

Site Address: Unit 1, Station Approach, North Street, Emsworth, PO10 7PW

Proposal: Prior approval for change of use from class B1(a) office use to C3 residential use for 4No. flats subject to prior approval covering flooding, highways, transport issues, contamination and impact of noise from commercial premises.

Application No: APP/17/00938 **Expiry Date:** 27/10/2017

Applicant: Mr H Gluck

Agent: Mr Jonathan McDermott **Case Officer:** Steve Weaver
The Town Planning Experts

Ward: Emsworth

1 Site Description

The external elevations of the building comprise brick construction at ground floor level, with profile metal sheeting to the first floor and continuing to the roof.

95/50796/004 - Change of use from showroom to class B1 (business), PERM,05/12/1996.
NB No restrictions were imposed on future changes of use.
APP/12/01153 - Change of use from B1 (office) to A1 (Retail). PERM,11/01/2013.
This was a personal permission, with the lawful use of the premises remaining as B1 (office) in the event that the permission was not implemented or ceased.

Application under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 as amended for change of use from class B1(a) office use to C3 residential use for 4No. flats subject to prior approval covering flooding, highways, transport issues, contamination and impact of noise from commercial premises.

The site layout plan indicates that car parking provision would exist within the communal parking area to the south of the building, which would also incorporate waste collection facilities.

4 Policy Considerations (in so far as they are applicable to the matters the subject of the prior approval application)

National Planning Policy Framework 2012

Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS16 (High Quality Design)
CS20 (Transport and Access Strategy)
DM13 (Car and Cycle Parking on Residential Development)

Havant Borough Local Plan (Allocations) July 2014

DM17 (Contaminated Land)
DM18 (Protecting New Development from Pollution)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Environmental Health Manager - Contamination issues

I have reviewed the application documents.

Other than the addition of the noise report, the application documents do not appear to be materially different from those put forward for pre-planning advice, and I note that the applicant has not responded to the pre-application advice in respect of undertaking a physical contamination assessment to confirm suitability of the land for this development.

My comments on the GEN/17/00037 case therefore remain valid; and I consider that prior approval would be required for the proposed development on grounds of contamination risk, and I would only be able to support the consent if subject to robust conditions relating to the assessment- (and if necessary, mitigation-) of contamination risks. The rationale for this conclusion is outlined in my 07/02/2017 response to the .../00037 consultation.

Officer comment: The pre-application advice offered on this site in relation to contamination issues was as follows:

I have reviewed the application documents, alongside the available spatial resources. Notwithstanding that residential development within walking distance of a commuter hub / public transport links is desirable from the perspective of sustainability, I have some concerns with the proposed conversion.

The building is located adjacent to rail station, railway land (or railway adjacent land) being considered to be potentially contaminating in and of itself. Additionally, the building is brownfield, coinciding with a former goods handling area & goods shed (in part), with crane structure marked adjacent. A railway siding line passes under the current building footprint, shown to be present in 1866. This line was subsequently shortened (<1932), and an additional line constructed adjacent (<1932). A further line was added between 1946 & 1953.

A builders yard & works are shown to be located adjacent (constructed after 1953, and before 1969), both of which are considered to be potentially contaminating, particularly given the dates (for example where materials now banned from commercial use would have been routinely stored, handled & used).

An embankment shown on the historic mapping in various positions. Some degree of fill has certainly been undertaken. Embankment associated with the construction of sidings is likely to represent a relatively uniform and structurally stable granular track ballast - this may however not have comprised virgin material, and could have been reclaimed from engineering works elsewhere on the line (i.e could have been contaminated at the time of placement, as well as through use). The granular nature would be permissive of vapour passage, and it would appear likely that the building is underlain by this material.

Some evidence of settlement / displacement within a nearby culvert has recently come to the attention of Environmental Health, this may be indicative of settlement in fill materials, at the periphery of the engineered railway embankments, where undertaken for general construction purposes (only, as opposed to being for rail line construction). It is unclear whether the changes in land profile are solely associated with the construction of additional sidings, or may have occurred later.

In terms of contaminants, this would to a large part depend upon the types of goods passing through this station. Traditionally, the rail system was used heavily for the transport of coal and by-products of town-gas production (Emsworth Gas works being <200m from the subject site), so metallic contamination, PAH & Arsenic are potential contaminants. Similarly, fuels, creosote, lead, asbestos would not be unexpected in association with railway ballast. If peripheral fill is from other sources, some gassing materials are also possible.

It is recognised that the form of development is relatively low risk, in that there are no private garden areas, and the type of dwelling proposed is unlikely to attract young families (for example). However, even for adult occupants with no exterior amenity space, vapour pathways (indoor & out) may be very important given likely contaminants, and background/baseline exposures (e.g. to particulates, contaminants sorbed to soil & dust, and asbestos) may be elevated as a result of fugitive emissions from the adjacent railway land. The structure itself could also represent a higher risk of vapour ingress (indoor pathways) than would a new build.

I would argue that prior approval would be required for the proposed development on grounds of contamination risk, and I would only be able to support the consent if subject to robust conditions relating to the assessment- (and if necessary, mitigation-) of contamination risks..

Environmental Health Manager - Noise issues

The acoustic report does not mention any noise from other close-by commercial premises and therefore it would be difficult to assess the application. This would be done by a BS 4142. From having been to the site and close-by commercial premises, the noise produced from those may impact negatively the potential residents of the proposed site and without this information, I would not be able to support the prior notification.

Further and of more importance, the order discuss "commercial premises" this to me also includes the railways by the site. Railways have been designated as "premises"

under the Environmental Protection Act 1990 and as they are in private ownership, and making profit would also constitute a commercial venture, those I believe being legible under the order.

Together, commercial premises (including the railways) would I have no doubt have a significant impact on the new residents and would not be a nice place to reside.

The argument relating to non-openable windows is not acceptable albeit there are mitigation measures for fresh air piped within. The choice to be able to open or keep a window closed must be given to the occupiers. Further I am unsure as to the building structure on the 1st Floor. The acoustic reports discuss metal cladding and plaster board, where brick work is to end at 2m from ground. What will make the fabric of the building at 1st floor and how is this going to prevent noise/vibration mitigation? In terms of rail noise, although the night time traffic has reduced, since Southampton re-developed their tunnel thus allowing heavy traffic to use it, some still use the tracks.

Further the report albeit mentioning a 4 day/night survey, described that the equipment was vandalised and no data was made available.

I have concerned about this site being used as residential and unless mitigation measures are in place to ensure adequate living accommodation, I would not wish for anyone to reside there.

Highways Engineer, Development Engineer

The Highway Authority has no adverse comment to this application but the station approach is not Adopted Highway and therefore the redline should extend to North Street (and notice served?)

Officer comment: *The procedures for submitting a prior approval application are specified in the Town and Country Planning (General Permitted Development) Order 2015 and do not require the inclusion of access into the 'application site'.*

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: 14

Number of site notices: One

Statutory advertisement: Not applicable.

Number of representations received: 2

Comment	Officer Comment
As a business tenant of Unit 2 Station Approach I wanted to add the following comments. In Unit 2 we have machines operating 24/7 which can often be heard as a constant noise from outside the	Noted and discussed in Section 7 below.

building.	
Large delivery lorries, refuse lorries and such like required daily access through this site.	Noted and discussed in Section 7 below.
The electricity meters for all Industrial Units 1,2, 2A and 3 are sited in the area where the plan is marked for refuse bins storage.	Waste storage is not a consideration of a prior approval application under Part 3, Class O.
The water supply for all industrial units 1,2,2A and 3 comes from Washington road, there is no direct supply to Unit 1. Should a connection be required a trench would need to be dug past all other units.	Water supply is not a consideration of a prior approval application under Part 3, Class O.
There is constant flooding in the car park area due to lack of suitable drainage only a soak away.	Whilst the considerations of a prior approval application do include flooding, this relates to tidal or fluvial flooding as controlled by the Environment Agency - rather than drainage off car parking areas.
This site seems ideal for light industrial use. The main reason it has laid empty for the past few years is that the (absentee) owner has allowed it to deteriorate and has demanded that a prospective tenant should refurbish and pay a ridiculous level of rent.	The principle of the change of use is allowed by the permitted development rights laid out under the Town and Country Planning (General Permitted Development) Order 2015. Only the prior approval criteria can be considered in determining this application.
If sold to a more engaged landlord or entrepreneur at a reasonable price, it could be refurbished and could bring business to the area.	

7 **Planning Considerations**

7.1 The change of use of the premises proposed is the subject of recent 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

(i) Transport and highways impacts

- 7.2 The existing parking and access arrangements on the site would not be altered as part of the proposal. There are communal car parking areas located within close proximity of the building, albeit shared with the commercial units further to the east. In terms of car parking demand, the use of the building for 4 1-bed flats would result in a significant reduction in parking demand in relation to the Council's adopted car parking standards. Furthermore the site is located in a relatively accessible and sustainable location adjacent the Emsworth Railway Station, and makes appropriate provision for cycle storage.

The Development Engineer has raised no concerns and having regard to the above considerations there are no concerns over transport and highway issues arising from the proposals.

(ii) Contamination risk

- 7.3 The consultation response from the Environmental Health officer highlights the pre-application advice provided in respect of this site, which is reproduced in Section 5 above. From this it can be seen that there is a reasonable prospect of the building lying on or adjacent to contaminated land by reason of the following factors:
- (a) its proximity to a rail station and railway land with the potential to handle contaminating materials;
 - (b) the siting of the building on land formerly used as a goods handling area and goods shed, and also railway siding line, again with the potential to handle contaminating materials
 - (c) its proximity to a former builders yard and works
 - (d) its proximity to an embankment constructed of material of unknown provenance.

It is recognised that the form of development proposed is relatively low risk, as the proposal amounts to a conversion of the building only with no private garden areas to be created and no children likely to reside in the flats given their 1-bed nature. Nonetheless the Environmental Health officer confirms that vapour pathways may be important given the likely contaminants, and background/baseline exposures could be elevated as a result of emissions from the adjacent railway land. Furthermore there is a risk that the structure of the building itself may represent a higher risk of vapour ingress.

These considerations point to the need for a precautionary approach to be taken in relation to the site; paragraphs 120 and 121 of the National Planning Policy Framework stating in this regard:

120. To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

121. Planning policies and decisions should also ensure that:

- *the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining,*

pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;

- *after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and*
- *adequate site investigation information, prepared by a competent person, is presented.*

In the present case, no physical contamination assessment has been submitted with the application to assess the suitability of the land for residential use. The applicant's agent was advised of the concerns in this regard in the course of the application but has requested that the application be determined as submitted. 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 Order (Procedure for applications for prior approval under Part 3), this prior approval application should be refused.

(iii) Flood risk

- 7.4 The site is not 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

- 7.5 Having regard to the site context, it is considered that there are two discrete elements which together impact upon the potential for noise from commercial premises on the intended occupiers of the development - firstly, the adjacent railway; and secondly the employment premises to the south and west of the site.

A noise impact assessment has been submitted with the application which principally considers the implications of noise and vibration from the adjacent railway on future occupiers. No assessment is made of the implications for noise from the adjacent industrial premises, which include a car workshop to the south and B class employment premises to the west. One of the adjacent tenants has highlighted that noisy machinery operations are carried out 24 hours per day - to assess the noise environment appropriately the Environmental Health officer has advised that a BS4142 noise assessment would be expected, and works of mitigation explored. With the very modest survey period (only one day's data was usable according to the report) the findings in respect of the noise environment of the proposed flats for road/rail noise also must be treated with some caution.

With regard to the impacts of railway noise/vibration, the assessment appears to recommend the use of non-opening windows to address noise issues identified - the Environmental Health officer has advised that this is not considered appropriate as residents should be given the option to open windows at times of relative quiet. Also the Environmental Health officer is unclear how effectively the structure at first floor level will serve to mitigate noise levels - a clearer specification of works proposed to the interior of the building would be required to address this.

As with the contamination issues, these considerations point to the need for a precautionary approach to be taken in relation to the site; paragraph 123 of the National Planning Policy Framework stating in this regard:

123. *Planning policies and decisions should aim to:*

- *avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
- *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;*
- *recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and*
- *identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.*

The Explanatory Note to the Noise Policy Statement for England sets out that 'significant adverse effects' are likely to be different for different noise sources, for different receptors and at different times. The partial nature of the noise impact assessment submitted with the application - both in terms of scope and duration of measurements - seriously undermines the ability to reach a conclusion that the impacts of noise from commercial premises on the intended occupiers of the development will not cause a significant adverse impact.

The applicant's agent was advised of the concerns in this regard in the course of the application but has requested that the application be determined as submitted.

8 Conclusion

- 8.1 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, the absence of any physical contamination assessment to assess the suitability of the land 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 paragraphs 120 and 121 of the NPPF and Policy DM17 of the Havant Borough Local Plan (Allocations) 2014. Furthermore the partial nature of the noise impact assessment submitted with the application - both in terms of scope and duration of measurements - seriously undermines the ability to reach a conclusion that the impacts of noise from commercial premises on the intended occupiers of the development will not cause a significant adverse impact. 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 Policy DM18 of the Havant Borough Local Plan (Allocations) 2014, and as such this prior approval application is recommended for refusal.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE TO GIVE PRIOR APPROVAL** for application APP/17/00938 for the following reasons:

- 1 There is a reasonable prospect of the building the subject of this application lying on or adjacent to contaminated land by reason of the following factors:
 - (a) its proximity to a rail station and railway land with the potential to handle contaminating materials;
 - (b) the siting of the building on land formerly used as a goods handling area and goods shed, and also railway siding line, again with the potential to handle contaminating materials;
 - (c) its proximity to a former builders yard and works; and
 - (d) its proximity to an embankment constructed of material of unknown provenance.

Vapour pathways may be important given the likely contaminants, and background/baseline exposures could be elevated as a result of emissions from the adjacent railway land. Furthermore there is a risk that the structure of the building itself may represent a higher risk of vapour ingress.

No physical contamination assessment has been submitted 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 120 and 121 of the National Planning Policy Framework and Policy DM17 of the Havant Borough Local Plan (Allocations) 2014, this prior approval application should be refused.

- 2 A noise impact assessment has been submitted with the application which principally considers the implications of noise and vibration from the adjacent railway on future occupiers, albeit that only one day's data was able to be used. No assessment has been made of the implications for noise from the adjacent commercial premises, which include a car workshop to the south and B class employment premises to the west where noise emitting machinery can be expected to affect the living conditions of future occupiers of the proposed flats.

The findings and recommendations of the noise impact assessment are therefore considered incomplete both in terms of the scope and duration of assessment, and on the basis of the information available it cannot be concluded that the impacts of noise from commercial premises on the intended occupiers of the development will not cause a significant adverse impact on the intended occupiers of the development. The proposal as submitted would therefore conflict with the policies set out under paragraph 123 of the National Planning Policy Framework 2012 and Policy DM18 of the Havant Borough Local Plan (Allocations) 2014.