

DELEGATED OFFICER REPORT:**Application Ref:** PN/24/97474**Site Address:** 2-4 LEIGH ROAD, EASTLEIGH, SO50 9FH**Case Officer:** Clare Martin**Description:** Prior Notification Application Under Class MA for the partial change of use from Offices to 4no. one bed and 1no. two bed flats including bin and cycle storage. Class E unit retained at the front of the ground floor.

Particular Site Constraints?	Yes ☒	No ☒
• Within Urban Edge • Within Eastleigh Town Centre • Within Existing Employment Site		

Planning History?	Yes ☒	No ☐
• Z/08602/006/00 - Conversion to Offices, Installation of Shop Front – Permitted (Jul 1986) • PN/23/95955 - 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 – Refused (Dec 2023)		

Publicity:	Letters ☒	Site Notice ☐	Newspaper ☐
Representations:	None		
Environmental Health (amenity):	<u>Site surroundings</u> The proposed residential development is located amongst a range of commercial uses both retained within the building and on adjacent sites that have the capacity to generate offensive noise. I note that a previous application PN/23/95955 was refused on the grounds that sufficient information was not provided to demonstrate that acceptable living conditions could be achieved. <u>Assessment Criteria</u> The application is supported by a Hawkins Environmental acoustic report H4128-NV v2 dated 20th May 2024 (updated since the previous planning submission dated 7th December 2023). Considerations needs to be given to both the acoustic quality of the proposed residential environment and the impact that this development could have upon neighbouring commercial uses. On the latter point, para 193 of the NPPF as it relates to the ‘agent of change’ principle is most relevant to your considerations. It advises in particular, that: ‘<i>Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.</i>’ I will advise on the various noise risks posed by this development making reference, to the submitted acoustic report. <u>Living Conditions</u> First to comment generally, you should note that the acoustic assessment submitted assumes that to provide acceptable acoustic conditions the windows to the residential uses will remain closed with ventilation provided by a mechanical ventilation		

system. You will need to consider in planning terms whether this is in principle would provide acceptable accommodation.

Low Frequency Noise from an electrical substation located 5 metres from a bedroom window

This risk is considered in Section 5.2.3 where the consultant compares expected noise levels from this source against low frequency criteria in the '*Procedure for the Assessment of Low Frequency Noise Disturbance (NANR45) (2011)*' and concludes that '*With standard double glazing that has an R_w of 33 dB, noise from the substation would be approximately 20 dB less than the criterion curve*'.

However, I am not satisfied that this conclusion has been properly considered for the following reasons:

- Figure 5.2 shows that the consultant has calculated the internal sound levels in each 1/3 octave band by simply subtracting 33dB from each band based upon his claim that standard double glazing has a sound reduction of about R_w 33dB. Account should be taken of the much lower performance of double glazing likely at low frequencies (as acknowledged for example, in Table 6.3 of the report).
- Low frequency noise within rooms will be impacted by the room acoustics (i.e the likely absorption present at the frequency of interest and the risk that eigen tones may develop dependent upon the room dimensions. In this regard it is notable that a substantial tone at 100Hz has been identified as present outside the proposed bedroom.

Fixed Plant Noise from various sources

The consultant identifies fixed plant capable of impacting amenity from the following sources:

- Black Horse House (West)
- Barclay House (North)
- Travel Lodge/British Heart Foundation (North-East)
- Wagon Work Public House (East)

Qualitative comments in the report suggest that plant noise is at times a dominant feature at the development site. For example, in Section 4.2, the consultant advises that '*between midday and midnight, noise on the eastern façade facing the public house becomes dominant with noise from patrons within the beer garden in addition to some plant noise as a result of a number of items of plant situated on the rooftop of the public house building*'. In Section 5.2.1 further comment is made; '*Noise to the rear of the proposed development site may be generally characterised by low level steady plant noise, with frequent masking from road traffic noise emanating from Leigh Road and Upper Market Street, in addition to rail and aircraft noise.*'

The report in part assesses plant noise using the BS4142 methodology. This is a *relative* standard, whereby the significance of commercial type noise is assessed by comparison of its level (and character) with that of the underlying background sound levels in the absence of the noise source of concern. However, I have a number of concerns regarding the approach taken in the report:

- Given that plant noise is described as apparent at the rear and side of the premises, it is not clear how representative

background sound levels have been obtained in the absence of influence from the various existing plant noise that is being assessed. Measurements in these locations cannot be used to determine the background sound level unless there are periods of time during which the plant was not operational. Measurements at the front façade may be affected by a higher residual sound level than would be present at the rear of the premises in the absence of plant noise. The Standard advises in para 8.1.2 that in such cases, an alternative location may need to be chosen with a similar residual sound level.

- Each separate premises housing fixed plant is assessed separately. However, the plant noise experienced at the development site will be a combined consequence of sources from all commercial plant noise sources. Since in this case we are considering the impact of all such existing commercial plant, the assessment should have considered a sound rating based upon all sources.

The individual premises sources are calculated as follows:

Source	Specific Sound Level	Character adjustments	Comment
Black Horse House (West)	47dBA	+5dB tonal; intermittency	Plant not operational – calculated from plant details
Barclays House (North)	39dBA	+5dB – as above	Based upon a qualitative assessment
Travel Lodge/British Heart Foundation (North-East)	25.9dBA	None	
Wagon Work Public House (East)	Not assessed	Not assessed	Described as more prominent after midnight and until 06:00 hours

With the exception of the public house plant that is not assessed at all; the combined specific sound levels will likely be only marginally higher than that listed for the Black Horse House. However, the public house plant may change this picture.

- Assessment has only been carried out for the daytime period. A night time assessment should be carried out unless it is clear that plant does not operate at night at all.
- Given that that the plant is considered tonal; why has no consideration been given to the performance of the proposed glazing at the frequencies of interest? Could for example, a poor choice of glazing based upon Rw performance only, exacerbate the tonal qualities of the source sounds within the rooms. This is particularly relevant here as the design relies upon windows remaining closed which will alter the spectrum of sound present within the rooms; emphasizing some frequencies relative to others.

Commercial Delivery and Refuge collection

These are acknowledged as risks in the report but the activities; times of such activities on this site; frequency of occurrence are not assessed. It is not clear for example, whether such activity typically occurs at night; how often it occurs or the types of noise generated.

Customer Noise

The consultant advises in Section 5.2.9 that patron noise associated with the public house (the garden area adjacent to the development in particular) *'could involve shouting, noisy behaviour, and continuous general conversations among patrons. This noise is typically noticeable between midday and midnight'*. They also advise; *'It's worth noting that as the day progresses, patrons in the rear garden tend to become louder. The one hour period between 11pm and midnight, as shown in Appendix 3 and just before the establishment's closure, sees the highest noise levels during the operating hours of the pub'*. The impact of this noise is not assessed in any quantitative way. The consultant simply concludes that; *'Since there are no bedrooms situated on the façade closest to the pub, it is considered that the layout of the proposed development considers noise from the public house and ensures that its impact is minimised. Additionally, with mechanical ventilation and standard double glazing, suitable internal ambient noise levels would still be achieved'*. It appears to be the case that windows on the Eastern flank are to be blocked up. However, windows to the rear elevation are not shielded entirely from the pub garden.

This is an insufficient assessment. Noise from patrons will diffract around the existing building mass and be reflected from the various hard surfaces in the vicinity. The consultant makes no suggestion as to what they consider *'suitable internal ambient noise levels'* to be. I suspect he is referencing BS8233 standards more appropriate for transportation noise sources. However, patron noise is much more objectionable to residents if it occurs regularly because of the irregular nature of the sound source and the information that it relays. To provide suitable accommodation, patron noise should not be intelligible or indeed routinely apparent within the habitable rooms every Friday or Saturday night. What assurance can be given that this would not be the case? The sound level typically produced by such activity; and in respect of the building design, the performance of the structure (primarily determined by the glazing) at the relevant frequencies and the relationship of predicted internal sound levels from such sources to masking noise produced by the mechanical ventilation system are all relevant considerations in a complex design consideration such as this. No objective assessment or design process has been carried out to demonstrate that acceptable living conditions are possible in these flats. All one can gather from the report is that standard double glazed is would be installed in habitable rooms, with mechanical ventilation to prevent the need to open windows and this is subjectively judged to be acceptable in some way.

Music Noise

The consultant comments in Section 5.3.1 that Weatherspoon public houses do not typically provide music.

However, the Licensing public register shows a current premises licence permitting the carrying out regulated entertainment including the playing of live or recorded music between 09:00 hours and 00:30

hours Sunday to Thursday and 01:30 hours Friday and Saturday; except on Christmas Eve, Christmas Day, Boxing Day; Maundy Thursday and Sundays preceding Bank Holidays when a 02:30 terminal hour is specified. Music outside the building is prohibited. The Licence is granted to Weatherspoons and dated 31/10/23 following a minor variation. I suspect that the proprietor will want to defend their recently renewed right to use the licence to its full extent if they decide they wish to do so. However, it may be that the applicant could negotiate with the licence holder to secure an agreement to vary the licence to remove the permission for such activities. Whilst they remain in place, consideration should be given to the impact of amplified music from within the public house. Should the proposed development experience unacceptable levels of music noise, it would be necessary to restrict the current licensing consent or require improvements to the sound insulation of the building both likely objectionable to the commercial neighbour.

The assessment in Section 5.3.4 is inadequate for a number of reasons:

- It does not consider the permitted hours granted under the current license but assumes that music would stop at 23:00 hours.
- It considers a noise level measured *outside* a single public house in Shoreham on a single occasion as '*typical*' of noise from small venues. No comment is made regarding the constructional details of the source premises in this case and the means of sound break out or indeed why they would be similar to the current case.
- The construction of the Wagon Wheel premises and the viability of retaining sound to a similar degree is not considered.
- The consultant references the 'Good Practice Guide on the Control of Noise from Pubs and Clubs (2003)'; 'Institute of Acoustics Working Group Annex – Control of Noise from Pubs and Clubs (2003)'; 'Noise from Pubs and Clubs - Phase I (2005) and Phase II (2006)' documents, but draws nothing from this body of work to apply in this case. For example, there is no consideration of the more extensive database of music levels typical in such venues. There is no application of any of the methodologies referenced. Consideration in this case ought to take account of typical noise levels generated especially in the low frequencies and assess likely breakout from this public house. The low frequency performance of the proposed double glazing would be a necessary consideration. The aim should be to ensure that typical levels associated with public houses holding live music are not intrusive within the proposed development. I can see no evidence of this kind of thinking in the design process.

Retained Use Class E (Ground Floor)

The acoustic consultant proposes a constructional detail for the party floor / ceiling between the residential use and the Class E use in Section 6.4.1. This is described as performing at least as well as the standard required in the Building Regulations for such structures separating residential uses. I agree that this should be sufficient for some low key Class E uses such as E9(g) (i) and E(a) for example. It would however likely be inadequate for protecting amenity where other noisier Class E uses were to occur. Most notably, Class E(d) is typically associated with loud music and substantial impact sound

	generation requiring particular special acoustic consideration. Other uses involving noisy activity may also create amenity issues with the insulation measures as proposed. If a more restricted use class at ground floor level was acceptable the design may be sufficient in this regard. Overall, I do not consider that the acoustic assessment has adequately assessed the risks posed to residential amenity. The proposal if granted would create an undesirable relationship between land uses acknowledged as high risk in terms of noise generation and uses of high sensitivity. This generally should be avoided. If there is an overriding planning need to support such an arrangement, a much more considered design needs to be forthcoming where the particular character of the noise sources likely are taken account of; such that the internal acoustics can be shown to present an acceptable environment where the character of the internal sound is not objectionable because it is routinely coloured by intrusive noise sources such as shouting, low frequency tones, bass beats associated with repetitive music.
Environmental Health (contamination):	The proposed development involves the removal of an existing portacabin at the rear of the property (according to the ACA Architectural Design Ltd. Existing and Proposed Plan drawing number 2023/02 rev D). Please confirm with the agent whether area will be used as soft landscaping. Depending on the use of the land further contamination information may need to be conditioned. I have contacted Building Control and would like to add the following advisory note ... <i>"The proposed development could be impacted by radon and you are advised to consult the radon UK map at UKradon - UK maps of radon. Depending on the risk level, radon protection will be necessary in accordance with Building Regulations"</i>.
Eastleigh Town Council:	No response

Site Visit:	Yes ☒	No ☐
Details: carried out 19/6/24		

Pre-commencement Conditions:	Yes ☐	No ☒
Details: None		

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) *not applicable as site is not within a conservation area;*
- f) the provision of adequate light in all habitable rooms of the dwellinghouse;
- g) *not applicable as site is not within an industrial area*
- h) *not applicable as current use is not a nursery or health facility*
- i) *not applicable as development as a fire risk condition is not required.*

Furthermore, Article 3 of the amended regulations 2020 does not grant permission, or authorise any development of, any new dwelling house where:

- a) the gross internal floor area is less than 37m² in size: or
- b) that does not comply with the nationally described space standards (issued by the Department for Communities and Local Government on 27th March 2015

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;

Development Management policies DM1, DM5, DM8, DM13 and DM14.

Area Policy: E3 (1aii)

Supplementary Planning Documents:

Quality Places & Residential Parking Standards

Eligibility:

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

- The building was granted permission in 1986 to be used as an office, which is within a Class E use. The existing signage is for a solicitor's office, which appears to have been present on the site from at least May 2016. This meets the legislation requirements to have been in an E Use Class for a continuous period of at least two years prior to the submission.
- 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 a area specified by the secretary of state.

Background and Proposal:

The building has previously received a Class MA prior notification refusal for the change of use from offices (Class E) to residential. The application comprised 5no. one bed flats spread over the ground and first floor and 1no. 2 bed flat on the second floor. A 53m² Class E use was to be retained at the front of the ground floor. To the rear the existing porta cabin was to be removed providing bin and cycle storage. The application was refused as it failed to demonstrate a satisfactory living environment, most notably because of commercial noise.

The site is located within a busy town centre environment and the range of commercial uses both retained within the building (at the front of the ground floor) and on the adjacent sites have the capacity to generate offensive noise. The previous application included a noise impact assessment, but this failed to demonstrate that the proposed residential properties would be satisfactorily protected from the effects of both current noise (from retained class E use and surrounding commercial uses) and potential future noise (agent of change principle).

The current proposal is a resubmission of the previous scheme, which has been revised to accommodate four flats and retains a larger (80m²) Class E unit at the front of the ground floor to 80m². The residential accommodation would comprise 1no. studio flat on the ground floor, 1no. studio and 2no. one bed flats on the first floor and 1no. two bed flat on the second floor. The outdoor area is the same as the previous scheme, only some of the cycle storage will be provided within the main building. The proposal is accompanied by a revised noise impact assessment.

Assessment:

A) Transport Impacts

The application site is located on the edge of Eastleigh Town Centre, in a sustainable location with a range of shops, services and transport connections. In this location it is considered acceptable not to provide off road parking and the proposal will not have any significant transport impacts. It is noted that the proposal includes cycle storage at the rear of the property.

B) 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 residential conversion as it does not involve substantial ground work. There is a potential that the proposal would involve landscaping of the rear yard and if this was the case then a condition could be imposed to deal with potential contamination.

C) 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.

D) Commercial Noise

The proposal is for a mainly residential conversion of five flats and would retain the existing Class E commercial use at the front of the ground floor. The new submission includes details of an acoustic barrier between the ground floor commercial use and adjoining residential units, which would provide sufficient noise protection for most Class E uses (and if approved the range of Class E uses could reasonably be restricted by condition).

However, the proposed residential conversion is within the heart of Eastleigh Town Centre, in a location comprising a range of commercial uses and immediately adjacent to a public house. While the proposed dwellings have their most noise sensitive rooms (bedrooms) on the far western side of the building, the neighbouring public house has the capacity to cause significant noise disturbance, particularly from customers using the adjoining beer garden late into the night.

On the western side of the site is an office block (black horse house) and the property is also within close proximity to a hotel and various offices/ commercial outlets, some of which involve deliveries and refuse collections outside of standard trading hours. Many of the surrounding commercial uses have fixed external plant, some within only a few meters of the proposed residential units (e.g. on the eastern wall of the application building and on the western wall of the offices at Black Horse House). There is also a substation at the

rear of Black Horse House, within 5m of the bedroom of the rear first floor flat. The surrounding uses along with their associated equipment and collection/ deliveries have the capacity to generate significant and intrusive noise to detriment of the new residential dwellings.

The submission is supported by a noise impact assessment, which relies upon the building being served by mechanical ventilation and requires the double glaze windows to remain closed, thus affecting the quality of the living environment. Even with these provisions the Environmental Health Officer has highlighted a number of concerns/ omissions with the submitted noise information in terms of its assessment of the sub-station, fixed plant, deliveries/ refuse collection, customer noise/ amplified music from the public house. As such the acoustic assessment does not adequately consider the risks posed to residential amenity from commercial noise.

Furthermore, the public house has a licence for the playing of live or recorded music within the building late into the evening/ early morning and the introduction of a noise sensitive residential use could unreasonably prevent this licence from being renewed in the future (agent of changes principle).

In conclusion the proposed development if granted would create an undesirable relationship between the existing commercial land uses within the busy town centre environment (acknowledged as high risk in terms of noise generation) and a noise sensitive residential use. The residential properties would be unacceptably impacted by commercial noise from the surrounding uses and as such would not provide a suitable living environment for the new residents.

F) Light to habitable rooms and Internal Space Standards

While the total internal floor space of each flats meets the nationally described space standards, the studio flat on the ground floor is at the very lower end providing a floor space of just 38m² with a shower instead of a bath. In addition, this small studio flat has the windows to its only living area on the western, directly facing the boundary wall and four storey high office building (at Black Horse House). The close proximity of these structures will unacceptably restrict the light into the key living space and so creating a poor-quality living environment.

Under the previous prior notification application there were only bedroom windows on the western side facing onto the office block, rather than primary living areas and therefore were more acceptable in this regard.

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. Had the proposal been approved, the applicant would be required to submit a separate Regulation 77 application to the LPA to secure the required mitigation.

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 ...
