

Case Officer: Bob Neville

Recommendation: Refusal

Applicant: Cornerstone Place

Proposal: Change of use to 18 x 1-bedroom flats (Class C3)

Expiry Date: 25 September 2020

Extension of Time:

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is an existing commercial building located in a service yard area behind buildings fronting on to Broad Street within Banbury Town Centre. The existing building is three storeys in height with walls constructed in brick with profiled metal cladding under a tiled roof. The site is accessed off Broad Street via an existing shared gated access which also serves the rear accesses of commercial properties. The site benefits from four existing parking spaces, albeit that one of the se is to the front of an existing roller shutter door serving the building.
- 1.2. The site is within a mixed-use area with a variety of town centre uses, including residential properties to the west and south of the site and commercial retail, leisure and food takeaway outlets to the east. Commercial properties to the front (east) of the site have accesses, various installations of plant and machinery on the rear elevations and also parking at the rear.
- 1.3. In terms of site constraints whilst the site is not a listed building it is located within the Banbury Conservation Area which is also considered of archaeological interest. The site is within an area of potentially contaminated land and an area known to be affected by Radon Gas.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. The application seeks a determination as to whether prior approval is required for the development shown in the application submission.
- 2.2. The proposal is for change of use of the existing building to residential under the provisions of Class PA, Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2016 (as amended); changing the use of building from B1(c) light industrial use to provide 18 no. x Class C3 residential units over the existing ground, first and second floors, with four parking spaces allocated to specific units.
- 2.3. The units would be comprised of 18 no. one bedroom apartments and 7 no. one bedroom apartments. No external alterations are proposed nor are there any works of extension or demolition proposed.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:
 - CHN.371/87 - Derelict warehouse demolished and replace with new warehouse and offices, plus 6 additional parking spaces. Application Permitted.
 - 01/00038/F - Formation of 3 No. new windows; 2 to 1st floor at front and 1 No. to second floor at side. Application permitted.

4. PRE-APPLICATION DISCUSSIONS

- 4.1. Whilst officers are aware of discussions being held with the Council, no formal pre-application discussions have taken place with the planning department with regard to this proposal.

5. RESPONSE TO PUBLICITY

- 5.1. This application has been publicised by way of a site notice displayed near the site and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **4 September 2020**, although comments received after this date and before finalising this report have also been taken into account.

- 5.2. The comments raised by third parties are summarised as follows:

- Conflict between existing businesses and residential use.
- Security issues with the service yard have unrestricted access where currently locked at night.
- Insufficient parking provision.
- Detrimental impact on highway safety through increased demand for on-street parking on Broad Street.
- Unrealistic to have residential accommodation with only access via a commercial service yard.
- Waste and recycling pickup would be problematic.
- Insufficient room for a pedestrian walkway.

- 5.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

6. RESPONSE TO CONSULTATION

- 6.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 6.2. BANBURY TOWN COUNCIL: **Objects**, to the proposal on the grounds of access and parking. Noting that:

- The only access to this building appears to be via a private gated rear service/parking area for the existing shops and businesses and the area appears to be regularly fully used already;
- There is no separate pedestrian access to the site with obvious danger to users, particularly with the increased footfall caused by these flats;
- The proposal does not account for the inevitable additional parking that would be needed.

OTHER CONSULTEES

- 6.3. LOCAL HIGHWAY AUTHORITY: **Objects**, on the grounds that minimum cycle parking standards are not met, and as such the proposal is likely to have any adverse impact upon the local highway network from a traffic and safety point of view. Further notes that the red line site area does not abut the highway boundary, but that the applicant have demonstrated that there is a right of access.

- 6.4. ENVIRONMENTAL PROTECTION OFFICER: **No objections subject to conditions** in relation to noise impact assessment and further intrusive investigations to assess potential land contamination.

- 6.5. BANBURY CIVIC SOCIETY: Notes the lack of detailed information with the application and considers that the application should be deferred until such time as sufficient information is submitted, to ensure appropriate standards can be met.

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. No local policy consideration due to nature of the Prior Approval Application.
- 7.2. The Schedule 2, Part 3, Class PA, of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 7.3. Other Material Planning Consideration
- Planning Practice Guidance (PPG)

8. APPRAISAL

- 8.1. The key issues for consideration in this case are:
- Principle of development and eligibility for prior approval
 - Transport and highways impacts of the development
 - Contamination risks in relation to the building
 - Flooding risks in relation to the building
 - Where the authority considers the building to which the development relates is within an area that is important for providing industrial services or storage or distribution services or a mix of those services (which includes, where the development relates to part of a building, services provided from any other part of the building), whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services,

Principle of development and eligibility for prior approval

- 8.2. Class PA, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(c) (light industrial) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted development provided it meets the criteria set out in section PA.1 of Class PA.
- 8.3. Officers' consideration against the criteria of PA.1 is set out in bold.
- 8.4. *PA.1. - Development is not permitted by Class PA if—*
- 8.5. *(a) an application under paragraph PA.2(1) in respect of the development is received by the local planning authority on or before 30th September 2017;*

The application was received after 30th September 2017.

- 8.6. *(b) the building was not used solely for a light industrial use on 19th March 2014 or, in the case of a building which was in use before that date but was not in use on that date, when it was last in use;*

The applicant has stated that the building was in B1(c) use as of this date and has been so at all material times since to the date of this application. They have also submitted a 'statement of truth' from Jane Fitzpatrick Company Secretary and a Director of Leisure Interiors 2000 Limited who has owned the freehold of the Property since the 4th July 2000 and operated their business from the site. The business for the construction and manufacture of interior fabric linings and covers designed and manufactured for use in temporary buildings is considered by officers to be a use the would fall within the definition of Class B1(c). A previous planning application (01/00038/F) at the site was for a similar B1 use (manufacture of sofas). Officers have no

evidence contrary to the applicant's assertions and consider this criterion to be met.

8.7. *(c) the prior approval date falls on or after 1st October 2020;*

The application is being determined prior to 1st October 2020

8.8. *(d) the gross floor space of the existing building exceeds 500 square metres;*

**Whilst the applicants contend that the gross floor space of the building is 483m² from measurement of the submitted plans officers consider the gross floor space of the existing building to be in excess of 500m² at 562m² (G.E.A.).
The proposal thereby fails to accord with this criterion.**

8.9. *(e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;*

There are no known agricultural tenancies on the site.

8.10. *(f) less than 1 year before the date the development begins—*

(i) an agricultural tenancy over the site has been terminated, and

(ii) the termination was for the purpose of carrying out development under this Class, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural purposes;

There are no known agricultural tenancies on the site.

8.11. *(g) the site is, or forms part of—*

(i) a site of special scientific interest;

(ii) a safety hazard area;

(iii) a military explosives storage area;

The site does not contain any of the above features.

8.12. *(h) the building is a listed building or is within the curtilage of a listed building; or*

The building is not a listed building or within the curtilage of a listed building

8.13. *(i) the site is, or contains, a scheduled monument.*

The site is not, nor does it contain a scheduled monument

8.14. The Order requires that before the change of use occurs the applicant is required to apply to the LPA for a determination as to whether the prior approval of the authority will be required as to;

a) Transport and highways impacts of the development;

b) Contamination risks on the site;

c) Flooding risks on the site;

d) Where the authority considers the building to which the development relates is within an area that is important for providing industrial services or storage or distribution services or a mix of those services (which includes, where the development relates to part of a building, services provided from any other part of the building), whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services,

Highway safety

8.15. Oxfordshire County Council as Local Highway Authority (LHA) objects to the application on the basis of the proposals and not provided cycle storage provision in

line with minimum standards. They also note that the application site boundary does not include access onto the adopted highway.

- 8.16. The PPG (Paragraph: 024 Reference ID: 14-024-20140306) sets out in the requirements for applications that the application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). Whilst the applicants have provided evidence of rights of access during without the access being included within the application's site boundary such matters cannot be considered; if the application were to be approved on the basis of the submitted red line plan, the site would be marooned without a vehicular access, meaning that, notwithstanding the limited parking provision proposed, vehicles from the development would need to park outside of the site potentially leading to an increase in demand for on-street parking within Broad Street.
- 8.17. Whilst four parking spaces are proposed (indicated by the applicants to be allocated to individual units) this would be below the usual requirement for a development of 18 no. 1-bed. However, it is considered that due to the site's relatively sustainable location within the town centre with good access to the services and facilities that the town centre has to offer, including public transport options, parking requirements could be reduced in such circumstances. The LHA advises that if proposals are to be considered on the basis of car-free development that minimum standards for cycle storage would have to be met for the proposals to be considered acceptable; which in this case would be for a requirement for 27 spaces including provision for visitors.
- 8.18. The proposals do not show any cycle parking within the submission and officers consider it unlikely that appropriate provision could be made without it impacting either on the number of units proposed or the size/layout of such as submitted.
- 8.19. During the case officer's site visit it was noted that on-street parking in the area was very much in demand within the vicinity of the site, with some instances of inappropriate parking, breaching parking restrictions in the area. The site itself was also quite congested with a number of vehicles parked at the rear of commercial properties to the east of the site fronting onto Broad Street, and parking within the area reserved for manoeuvring within the service yard area. There is no existing dedicated pedestrian access route and given the constrained nature of the site it is unlikely that such could be achieved. This would lead to conflict between pedestrian and vehicle movements and therefore to the detriment of highway safety.
- 8.20. Without providing either vehicular and cycle parking as an option for potential future occupants, it is likely that the proposals would result in pressure for such parking provision within the surrounding area; and in an area already under pressure for on-street parking potentially to the detrimental to highway safety.
- 8.21. Overall, in terms of highway safety it is considered that the proposed development would fail to provide an adequate means of access to the site to serve the proposed dwellings. The proposed development would therefore result in significant and demonstrable harm to local highway safety and is therefore contrary to Policy ESD15 of the Cherwell Local Plan Part 1 and Government guidance contained within the National Planning Policy Framework.

Contamination risks on site

- 8.22. In terms of assessment of land contamination issues, the submitted Phase 1: Desktop Study and Preliminary Risk Assessment report submitted in support on the application recommends further intrusive investigations in respect of potential land contamination. The Environmental Protection Officer (EPO) has assessed the submitted information and raised no objections subject to the further investigative survey work being carried out. Given the nature of the proposal (conversion with

very limited ground works likely to be required) and context of the site, it is considered that any potential contamination risks are likely to be relatively low and such matters could be appropriately dealt by way of condition had the Council been minded to approve the application.

Flood Risk

- 8.23. The site is not located within Flood Zones 2 or 3 and no changes are proposed which would involve alterations to existing surface water drainage arrangements. The proposal is therefore to be considered low risk and does not require prior approval with regards to flooding risks.

Adverse impact on the sustainability of the provision of existing facilities

- 8.24. The site is not considered to be within an area that is particularly important for providing industrial services or storage or distribution services or a mix of those services; being in a town centre location with a variety of town centre uses currently within surrounding properties.
- 8.25. Given the proximity of the proposals to existing commercial units, there is the potential for conflict between the operation of the businesses and the proposed residential use, beyond the highway safety issues discussed above. The EPO has raised concerns with regards noise, given the location of the site and its relationship to commercial properties (including a night club) surrounding the site. Whilst there is a concern with regards to potential noise disruption occurring it is considered by the EPO likely that such matters are likely to be able to be satisfactorily be mitigated against through acoustic insulation measures; and that appropriate noise impact assessment and mitigation measures could be appropriately be secured by way of conditions, again, had the Council been minded to approve the application.
- 8.26. It is not considered the proposed change of use would detrimentally affect the supply of existing industrial or storage and distribution floorspace. Further, and although noting the comments of neighbouring commercial premises, officers do not consider that the proposed change of use would have any adverse impact on the sustainability of any neighbouring commercial uses.

Other matters

- 8.27. Officers consider that the proposals would result in a poor living for potential future occupants, particularly in relation to the units on the ground floor. These units have limited internal amenity space with no outlook or access to natural light and in officer's assessment would provide for a very poor standard living for future occupants. Whilst the Government have made amendments to the prior approval process that allow for consideration of access to natural light going forward, at the time of the submission of the application these were not matters for consideration under the prior notification application process, and therefore not a reason by which permission could be withheld.

9.1. PLANNING BALANCE AND CONCLUSION

- 9.2. For the reasons set out above, the application is not deemed to be eligible for the prior approval process under Class PA, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016.
- 9.3. Having regard to land contamination, flood risk; and the loss of the industrial unit, there would have been no issues. However, given that the application does not include access up to the adopted highway within the application's site boundary, adequate cycle storage provision and also lacks any dedicated pedestrian access route, the proposals would be to the detriment of the safety and convenience of pedestrian and motorists alike and therefore unacceptable in terms of highway safety.

9. RECOMMENDATION

That permission is refused, for the following reasons:

1. The gross floor space of the building to which this application relates exceeds 500 square metres. It therefore fails to accord with criterion (d) of Class PA to Schedule 2 Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and is not permitted development.
2. The proposed development would fail to provide an adequate means of access to the site to serve the proposed dwellings. Further, given the constrained nature of the site and lack of any dedicated pedestrian access route, the proposals would result in conflict between pedestrian and vehicular movements. As a result, the proposed development would detrimentally impact on highway and pedestrian safety and convenience as result of the intensified use of the existing substandard access. The proposed development would therefore result in significant and demonstrable harm to local highway safety and is therefore contrary to Policy ESD15 of the Cherwell Local Plan Part 1 and Government guidance contained within Section 9 of the National Planning Policy Framework.

Case Officer: Bob Neville

DATE: 25/09/2020

Checked By: Nathanael Stock

DATE: 25.09.2020
