



applicable; additionally any operational development necessary for conversion is subject to prior approval of design and external appearance.

Prior notification application under Part 3, Class M of the Town and Country Planning (General Permitted Development) Order 2015 as amended seeks prior approval for the change of use of the existing building (retail use A1/A2) to C3 residential use.

Under the prior approval procedures the authority is only able to consider (a) transport and highway impacts; (b) contamination risks; (c) flooding risks; and (d) noise issues in connection with the development.

#### **4 Policy Considerations**

National Planning Policy Framework  
Havant Borough Council Borough Design Guide SPD December 2011  
Havant Borough Council Parking SPD July 2016

##### Havant Borough Local Plan (Core Strategy) March 2011

|      |                                                                        |
|------|------------------------------------------------------------------------|
| CS16 | (High Quality Design)                                                  |
| CS17 | (Concentration and Distribution of Development within the Urban Areas) |
| CS9  | (Housing)                                                              |
| DM10 | (Pollution)                                                            |
| DM11 | (Planning for More Sustainable Travel)                                 |
| DM13 | (Car and Cycle Parking on Residential Development)                     |

##### Havant Borough Local Plan (Allocations) July 2014

|      |                                                                                           |
|------|-------------------------------------------------------------------------------------------|
| DM17 | (Contaminated Land)                                                                       |
| AL1  | (Presumption in Favour of Sustainable Development)                                        |
| DM18 | (Protecting New Development from Pollution)                                               |
| DM24 | (Recreational Disturbance to Special Protected Areas (SPAs) from Residential Development) |

Listed Building Grade: Not applicable.  
Conservation Area: Not applicable.

#### **5 Statutory and Non Statutory Consultations**

##### **Development Engineer - Highways**

The Highway Authority has no adverse comment to this application.

##### **Environmental Health Manager, Community Group Contamination**

*The submitted plan clearly identifies a 'garage' on contemporary mapping, and as such I thought it prudent to undertake a search of available records. This search has identified several factors which suggest non-trivial risk.*

*I would regard there to be a reasonably high risk of presence of contaminants of concern within the soils at the application site and within the immediate vicinity.*

*The question here is whether the Change of Use to unrestricted C3 is acceptable accounting for the contamination risk. Given:*

- the indoor inhalation pathway risk, the potential for contaminants (PAH/VOC) to penetrate water supply pipework (chronic ingestion risk),
- the potential for volatile contaminants (<C8, naphtha, Xylenes, VOC) to enter the property, and,
- the possibility of future owners / occupants introducing planting beds, or soft ground cover around the building in future;

*I would have to conclude that the LPA would not be complying with NPPF Para 178 without requiring further information from that applicant regarding contamination risk & mitigation. Given the results of above research, it seems unlikely that desk based sources of information will be sufficient to dismiss the risk (or determine that the risk is acceptable), and so I would expect that empirical results from an intrusive investigation would be necessary to support a positive determination.*

*Given the small quantum of development, I am not sure that it would be rational to grant consent subject to conditions. The cost of investigation and effective implementation of risk mitigation may be disproportionate to the scale of development, and may therefore prejudice delivery.*

*In accordance with NPPF 178 c), I would anticipate the results of a site investigation as being necessary in order to accompany an application.*

*On the basis of the above, I would conclude that prior notification is required, and should be refused.*

#### **Other**

No objection. I would however ask that the following condition and informatives be added to any approval that may be granted.

#### **Condition 1:**

The applicant to ensure that the acoustic mitigation measures to be employed with regard to the building envelope, including fenestration and ventilation, and between levels, will meet BS8223:2014 standards as recommended for indoor ambient noise levels for dwellings, especially in relation to living rooms and bedrooms i.e during the day (07:00 to 23:00) 35 dB L Aeq,16 hour and at night (23:00 to 07:00) 30 dB L Aeq,8 hour for bedrooms.

Reason: To ensure the residential amenity of the property is not impacted upon by any internal or external noise levels.

#### **Informatives:**

Regarding Hours of Work:

Regarding Bonfires:

Regarding Dust:

Regarding light pollution:

Contamination

**Officers note** The applicant has been advised of the contamination issue.

## **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: 17

Number of site notices: one

Statutory advertisement: Not applicable.

Number of representations received: 0

| Comment | Officer Comment |
|---------|-----------------|
|         |                 |

**Summary:**

**Comment:**

## **7 Planning Considerations**

The change of use of the premises proposed is the subject of changes to the General Permitted Development Order (GPDO) which have given a general permitted development right for such changes to take place with only a 'prior approval' process to go through. Consequently the principle of the change of use is considered acceptable. Having regard to the relevant conditions of the GPDO it is considered that the main issues arising from this application are:

- (i) Transport and highways impacts of development
- (ii) Contamination risk on the site
- (iii) Flooding risks on the site
- (iv) Impacts of noise from commercial premises on the intended occupiers of the development
- (v) Impact on adequate provision of services falling within A1/ A2 and sustainability of the shopping area
- (vi) Design and External Appearance
- (vii) Other matters

### **(i) Transport and highways impacts of development**

The proposal will create a two bed flat and as such there is an expected parking provision requirement of two spaces. The property does not have any on site parking and there are double yellow lines to the front in both Creek Road and West Haye Road. The Highways Officer has been consulted and has raised no concerns with regards to the impact on the highway or transport issues and therefore, in respect to highway safety the application is considered to not substantiate a refusal in this regard. If the proposed development were the subject of a full planning application for change of use it would be relevant to have regard to the adequacies of the amenities for future residents and in this respect the absence of car parking would be a consideration, and as such it would be contrary to adopted parking standards and a potential reason for refusal. .

### **(ii) Contamination risk on the site**

The Havant Borough Council Environmental Control Officer has been consulted and

has identified there to be a reasonably high risk of presence of contaminants of concern within the soils at the application site and within the immediate vicinity by reason of the following factors:-

- Fuel storage tanks & dispensing pumps pre-dating 1975 were formerly present within 25m of the property.
- A 6000 gallon fuel storage tank is located within 10m of the property, dating from approximately 1975. Lead, Toluene, MTBE, Naphtha, and general hydrocarbons (C5-C35) might be expected to be likely to be present.
- The adjacent garage (vehicle servicing & repair) use has evolved over the course of it's history, with a number of phases of development and alterations dating from before 1949 to at least 1976. This use remains to date.
- Cellulose thinner (Xylenes) from a spray shop might be expected to be present, alongside other light fraction hydrocarbon solvents, VOC, and traditional metallic paint pigments (Cu, Zn, Pb, Cr, Co) ca. 45m from the property.
- Groundwater is known to be shallow in this area, and the geology is permeable
- Garage use of soakaways represents a risk of a rapid transport vector with bypasses site hardstanding, and introduces contaminants directly to soils &/or groundwater.

It is therefore necessary to consider whether the Change of Use to unrestricted C3 is acceptable accounting for the contamination risk. Given:

- the indoor inhalation pathway risk, the potential for contaminants (PAH/VOC) to penetrate water supply pipework (chronic ingestion risk),
- the potential for volatile contaminants (<C8, naphtha, Xylenes, VOC) to enter the property, and,
- the possibility of future owners / occupants introducing planting beds, or soft ground cover around the building in future;

In order to comply with the NPPF further information is required and it is unlikely that a desk based assessment would be able to adequately address this. In *accordance with NPPF* a site investigation is required at the application stage.

In the present case, no empirical soil quality analysis has been undertaken in connection with the application to assess the suitability of the land or building for residential use and on the basis of the information available to the Local Planning Authority, it is considered that there is a reasonable prospect of the site comprising contaminated land and as such, as set out under Part 3, W (10) (c) of the Order (Procedure for applications for prior approval under Part 3), this prior approval application should be refused.

(iii) Flooding risks on the site

Whilst the site borders flood zone 2, it is not situated within either Flood Zones 2 or 3 and as such there are no flood risks concerns associated with the proposal.

(iv) Impacts of noise from commercial premises on the intended occupiers of the development

The site is positioned within the urban area where a certain level of noise is expected. The Havant Borough Council Environmental Control Officer has been consulted on the application and has raised no objection to the principle under this consideration but has recommended a conditions and informative's in relation to the control over noise levels, lighting, dust and working hours and it is considered that these measures would satisfactorily address the concerns raised.

(V) Impact on adequate provision of services falling within A1/ A2 and sustainability of the shopping area

The site is not located within a designated shopping frontage and the change of use to C3 will not negatively impact the vitality or viability of the area.

(vi) Design and External Appearance

The proposed changes to the front elevation would be consistent with the mixed character of the area, and not considered to be detrimental. In respect to the proposed enclosure of the forecourt onto Creek Road, details of the height of the enclosure have not been provided, however, given the location on the street frontage such development could be intrusive and would require an assessment of the impact on the street scene where planning permission is required.

(vii) Other matters

Under the Habitat Regulations the proposal results in new dwellings, for which avoidance and mitigation measures must be secured to protect the habitats and species of the Borough's European sites prior to implementation. Under the prior notification process it is not a requirement to seek this at this stage however, an informative would have been recommended to highlight the issue should prior approval have been granted..

## **8 Conclusion**

The proposed change of use, the principle of which is granted by the Town and Country Planning (General Permitted Development Order) 2015 as amended, is considered acceptable in terms of its transport and highways impacts and flood risks. However, in the absence of an empirical soil quality analysis in connection with the application to assess the suitability of the land or building for residential use, there is a reasonable prospect of the site comprising contaminated land and as such, as set out under Part 3, W (10) (c) of the Order (Procedure for applications for prior approval under Part 3), this prior approval application should be refused - this approach is supported by the NPPF and Policy DM17 of the Havant Borough Local Plan (Allocations) 2014.

A precautionary approach is considered appropriate in relation to these issues, having regard to the policies set out in the National Planning Policy Framework and Policies DM17 and DM18 of the Havant Borough Local Plan (Allocations ) 2014, and as such it is not appropriate to grant prior approval.

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## 9 RECOMMENDATION:

That the Head of Planning be authorised to Wrong Application type for recommendation code for application APP/19/00198

for the following reasons

- 1 The location of the application site adjacent to a commercial garage use dating from before 1949 with associated contamination activities results is a reasonable prospect of the building the subject of this application lying on or adjacent to contaminated land.

No empirical soil quality analysis has been undertaken in connection with the application to assess the suitability of the land or building for residential use, given these environmental constraints. That being the case, and on the basis of the information available to the Local Planning Authority, it is considered that there is a reasonable prospect of the site comprising contaminated land and as such, as set out under Part 3, W (10) (c) of the Town and Country Planning (General Permitted Development) Order 2015 as amended (Procedure for applications for prior approval under Part 3), and supplemented by Paragraphs 178 and 179 of the National Planning Policy Framework 2018 and Policies DM17 and DM18 of the Havant Borough Local Plan (Allocations) 2014, this prior approval application should be refused.