
Site Address: 158A Stakes Hill Road, Waterloooville, PO7 7BS
Proposal: Prior Approval for development consisting of a change of use from Commercial, Business and Service (Use Class E) to mixed use (Use Class E and Use Class C3 (1no. 2 bed flat)).
Application Type: Prior Approval CU retail to mixed E/C3
Application No: APP/24/00541 Expiry Date: 19/09/2024
Applicant: Mr Pranay Patel
Agent: Mr I Knight Case Officer: Kayleigh Taylor
Knight Consulting
Ward: Stakes

Recommendation: **REFUSE**

1 Site Description

The application site comprises a detached part two storey, part single storey building which had previously been used as a Dentist, located on the corner at the junction of Philip Road and Stakes Hill Road in Waterloooville. The building fronts Stakes Hill Road and parking provision to the rear is accessed from Philip Road.

2 Planning History

99/50538/002 - Provision of ATM (cash point) machine to east elevation, REF,24/02/2000
99/50538/003 - Provision of projecting sign to east elevation, at first floor level, REF,24/02/2000
97/50538/000 - Shopfront alterations, internal alterations and single story infill extension to rear., PERM,27/02/1998
97/50538/001 - 1 no. internally illuminated fascia sign to front elevation and 1 no. internally illuminated projecting sign to side elevation and 1 non-illuminated sign to rear elevation, PERM,27/02/1998
08/50538/004 - Demolition of existing building; erection of 3No. 1 bed flats (3 storey) and 2No. 3 bed semi-detached houses (2 storey.), WD,02/10/2008
08/50538/005 - Change of use of the premises from A1/C3 use class (retail/residential) to a dental surgery (use class D1)., PERM,16/12/2008
08/50538/006 - To re-instate existing windows and install new windows at the premises., PERM,20/01/2009
09/50538/007 - Discharge of Condition No. 2 of Planning Permission 08/50538/005., PERM,12/03/2009
APP/24/00537 - Display of 1No illuminated Nisa Vinyl Fascia sign on front elevation and 1No Nisa Vinyl Fascia on side elevation. Installation of 4No. mock windows display of 4mm clear polycarbonate panel with internally applied full colour vinyl graphic in extruded aluminium frame and associated vinyl display and car parking signs.(Pending consideration)

3 Proposal

Prior Approval for development consisting of a change of use from Commercial, Business and Service (Use Class E) to mixed use (Use Class E and Use Class C3 (1no. 2 bed flat)).

4 Relevant Legislation

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Town and Country Planning Act 1990 (as amended)

5 Statutory and Non Statutory Consultations

Building Control, Havant Borough Council

Comments received 30/07/2024:

Building Regulation consent will be required for this work.

The means of escape along the walkway shown in brown would appear to be within 1.8 m of the two windows serving the ground floor which is under a different use Approved Document B requires the escape route not to be affected by other uses. This will need consideration

Floor separation should comply with Approved Document B (Fire) and E (sound)

Comments received 13/08/2024 following an email from the applicant with photos of windows bricked up:

With the removal of the windows shown in photos the means of escape route now appears to comply

No formal application for Building Regulation consent has yet to be raised.

Councillor Elizabeth (formerly Dianne) Lloyd

No comments received.

Councillor S Milne

No comments received.

Councillor Simon Hagan

No comments received.

Environmental Health Manager, Community Group

No objection, subject to condition relating to noise mitigation.

Hampshire Highways

This Prior Approval seeks the change of use of the site Commercial, Business and Service (Use Class E) to mixed use (Use Class E and Use Class C3). It is noted that the change of use of the ground floor is like for like and the Highway Authority have no objection to this.

There is an existing car parking with 13 car parking spaces within the site and it is proposed that one parking space is dedicated to the proposed two-bedroom flat with the remaining parking spaces for use of the commercial use. Havant Borough Council's

Parking SPD would required a minimum of 2 car parking spaces for a two-bedroom unit, dependent on the location being outside of Waterlooville Town Centre. There are concerns that an under provision of car parking spaces could result in overspill parking on the highway. The applicant is required to update the proposed site plan, dedication 2 car parking spaces to the proposed residential unit.

Two Sheffield stands are indicated on plan for the residential use of the site in accordance with Havant Borough Council's Parking SPD. No cycle parking spaces have been shown on plan for the commercial use and the applicant is required to address this to promote sustainable travel to and from the site

Having regard to the above, there is insufficient information for the Highway Authority to provide comments on this planning application. Further comments will be provided upon receipt of the above requested information.

Officer comment: Part 3 Class G of the GPDO does not require prior approval for highways matters nonetheless the applicant has provided an amended plan addressing these comments during the course of the application.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 9

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 0

7 Planning Considerations

- 7.1 Part 3 Class G allows for 'development consisting of a change of use of a building— (a) from a use within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a mixed use for any purpose within that Class and as up to 2 flats'. The lawful use of the building is as a dentist, which fall within Use Class E(e). The proposed use is as a shop (use class E(a)) and a 2 bedroom flat (use class C3) and therefore does fall within the realms of permitted development, subject to the prior approval process and conditions.
- 7.2 Paragraph W of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states;
- (11) The development must not begin before the occurrence of one of the following—*
- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;*
- (b) the receipt by the applicant from the local planning authority of a written*

notice giving their prior approval; or

(c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.

7.3 Officer site visits were undertaken on 01/08/2024 and 07/08/2024 to display the site notices required for this application and the concurrent advertisement application (APP/24/00537) respectively. On these visits it was noted that trades people were on site carrying out internal and external works. In order to assess this further a formal site visit was undertaken on 22/08/2024. On this site visit it was noted that the internal works were nearing completion, this comprised the installation of a partition wall at ground floor level meaning the staircase to the flat above could no longer be accessed internally through the main ground floor. The staircase could however be accessed from a separate entrance as shown on the submitted proposed floor plans. The shop floor at ground floor was being fitted with shelving and fridges. At first floor level there was an unfurnished flat benefitting from a new bathroom suite and new kitchen. 3 windows at ground floor level on the southern elevation had been bricked up and 1 window had been installed at ground floor level on the western elevation.

7.4 The question is whether the works undertaken on site prior to the determination of this prior approval application constitute development and conflict with the requirements of Paragraph W(11) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

7.5 The definition of development is set out in S55 of the Town and Country Planning Act 1990 (as amended);

55 Meaning of “development” and “new development”.

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(1A) For the purposes of this Act “ building operations ” includes—

(a)demolition of buildings;

(b)rebuilding;

(c)structural alterations of or additions to buildings; and

(d)other operations normally undertaken by a person carrying on business as a builder.

(2)The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building, and are not

works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;

7.6 It is therefore accepted that in isolation to the change of use, some of the internal alterations may not constitute development in so far as the definition set out in Section 55. Further to this, it is acknowledged that Part 7 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) allows for non-domestic alterations to commercial buildings.

7.7 The Council's legal team have advised 'The key question in determining this Application is whether the works that have been carried out already are a 'stand alone' building operation or whether it was part of the change of use of the property from a dentist surgery into mixed use residential and shop. There is High Court authority from the case of *Winters v Secretary of State for Communities And Local Government & Anor* [2017] EWHC 357 (Admin) which confirms that where prior approval of the LPA is needed in order to comply with conditions attached to a PD right, it must be obtained prior to development commencing. Prior approval cannot be obtained retrospectively in the way that planning permission can be. As the judge remarked in *Winters* "*What needs to be considered and approved is the whole development. That is why information about "the proposed development" must be provided by the developer to the Local Authority...before beginning the development*".'

7.8 The building has clearly been subdivided prior to the determination of this application and although uninhabited and unfurnished a full kitchen and bathroom suite has been installed at first floor to facilitate the proposed residential use.

7.9 Furthermore, it is noted that the original floor plans submitted with this prior approval show the ground floor windows on the southern elevation. It appears that these were bricked up following comments received from the Council's Building Control Team, as an email was received from the applicants agent dated 05/08/2024 stating '*We note the objection comment from building control relating to fire risk exposure from the retail windows to the escape route from the flat over. Please be aware that these windows have since been bricked up so this comment is no longer valid.*' Further to this another email was received 08/08/2024 providing photo evidence of the bricked up windows and amended proposed plans were received on 29/08/2024 showing two of the windows removed from the ground floor. Evidence therefore suggests that these windows were blocked up for the purpose of the change of use.

7.10 In summary, the works that have been undertaken are considered fundamental and necessary to facilitate the mixed use of the building. Case law is clear that the prior approval relates to the whole development, it is therefore concluded that the proposal fails to comply with the requirements of Paragraph W of Part 3 the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and therefore prior approval cannot be considered nor granted.

7.11 Furthermore, Class G G.1(d) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out that prior to the beginning of development the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will

be required as to—

- (i) contamination risks in relation to the building;
- (ii) flooding risks in relation to the building;
- (iii) impacts of noise from commercial premises on the intended occupiers of the development;
- (iv) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (v) arrangements required for the storage and management of domestic waste.

7.12 As the development has already commenced, the proposal would fail to accord with condition G.1(d). Paragraph W(3) states that the local planning authority may refuse an application where, in the opinion of the authority the proposed development does not comply with any conditions limitations or restrictions specified in Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The application is therefore recommended for refusal.

8 Conclusion

Development has begun on site to facilitate the change of use, it is therefore concluded that the proposal fails to comply with the requirements of Paragraph W(11) of Part 3 the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and therefore prior approval cannot be considered nor granted. As the development has already commenced, the proposal would fail to accord with condition G.1(d) of Part 3 Class G. In line with Paragraph W(3) of Part 3 the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) the application is recommended for refusal.

9 RECOMMENDATION:

That the Head of Place be authorised to **REFUSE** application APP/24/00541 for the following reason:

- 1 The proposal fails to comply with the requirements of Paragraph W(11) of Part 3 the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as the development to facilitate the change of use has begun. Furthermore, as the development has already commenced, the proposal would fail to accord with condition G.1(d) of Part 3 Class G and therefore in line with Paragraph W(3) of Part 3 the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) the local planning authority refuse the application.