and night). In the summer months the workshop doors are open and the machines and air tools make loud noises adversely affecting residents. • Deliveries and collections for nearby businesses occur from early morning till late evenings and weekends. • Hazardous materials are stored on site (including paint thinners, waste oils, and compressed cylinders containing Argon gas and acetylene). These substances will adversely affect people living in the proposed residential conversion. • There's limited on street parking which is used by many people who work in the area. • The change of use would pose a road safety risk for new residents. • Security of neighbouring premises. <u>One letter of support</u> • I have lived at 10 Botley Road for over 10 years and I have never had problems with noise from the surrounding businesses, (including when the car sales was below me). There have also not been problems with parking, especially now the car sales has left.		
Environmental Health (commercial noise):	Original Consultation Response (1/5/24) I am not convinced that residential development in this location could avoid an adverse impact arising from industrial/commercial noise in this location. I have seen the Dice Environmental Acoustics report 101225 version 2 dated 8/2/24 and will comment upon this as relevant.		

The site appears to be surrounded by a range of industrial and commercial sites. These include current activities likely to generate industrial or commercial noise best avoided in a residential setting. These appear to include car repair activity, hot food takeaway and associated plant noise. It is not known what the current operational times or periods of activity are although the acoustic assessment assumes daytime activity only. My first general observation is that this area looks to have a range of historical industrial activity, which may have limited extant controls over the generation of offensive noise. I would recommend therefore, that the planning history of the adjacent sites is reviewed to establish whether adjacent sites could (if not already) become occupied by industrial uses incompatible with residential use (e.g. B1 , B8 use) and whether any extant consents contain measures such that future noise impacts could be controlled (for example limitations on the hours of operation). Should such controls not be in place, I would consider the risk to amenity of future residents from industrial and commercial noise to be significant and a strong indicator that residential use should not be permitted in this location.

Considering next the impact of current activities on site, the submitted report relies upon a limited attended acoustic survey of industrial/commercial noise sources. See Section 3.3 that describes 1 hour on the 11/1/24. The assessment process is not fully reported as required in Section 12 of the Standard and as such it is difficult to comment upon the methodology. You should seek full reporting if the application is to progress. The assessment conclusions are that industrial/commercial noise results in a rating level of 53dBA; this 5 dBA in excess of the stated background level (underlying noise level in the absence of industrial / commercial noise). This indicative of an adverse impact dependant upon context. The consultant then applies his contextual analysis advising curiously, that the acoustic conditions fall 'within the range for comfort and enjoyment' assumed to mean there is no adverse impact for two reasons:

- 1.The site is dominated by traffic noise
2. The average noise levels within external amenity space would be less than 50dBA a standard referenced in BS8233.

I do not accept this contextual assessment. There is no precedence for this type of contextual assessment within BS4142. Most urban areas are dominated by traffic noise; this is not a reason to downgrade consideration of the impact of industrial/commercial noise. The purpose of a BS4142 assessment is to consider whether the more incongruent industrial/commercial noise is sufficiently noticeable during lulls in traffic to impact the amenity of residential uses. This is the reason that the standard uses a relative criterion to reflect the character of the noise set against the quiet parts of the underlying noise. The reference to '50dBA' in BS8233 is also inappropriate for many reasons. However, in brief this standard is more typically applied to transportation noise without specific character. It is also intended to apply to overall noise levels (including transportation noise). Consideration of transport noise is not appropriate for a PN application. Considering of only part of the noise climate (the industrial/commercial element) against this standard is also inappropriate in my view.

Following up response by Environmental Health (5/7/24)

Changes in industrial activity

I am highly sceptical that the consultant's generalised view that, 'any future potential change of use, or reverting back to prior uses would not be outside the realms of what already exists in terms of use, and of noise and as such, no future impact should need to be considered is justified. In my experience, lawful changes in occupation and activity within extant B1 and B8 consents can indeed significantly change the character, magnitude, frequency and extent of noise impacts.

Existing pattern of residential use as a contextual consideration under BS4142

I do not consider the presence or absence of residential uses in this location to be a relevant contextual consideration using BS4142:2019 methodology. The purpose of the method is to (Para 1.1 of the standard), 'assess the likely effects of sound on people who might be inside or outside a dwelling or premises used for residential purposes'. The presence of other residential uses near or far, that may be similar impacted or not impacted at all is irrelevant for this purpose.

Methodology

This is still not reported adequately. I previously referenced the requirements of the standard. It is particularly problematic that these parts of the standard have not been reported (my emphasis):

'12 (l) Measured sound level(s):

- 1) residual sound level(s) and method of determination;
- 2) ambient sound level(s) and method of determination;
- 3) specific sound level(s) and method of determination;
- 4) justification of methods; and
- 5) details of any corrections applied.

m) Background sound level(s) and measurement time interval(s) and in the case of measurements taken at an equivalent location, the reasons for presuming it to be equivalent.'

The main concerns here are how the specific sound level has been calculated, when (excepting the 1 hour survey now described as relating to fixed plant sound from the takeaway only) the assessment appears to consist of unattended measurements? What specific industrial/commercial activities and sounds are likely to occur?; Did they occur during the assessment period?; what types of sound were discernible?; what was their source?; how typical was this activity?; how variable was the industrial / commercial activity?; how was residual sound calculated?; how was the specific sound calculated? Also, in respect of the assessment of background sound levels a single daytime figure only is stated described to be 'based' upon modal values. How exactly has this been determined and what does the distribution of background measurements across time look like? Also how has background sound been measured absent the interference from industrial / commercial noise sources?; to what extent does the background sound level vary throughout the week and daytime period (07:00 hours to 23:00 hours) and how might that relate to periods of foreseeable activity in the commercial units? Based upon this pattern, is there a case for assessments based upon different time periods for example?

Context

The consultant re-iterates their view I think, that contextually the sound climate in this location is already high by virtue of the traffic

noise affecting this location. They also use BS8233 as the source of a specific criterion to apply.

So what specifically does BS4142 say about this type of contextual argument? I refer to the contextual discussion in para 11(1) of the standard. This para relates in general terms to various considerations of the whole sound climate and how this context may change the overall assessment of the impact of commercial / industrial sound (thus far in the assessment method considered as relating only to the relative difference in levels between the industrial / commercial sound in isolation – adjusted for character; and the background sound). The para sets out three conditions relating to circumstances where the residual sound is high; where the background sound levels are low; or where the residual sound is very high. Residual sound here referring to the whole sound climate absent any industrial / commercial sound. I am not sure that any of these circumstances apply here! However, if we take the consultant's comments it appears that the argument is that the residual sound is high. The standard advises in such cases (my emphasis):

'For a given difference between the rating level and the background sound level, the magnitude of the overall impact might be greater for an acoustic environment where the residual sound level is high than for an acoustic environment where the residual sound level is low.'
This would suggest that the rating level taken in isolation would underestimate rather than overestimate the impact of the industrial / commercial sound contrary to the case being put forward.

Finally with regard to the reference to the specific criterion of 50dBA; reference BS8233 para 7.7.3.2 of that standard. More typically, this criterion is used where the soundscape has no particular offending characteristics. In such cases it must apply to the whole sound environment. The consultant's report suggests in Table 4 that the measured sound level at position NMP1 was 56dBA LAeq,(18 hour); this is a position that appears to be located in the proposed garden areas close to the rear façade of the existing building. This of course described as a measured level must therefore include all sound sources; industrial/commercial and road transport and anything else that occurred during the survey period. Thus the sound climate is in excess of the BS8233 50dBA criterion quoted, rather than lower than the standard as claimed on this evidence.

However, you are not entitled to consider the transport noise element in your considerations, so I don't consider this to be a very helpful criterion to apply. BS4142 on the other hand is specifically intended for assessing sound from industrial and commercial activity.

Mitigation

The report is now contradictory in respect of recommendation for mitigation (see Section 4.7 and 5 of the report). There is a suggestion that a 2.4 meter acoustic fence could be constructed around the garden areas to reduce the impact of noise in these areas. This suggests that a 1dBA reduction of industrial / commercial noise only would be achieved within the garden areas. The methodology used to produce this assessment of benefit is not set out in the amended report and so I cannot comment upon how this figure has been obtained.

	Such a reduction if achieved; would be of marginal benefit only in the garden area. It would likely not be achieved at first floor level of the residential building providing no benefit to any accommodation at first floor level.
Environmental Health (Land Contamination)	The proposed development is located within a retail/ commercial area, with a takeaway business located immediately to the east boundary and a garage to the north and west. It is inferred from the Proposed Floor Plan (Sparshatts Group, March 2024, reference SA24.PL1) that the proposed change of use does not involve disturbance on the ground as it only includes internal alterations; however, it is not clear whether the proposed dwellings will have outside areas such as gardens which require excavations/ importation of soils. Can this be clarified? From the contaminated land perspective, if no soft landscaping areas are proposed, the proposed change of use from offices to dwellings is acceptable.
Hedge End Town Council:	<u>No Objection</u> in principle but question the suitability of housing in that location. There is a concern that changing from commercial use would reduce the potential employment opportunities.

Site Visit:	Yes ☒	No ☐
Details: Carried out 17 th April 2024		

Pre-commencement Conditions:	Yes ☐	No ☒
Details:		

Legislation:
The Town & Country Planning (General Permitted Development) (England) Order 2015 (Amendment) Part 3 of Schedule 2, Class MA grants planning permission for a change of use from Class E (commercial, business or service) to residential, subject to certain exceptions, limitations and conditions. Under this act the developer must apply to the Local Planning Authority, before starting development, to determine whether the prior approval of the authority will be required, and if so whether this is granted by the LPA. The matters to be considered under the prior approval are: 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) <i>not applicable as site is not within a conservation area;</i> f) the provision of adequate light in all habitable rooms of the dwellinghouse; g) the impact on intended occupiers of the introduction of residential use in an area of important for general or heavy industry, waste management, storage and distribution, or a mix of such uses h) <i>not applicable as current use is not a nursery or health facility</i> i) <i>not applicable as development as a fire risk condition is not required.</i>

Policy:
National Planning Policy Framework

Planning Practice Guidance

Paragraph W(10) of Schedule 2 Part 3 of the GPDO requires that in assessing this Prior Approval application, the LPA must take into account any representations made to it on the proposals by neighbours or by relevant consultees and must have regard to the NPPF where relevant to the subject matter of the Prior Approval. The NPPF re-iterates that planning law requires that applications for planning permission be determined in accordance with the development plan, and consequently those policies of the adopted Local Plans that are relevant to the subject matter of the Prior Approval are cited here and have been taken into consideration in the assessment of the application.

Development Plan:

The Eastleigh Borough Local Plan 2016-2036 The most relevant policies are Strategic policies S1 and S2; and Development Management policies DM1, DM5, DM8, DM13, DM14 and DM15.

Supplementary Planning Documents:

Quality Places; Residential Parking Standards & Character Area Appraisals.

Assessment:

Eligibility

The building is eligible for a Class MA prior notification application, as:

- The building has been granted planning permission to be used as offices, which now falls within Class E. The last use appears to have been for offices relating to the sale of cars for Sparshatts.
- The building and its curtilage is not in an SSSI, listed building, scheduled monument, in a safety hazard area, military explosives storage area, in an area of outstanding natural beauty, in a national park or within an area specified by the secretary of state.

Commercial Noise/ Industrial Area

The site is located on the edge of Hedge End retail park where it is surrounded by a mixture of commercial, industrial and warehouse uses (with a car repairs garage and hot foot takeaway in close proximity). These types of commercial/ industrial uses tend to generate a significant amount of noise and disturbance and so are usually located away from residential properties. Indeed, letters from two nearby commercial premises highlight their use of noisy machines and that their businesses run day and night throughout the week, with deliveries and collections. While it is noted that a person's perception of sound is subjective, the noisy nature of the busy environment is likely to have a materially harmful impact upon the living conditions of the new residents in this location.

An acoustic report has been included with the submission, but the report's methodology does not conform with the government noise guidance (BS4142:2019) as set out within the Environmental Health Officer's response. The report only includes 2no. one hour noise surveys taken during the day, which is not representative of the surrounding noise environment. The report suggests a 2.4m high acoustic fence is positioned around the rear gardens, but the assumed noise reduction has not been proven and this fence would not reduce sound to the first-floor bedrooms, which could be problematic when residents are trying to sleep.

In conclusion, it is considered that the commercial noise within the established commercial/ industrial area is likely to have a materially harmful impact on the amenity and living conditions of the residents of the proposed dwellings.

Furthermore, many of the nearby long standing commercial/ industrial uses have evolved with limited planning controls and their operations and the associated noise impact could

reasonably change again in the future, potentially having an even worse impact upon the residents.

Alternatively, the presence of a new sensitive residential use at the site could prevent the future expansion/ alteration of the existing businesses nearby (though statutory nuisance legislation), which could unreasonably curtail growth within the established industrial area (agent of change).

Transport Impacts

There is space on the property's frontage to provide eight on site car parking spaces, two for each dwelling. This meets the Council's residential parking standards. The spaces are accessed off a minor one-way road and the car parking provision is not considered to pose any significant transport impacts.

Contamination Risks

While there is a potential of the site being impacted by historic contamination a phase 1 contamination report is not necessary as the proposed conversion does not require major structural alterations or extensions. The existing rear yard would be retained as concreted amenity space and so would not involve ground excavations or importation of soils.

Flooding

The site is within flood zone 1 where there is a low risk of flooding. As such it is not necessary for flood protection measures to be installed at the site.

Light to habitable rooms

The building would be divided into a terrace of 3no. (two and three bed) dwellings. The dwellings have their main primary windows at the front (south facing) and rear (north facing). While the rear windows will not receive much sunlight, their main living spaces would still receive sufficient daylight over the mostly single storey warehouses behind.

Impact of SPA:

Conservation of Habitats and Species Regulations 2017:

Under Regulation 77 of the Habitat Regulations, development which would be permitted by a Development Order, and which would be likely to have a significant effect on a European site or a European off-shore marine site, (in this case, through additional nitrates loading on the waste water system) must not commence until the Local Planning Authority has given its written approval for the development and appropriate mitigation has been secured against the developments harmful impacts on the European Protected Site. The applicant is required to submit a separate Regulation 77 application to the LPA to secure this mitigation. An advisory note to this effect would have been added to the decision notice, had the application been recommended for permission.

Equalities Act:

Section 149 of the Equalities Act 2010 created the public sector equality duty.

Section 149 (1) 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, development plan and emerging 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 emerging plan policy. The need to support the economy is part of the Strategic Environmental Assessment for the Emerging 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 Adopted Local Plan sets a target for 14,580 dwellings to be provided by 2036. The NPPF, Saved, Policies S1, DM2 and DM3 of the Adopted 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.

Conclusion:

Recommendation:	GRANT CONSENT ☐	REFUSE ☒
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Comments ...
