

Havant Borough Council
Planning Department
Via Planning Portal

11th July 2023

Dear Sirs

Prior Notification requirement under Part MA of the GPDO for the change of use of Class E space to form 1 apartment.

Site at Part Second floor only at Nos. 286-288 London Road, Waterlooville, PO7 7DS

This Prior Notification submission relates to part of the second floor only of this existing three storey building. It is proposed to convert the vacant former Class E space into 1 apartments. The remaining area of the second floor already has prior notification permission for change of use as does the first floor. The application is accompanied by a site plan, the CIL forms and also the application forms together with proposed and existing detailed floor plans.

There is no Article 4 direction in place removing Part MA permitted development rights from this locality and the site frontage is shown in Figure 1 below.



Figure 1 – Site frontage

The application site is formed by a three storey commercial building (Nos 286-288) which fronts the pedestrianised London Road with vehicular access and servicing provided from the service road to the rear known as Dukes Walk.

The site is not listed and does not lie within a Conservation Area and whilst it was last used for purposes falling under Class E of the UCO the entirety of the building is currently vacant.

This site is located within Waterlooville Town Centre and forms a primary shopping frontage . At ground floor level the site previously housed Peacocks retail use which has since closed

down. To the rear of the site is the Dukes Walk Service Road where the building overhangs at first and second floor level.

The general location of the site is shown in Figure 2 below.



Figure 2 – Site Location

Planning History

The most recent planning history on the site is the recent granting of planning permission for the creation of numerous new windows (Installation of 9 No windows including 2No on south elevation, 4No on west elevation and 3No on east elevation) an external alterations to the building under reference APP/23/00403.

In terms of the first and second floors Prior Notification consent was granted under LPA reference APP/22/01165 for conversion to form 21 apartments. Prior to this planning permission was granted for the creation of numerous new windows an external alterations to the building under reference APP/22/00741.

Permitted Development

Class MA of the amended General Permitted Development Order, which came into force on the 1st August 2021 states that a development consisting of would constitute permitted development: -

MA. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

Paragraph MA.1 identifies that development is not permitted by Class MA:

(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 floorspace the subject of this application has been vacant for in excess of three months and indeed it was last occupied as a Class E use. The building has been vacant since the 1st April 2022.

(b) unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

The site was last lawfully used for retail purposes and ancillary storage a use which now falls within Class E of the Use Classer Order (UCO) then this criterion is complied with.

(c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;

the floorspace of the building proposed to be converted is circa 52m² and is therefore below the 1500 m² limitation even given the existing consent which converted 1141m² as set out in this criterion.

(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 or 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; or*
- (v) is or forms part of a military explosives storage area;*

The site is not covered by one of these listed designations

(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(a);*
- (iii) the Broads;*
- (iv) a National Park; or*
- (v) a World Heritage Site;*

The site is not covered by one of these listed designations

(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

The 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 1st August 2021; and*
- (ii) the development would not have been permitted under Class O immediately before 1st 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.*

Not the case with these proposals

Conditions

This permitted development is also subject to conditions as identified in paragraph MA.2 namely that before beginning development under Class MA, 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—

- (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 located 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; and*
- (h) where the 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(a), the impact on the local provision of the type of services lost.*

(3) An application for prior approval for development under Class MA may not be made before 1 August 2021.

(4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if in the introductory words in sub-paragraph (5), for “and highways impacts of the development” there were substituted “impacts of the development, particularly to ensure safe site access”.

(5) Development must be completed within a period of 3 years starting with the prior approval date.

(6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse

(a) transport impacts of the development, particularly to ensure safe site access

The application proposes the conversion of the “remaining” second floor (which does not have extant consent) into 1 apartment and the site has no off street car parking spaces.

It is well established that a Class E use of the site could generate more traffic movements when compared to the use of a building as residential apartments, especially in a highly sustainable location such as this. On that basis the additional traffic created by this proposed development would not lead to situations detrimental to highway safety.

There are no issues therefore in terms of “safe site access”

Turning to matters of car parking the revised NPPF of 2021 in matters of sustainable development, transport and car parking advises at paragraph 110 that: -

“110. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
- b) safe and suitable access to the site can be achieved for all users;*
- c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and*
- d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.”*

Importantly Paragraph 111 of the Framework advises that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

In terms of the use of parking standards paragraph 108 of the recently revised NPPF advises:

108. Maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport (in accordance with chapter 11 of this Framework). In town centres, local authorities should seek to improve the quality of parking so that it is convenient, safe and secure, alongside measures to promote accessibility for pedestrians and cyclists.

In terms of local plan Policy DM11 of the Core Strategy seeks planning for more sustainable travel with the Council seeking to ensure that every opportunity is taken to increase integration of sustainable travel modes and availability of non-motorised modes.

In addition, Policy DM13 Car and Cycle Parking on Residential Development adds that residential development will only be permitted where it provides car parking and cycle storage in accordance with the standards set out in the Residential Car Parking and Cycle Provision Supplementary Planning Document

Table 4A of the Council's Supplementary Planning Guidance advises that within WaterlooVille Town Centre one space per flat is sought for residential development.

In this case the site has no off street car parking and is located within the town centre where parking on street would be difficult. There are of course a number of car parks in close proximity to the site.

In terms of sustainable transport, the site is very well located with easy access by foot to the town's amenities together with bus and rail public transport opportunities. The rear courtyard can also successfully accommodate safe and secure cycle storage and refuse storage.

The development plan and its supporting SPD are now of some age and any parking “standards/requirements” must be read in conjunction with the much more up-to-date Framework which clearly advises that minimum parking standards should only be set where there is clear and compelling justification to do so.

In addition, guidance requires that appropriate development should not be prevented on highway grounds unless the impacts on the road network would be severe.

It is submitted that in this case, given the highly sustainable nature of the site, and the reuse of the upper floors of this existing vacant building that the provision of a car free scheme, with appropriate cycle parking, would first of all be wholly “in step” with sustainable planning and transport policies and importantly would avoid any adverse impacts upon the local highway network.

Indeed, the LPA accepted the provision of a car free development in terms of the previous permission on the site for the conversion of the majority of the first and second floors to form 21 apartments as set out in the history section above.

In addition, appropriate cycle parking and rescue storage is provided both for the proposed flat and also consented 21 units.

In light of the above we submit that the development proposed would avoid any unacceptable impacts in terms of matters of parking or highway safety.

(b) Contamination risks in relation to the building

Turning now to matters of contamination the site lies in an area where matters of land and ground contamination have not previously been raised in any permissions either on or in close proximity to the site and it is therefore highly unlikely that these proposals would lead to matters of contamination. The application proposes the conversion of part of the second floor only of this existing building only with no “ground break”.

In light of the above we therefore respectfully suggest that there are no material issues relating to the change of use proposed on matters of ground contamination

(c) Flood Risk

The site lies outside any defined flood risk area as shown below from the EA flood risk mapping information. The extract from the flood map is shown in Figure 3 below.

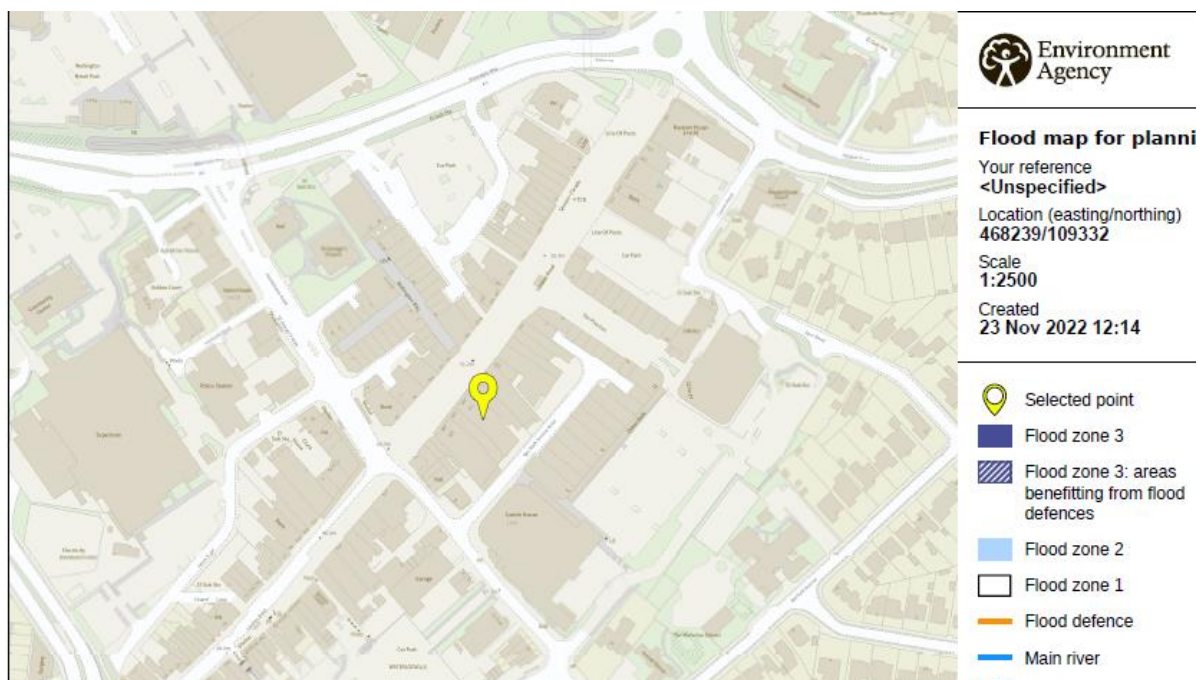


Figure 3 – Extract from EA Flood Map

On this basis and given the above we respectfully suggest that there are no material issues relating to the change of use proposed on matters of flooding and flood risk.

(d) Noise

In terms of the impacts of noise from commercial premises on the intended occupiers of the development, in this respect traffic noise cannot be an issue for consideration in Prior Notification applications.

When considering potential noise disturbance, the NPPF at paragraph 174 states that planning policies and decisions should aim to:

174. Planning policies and decisions should contribute to and enhance the natural and local environment by:

(e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and

Paragraph 185 adds further:

“185. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation .”

Whilst the site lies within a town centre mixed use area where the predominant land use is commercial, there are however no existing uses within this location which could constitute noise generating uses such as public houses or nightclubs within close proximity to the site and certainly no industrial uses which could create the potential for noise disturbance as these are generally retail or office uses.

It is noted that the LPA raise no objections in terms of potential noise impacts when approving the application for the conversion of the majority of the upper floors to form 21 apartments.

In light of the above we submit that there is no reason to resist the change of use proposed in terms of matters of potential noise disturbance from commercial buildings and/or land uses in close proximity to the site.

(e) Conservation

The site does not lie within a defined Conservation Area and on that basis, there is no requirement to consider this criterion further.

(f) Adequate Natural Light

This criteria requires an assessment in terms of each flat to be created relating to:

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses,”;

The proposed floor plan identifies that the apartment proposed would possess two habitable rooms being a one bedroomed unit and both rooms would be served by two windows each. To assist the LPA this existing and approved fenestration is shown on the proposed floor plans.

In this respect we refer to the recent granting of planning permission for the creation of numerous new windows and external alterations to the building under LPA reference APP/23/00403.

This proposed flat would be served by two existing windows and also two approved under the recent planning permission referred to above.

As evidenced by the recent appeal decision which accompanies this application at **Appendix AP1** it is clear that the provision of approved windows within the building, even if they are not as yet in situ, can be assessed in terms of the levels of daylight which would be provided to the proposed flats.

In the respect of this recent case in Reading we quote the following paragraphs from the decision letter in such regards:

“14. It is proposed by the appellant, that the residential uses currently being sought would not commence until the operational development (approved under planning permission 210885) is complete. It is suggested that this could be secured by a planning condition (to be applied to the grant of prior approval) to ensure that the proposed residential dwellings are compliant with the conditions of Class O and receive adequate natural light.

15. The Council acknowledge that should the separate works under permission 210885 take place, adequate levels of natural light would be achieved for the future occupants of the proposed units. I see no reason to find otherwise. However, the Council contests that prior approval can be granted subject to a condition(s) necessitating that building operations under a separate planning permission are complete.

16. Paragraph W(13) of the GDPO provides that ‘The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval’.

17. Paragraph W(13) does not give the power to impose any condition(s) it pleases, rather, the condition(s) must be reasonably related to the subject matter of the prior approval. The approval does not relate to the entirety of the proposed development, but only to those matters which are specified for approval under each class of development.

18. It is quite clear from paragraph W(13) that conditions may be imposed when granting prior approval. Equally, I consider there is no particular tension, between paragraph W(2A) and W(13) as they deal with separate points. In other words, it would be permissible for a condition to be imposed in relation to the provision of natural light in all the habitable rooms of the dwellinghouses and for the prior approval not to take effect until this provision had been fully met. I also deem that such a condition would be reasonably related to the subject matter of the prior approval and would therefore satisfy the criteria in paragraph W(13).

19. However, to the extent that prior approval (with or without conditions) is granted in relation to a Class O change of use from office to residential, that prior approval cannot, and does not, also grant permission for any associated physical development required to implement the change of use.

20. Furthermore, the Planning Practice Guidance¹ provides that where associated physical development is required to implement the change of use, developers will need to consider whether it constitutes development and ensure they have planning permission if necessary.

21. This further reinforces my view that a condition requiring operational development under a separate planning permission can be appropriate to secure the necessary provision of adequate natural light, and thus allow for prior approval.

22. The Council suggests that such a condition may result in a prior approval that cannot be implemented. This is because the prior approval development must be complete and occupied within three years, while there is no guarantee that the separate operational development would be complete in sufficient time to allow this. Be that as it may, there is no guarantee that the grant of prior approval for any development under Class O (or now Class MA) would always be completed and occupied within the required timescales. As such, ensuring that the relevant timescales would be met is a matter for the appellant to address, while I do not find this issue would prevent the imposition of such a condition.”

Given the above appeal decision, together with the overall assessment of the “approved” and existing fenestration within the building it is submitted that the proposed scheme would provide adequate natural light into both of the habitable rooms serving the proposed apartment.

(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; and

The site does not lie within such an area

(h) where the 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(a), the impact on the local provision of the type of services lost.

In this case none of the land use involves a registered nursery or a health centre.

Apartment sizes

A further requirement of prior notification is that each flat proposed must achieve the minimum size standards as set out below:

. In article 3, after paragraph (9) insert—

“(9A) Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse—

(a) where the gross internal floor area is less than 37 square metres in size; or

(b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015(a).

(9B) The reference in paragraph (9A) to the nationally described space standard is to that

standard read together with the notes dated 19th May 2016 which apply to it.”.

In terms of the above we therefore assess the apartment size against the NDSS standards.

Flat No	Type	NDSS m2	Proposed m2
C	1b2p	50	52

On the basis of this assessment, it is submitted that all of the apartment proposed exceeds the NDSS size standards and this criterion of permitted development is also complied with.

Part M.2.A requirements

Paragraph M.2A.(1) requires that the following provisions apply where a developer is required under paragraph M.2(f) to make an application to a local authority for a determination as to whether the prior approval of the authority will be required.

Sun paragraph (2) advises that the application must be accompanied by—

(a) a written description of the proposed development;

a detailed description of the proposal is set out on the application forms and within this covering letter.

(b) a plan indicating the site and showing the proposed development;

a plan indicating the location of the site and the floorspace within the building proposed to be converted accompanies this application.

(c) drawings prepared to an identified scale and showing—

the drawings have been prepared to an identified scale and show the proposed layout of the proposed flat.

(i) in the case of a building to be erected, the proposed external dimensions and elevations of that building; and

(ii) in the case of a building to be extended or altered, the external dimensions and elevations of that building both before and after the proposed extension or alteration;

It is not proposed to extend, alter or erect buildings on the site

(d) a written statement in respect of the heritage and archaeological considerations of the development;

The site does not lie within a conservation area.

(e) the developer’s contact address;

Mountley Ltd c/o Allen Planning Ltd, The Old Fire Station EC, Salt Lane, Salisbury,
SP1 1 DU

(f) the developer’s email address if the developer is content to receive communications electronically; and

Mountley Ltd c/o Allen Planning Ltd– tony.allen@allenplanning.co.uk

(g) any fee required to be paid.

The fee of £100 will be paid via the Planning Portal.

Conclusions

In light of the information contained within this letter we submit that the change of use of the identified part of the second floor of this vacant three storey building to **form 1 apartment** from its permitted Class E use is wholly in accord with Class MA of the amended General Permitted Development Order and the Prior Notification Procedure.

If the Council require any further information, then please do not hesitate to contact me.

Yours sincerely

anthony allen

Mr A.M Allen
Managing Director