
Site Address: 153-155A Milton Road, Cowplain, Waterloooville
Proposal: Prior Approval for development consisting of the conversion of the roof space and the installation of rear and front dormers, to provide 2No. 1 bed flats together with bin and cycle store.
Application Type: Prior Approval - dwellings/terrace/mixed
Application No: APP/23/00659 Expiry Date: 20/10/2023
Applicant: Mr Richard Martin
Agent: Mr Jason Evans Case Officer: Tina Pickup
Martin Ralph Group
Ward: Hart Plain

Recommendation:

1 Site Description

The application site relates to the northern most 2 shop units with flats above, within the terrace of shops and flats located on the west side of Milton Road, Cowplain, opposite Hart Plain Avenue. The row of shops are set back with their own frontage access road and parking, and are of uniform design with consistent eaves and ridge height, and rhythm to regular first floor fenestration. They are constructed of dark brick and tile. As ground floor shops with first floor flats the site does comprise a mixed use building.

To the rear there is an access road serving the rear of the shops and a parking/servicing yard. The rear of the application building has an overhang at first floor i.e. the depth of the first floor flats is deeper than the shops below. The existing first floor flats are accessed via this undercroft area. Above the flats have a terrace enclosed by glazed balustrade, providing some outdoor space.

The area is mixed, with public house opposite and residential properties surrounding, and Hart Plain Infant and Junior schools close by. Despite the mixed use area the site is not identified as a Local Centre in policy terms. The site is outside any current or future flood zone.

2 Planning History

98/51762/2 - Construction of 2no ground floor shop units and 2no bedroom self contained first floor flats and widening of Milton Parade access road. Permitted 30/7/1998

03/51762/003 - proposed second floor one bedroom flats, UNK,

3 Proposal

Prior Approval for development consisting of the conversion of the roof space and the installation of rear and front dormers, to provide 2No. 1 bed flats together with bin and cycle store.

The application is made under Schedule 2, Part 20, Class AB of the Town & Country Planning (General Permitted Development) Order 2015, as amended: new dwellinghouses on terrace buildings in commercial or mixed use.

4 Policy Considerations

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011

Havant Borough Local Plan (Core Strategy) March 2011

CS16	(High Quality Design)
CS17	(Concentration and Distribution of Development within the Urban Areas)
CS21	(Developer Requirements)
CS9	(Housing)
DM10	(Pollution)
DM13	(Car and Cycle Parking on Residential Development)

Havant Borough Local Plan (Allocations) July 2014

AL1	(Presumption in Favour of Sustainable Development)
DM24	(Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development)
AL2	(Urban Area Boundaries and Undeveloped Gaps between Settlements)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Building Control

No adverse comments based on submitted plans

Environment Agency

None received

Environmental Health

None received

Hampshire Highways

Due to the scale of the proposal, being 5 dwellings or less, and that there is no new vehicular access on the public highway, HCC's standing advice should be referred to in the first instance. As a result, the Highway Authority will not provide detailed comments on this planning application. For more information on standing advice please use the following link: www.hants.gov.uk/transport/developers/consultation

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: 28

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
None received	

7 Preliminary matters

- 7.1 Article 3 (1), 'Permitted development of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states:

"Subject to the provisions of this Order and regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017, planning permission is hereby granted for the classes of development described as permitted development in Schedule 2."

- 7.2 In turn Regulation 75 of the Conservation of Habitats and Species Regulations 2017 (as amended) sets out that to be permitted development, any development that is likely to have a significant effect on a European site must not be begun until written notification of an appropriate assessment has been undertaken in accordance with Regulation 77.
- 7.3 In light of the recommendation for refusal, see below, in this instance, no mitigation or Habitats Regulations Assessment (HRA), including Appropriate Assessment (AA), has been undertaken for the proposed development under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended). However, in order to comply with Regulation 63 of The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 the proposal would require a Habitats Regulations Assessment (HRA), including Appropriate Assessment (AA) as the proposal is likely to have a significant effect on several Solent European Sites due to both the increase in recreation and the decrease in water quality that would result from the proposed development as a result of the additional residential flats. As such, if prior approval were granted, to comply with Article 3 (1), then no works could begin until such time as the applicant receives written notification (approval of the local planning authority) having carried out such assessments as the competent authority.
- 7.4 In addition, Article 3 (9A) 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.
- 7.5 In this instance two 1 bed flats are proposed - each are in the roof space with skillings and to comply with the space standards it is only where headroom is 1.5m or above that can count towards the gross internal area. The plans show double beds so if they are intended as 1bed, 2 person flats, then the minimum standard is 50sqm. However one flat has a floor area of 37.29sqm and the other 43.00sqm. So neither would comply with the nationally described space standards if intended as 2 person flats. However if they are only intended as 1 person flats, and with a shower and not bath, the minimum standard is 37 sqm and both would comply.
- 7.6 Therefore it is not conclusive whether the flats comply with Article 3 (9A) or not.

8 Planning Considerations

- 8.1 Schedule 2, Part 20, Class AB of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), permits development of new dwellinghouses on terrace buildings in commercial or mixed use. Class AB (1) allows development consisting of works for the construction of new dwellinghouses immediately above the topmost storey on a terrace building, by adding one or two additional storeys, subject to a number of criteria.
- 8.2 The interpretation of this Class AB (1) is that the new dwellings should be within the 'airspace' above the buildings and is about adding another one or two storeys above the existing. It is not about converting or changing the use of existing buildings, for which

some permitted development rights exist under Part 3.

- 8.3 The criteria of Part 20, Class AB, relate to the construction of one or two additional storeys above the existing building, with provision of appropriate and safe access etc. Up to 3.5m per storey can be added to the height of the building, with several other criteria about floor to ceiling heights etc.
- 8.4 However, the plans submitted show that the current proposal would involve the conversion of the existing roof space, with construction of both front and rear dormers, with the overall height of the building remaining as existing. This would not create additional dwellings in the 'airspace' above the existing building comprising of an additional storey, but would simply convert and enlarge the existing roof space. As such, it is considered that the proposed development does not meet the criteria for a permitted development under Class AB Part 20 .
- 8.5 The procedures for the determination of prior approvals made under Part 20 is set out in paragraph B of Part 20 and under sub-paragraph (3) the LPA can refuse an application where the proposed development does not comply with any conditions, limitations or restrictions. Since the proposed development does not accord with the limitations and criteria set out in Part 20 Class AB in so far as it is not proposing new dwellings immediately above the topmost storey of the building, then the application has to be refused.

9 Conclusion

- 9.1 It is considered that the wrong application type has been used for the proposed development which does not represent new dwellinghouses constructed in airspace above the building by adding one or two additional storeys, but rather represents the conversion of the existing roof space. This type of development would require planning permission and does not fall within the definition of development allowed by criteria AB (1) of Part 20 Class AB. Therefore, this Prior Approval application is the wrong procedure for this development and must be refused. It is also noted that it is inconclusive as to whether the nationally described space standards are met for compliance with Article 3(9A) for the development to be permitted development. Given the recommendation for refusal this has not been pursued/clarified with the agent.

9 RECOMMENDATION:

That the Head of Place be authorised to for application APP/23/00659

(A) for the following reasons

- 1 The development as shown on the submitted drawings, namely drawing number 23.001.D011 Rev P1; 23.001.D001 Rev P1; 23.001.D010 Rev P1; and 23.001.D011 Rev P1 does not constitute a permitted development as it does not meet the requirements of Schedule 2, Part 20, Class AB criteria AB (1) of The Town and Country Planning (General Permitted Development) (England) Order 2105 as amended, which relates to the construction of new dwellinghouses immediately above the topmost storey on a terrace building. It is considered that the proposed development represents the provision of dormer windows to facilitate a conversion of the existing roof space and not the construction of new dwellinghouses in the airspace above the existing terraced building, comprising of one or two additional storeys. It is considered that the proposed development requires planning permission.

