

Case Officer: Bob Neville

Recommendation: Refusal

Applicant: Waterperry Court Developments LTD

Proposal: Prior Approval for the change of use from office (Use Class B1a) to residential (Use Class C3) to create 30 self-contained flats.

Expiry Date: 5 February 2021

Extension of Time:

1. APPLICATION SITE AND LOCALITY

1.1. The application relates to Waterperry Court, a development of five self-contained office buildings prominently located on the Middleton Road on the edge Banbury's Town Centre, adjacent to Banbury's train station and close to the town's bus station. Adjacent to the south is Banbury's main Royal Mail sorting office with associated parking and service-yard areas. The existing buildings are a mixture of three and four storey units and currently have B1 office use. The site includes both external and undercroft parking to the rear.

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 office buildings to residential under the provisions of Class O, Part 3 of Schedule 2 of the GPDO 2015. The buildings are proposed to be converted from B1(a) office use to 30 residential units (seven, two bedroom flats and twenty three one bedroom flats) with associated parking.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:
- CHN.546/89 - 6 No. office units in terrace formation with undercroft and surface parking to provide a total of 59 No. car spaces. New access. (as amended by the plans received on the 10th August 1989). Application permitted.

4. PRE-APPLICATION DISCUSSIONS

- 4.1. No pre-application discussions have taken place 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 **17 January 2021**, although comments received after this date and before finalising this report have also been taken into account.
- 5.2. One letter of objection has been received from a local resident during the application. The comments raised by third parties are summarised as follows:
- Insufficient attempt has been made to find alternative office tenants following the departure of the solicitors.

- Significant number of additional flats in an area that already benefits from this of accommodation. Banbury has already seen a number of major developments and significant housing provision has already been made.
- Occupant amenity would be affected by vibration and noise from adjacent railway. Further local residential amenity would be affected by Noise and disruption during construction phase
- Concern raised in respect of potential social problems being caused by having 30 flats with no outside space, especially following the pandemic and lockdowns we have experienced recently.
- Detrimental impacts on sewage infrastructure
- Could the site be better used for houses as that way gardens and parking could be provided making it more suitable as living accommodation as well as providing a more mixed economy of property in the area.

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: **No objections.**

OTHER CONSULTEE RERSPONSES:

6.3. DRAINAGE (OCC): **Objects.** The site is subject to flood risk from surface water. A detailed surface water management strategy must be submitted in accordance with the Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire. In line with this guidance, runoff must be managed at source (i.e. close to where it falls) with residual flows then conveyed downstream to further storage or treatment components, where required. The proposed drainage should mimic the existing drainage regime of the site as much as possible.

6.4. ENVIRONMENT AGENCY: **No objections subject to conditions**, and development being carried out in accordance with the submitted Flood-Risk Assessment (FRA).

ENVIRONMENTAL PROTECTION: **Objects.** Further information is required regarding contaminated land, air quality and noise.

6.5. LOCAL HIGHWAY AUTHORITY: **Objects;** due to the lack of any cycle parking for future residents detailed within the application; however confirms that such matters could potentially be addressed by appropriate conditions were the Council minded to approve the application..

6.6. THAMES WATER (TW): With regard to surface drainage, TW advises that if the developer follows the sequential approach to the disposal of surface water they would have no objection. No objections with regard to wastewater network, sewage treatment works or water supply based on the information submitted.

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 O, of The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2015.

7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

8. APPRAISAL

8.1. The key issues for consideration in this case are:

- Principle of development
- Highway safety
- Contamination risks on site
- Flooding risk
- Noise
- Adequate natural light

Principle of development

8.2. Class O, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that the conversion of offices to a residential use is permitted development provided it meets the criteria set out in section O.1 of Class O.

8.3. The proposal is considered to meet the criteria set out in section O.1 of Class O as the following apply;

- The building is not on article 2(5) land. There are a number of office units on the first and second floor of the building, and I have no reason to doubt that these were in use for Class B1 office use before 29th May 2013.
- The site is not and does not form part of a safety hazard area. The site and building is not and does not form part of, a military explosives storage area.
- The building is not a listed building or within the curtilage of a listed building; and the site is not and does not contain a scheduled monument.

8.4. However, notwithstanding the above when planning permission was given for the construction of the building and its subsequent use the permission (CHN.546/89) included a condition which restricted the use of the building.

8.5. CHN.546/89 Condition 11:

That the buildings shall be used only for the purpose of B1(a) and B1(b) and for no other purpose whatsoever, including any other purpose in class B1 of the schedule to the Town and Country Planning (Use Classes) Order 1987.

Reason - In order to maintain the character of the area and safeguard the amenities of the occupants of the nearby residential premises.

8.6. Regulation 3(4) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) has been states: *'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the Act otherwise than by this Order'*

8.7. The effect of this provision is that Permitted Development rights do not override contrary planning conditions. In this case, Condition 11 of the 1989 enabling consent specifically restricts the use of the buildings to B1(a) and B1(b) and for no other purpose whatsoever, including any other purpose in class B1.

8.8. The applicants contend that Condition 11 does not exclude the application of Class O and, therefore, the permitted development rights that the development would usually benefit from.

8.9. The wording of condition 11 follows a well-established and widely used formulation utilised when seeking to restrict or limit the use of development. It sets out the use

class, B1, within which development is restricted (B1(a) and B1(b) and refers to the statutory instrument, The Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO), where that use class is defined. The intention and effect of the condition is clear that it restricts the permission in that respect to that use. The words “*for no other purpose*” make it clear that the condition goes beyond merely specifying the development for which permission was being granted and explicitly restricts development outside that which it specifies.

- 8.10. Whilst it is implicit, rather than explicit, that this would include any change of use permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), as the effect of such permitted development changes of use would be a use within another use class and not in Class B1 this is clearly covered by the terms of the condition and by its reading in a straightforward way, even though the condition only specifically refers to the UCO.
- 8.11. Given the above the change of use of the building to residential would be contrary to the existing condition and therefore would not constitute permitted development, and the application under Class O therefore fails.
- 8.12. Notwithstanding the above the Order also 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, and
 - d) impacts of noise from commercial premises on the intended occupiers of the development, and
 - e) the provision of adequate natural light in all habitable rooms of the dwellinghouses.

Transport and highways impacts

- 8.13. Whilst not objecting to the principle of the proposed use of the site for residential purposes, objections have been raised by Oxfordshire County Council as Local Highway Authority (LHA), on the basis of the lack of cycle storage provision within the proposals.
- 8.14. OCC comments: The site is very well located in terms of access local facilities and to sustainable transport modes. This will encourage the use of sustainable transport for short trips in particular.
- 8.15. In terms of traffic impact, it is typically expected that residential uses generate a lower number of trips than B1a office uses. Therefore, the proposed change of use is unlikely to lead to an increase in traffic movements in comparison to the permitted use.
- 8.16. There appears to be sufficient off-street parking available for the residential units and it is worth noting that the surrounding streets are subject to parking restrictions which would prevent overspill off-street parking in any event. The fact that the site is so well located in terms of access to local facilities and sustainable transport options is likely to lead to lower levels of car dependency and car ownership among the residents.
- 8.17. Subject to a condition securing appropriate cycle storage provision it is considered that the proposal would not have an adverse impact upon the safe and efficient operation of the highway network.

Contamination risks on site

- 8.18. No investigative work appears to have been undertaken in respect of potential land contamination, and the Environmental Protection Officer (EPO) advises that further

information is required in this respect. Given the nature of the proposal (conversion with very limited ground works likely to be required) and context of the site, and being currently in office use, the EPO is satisfied that any potential contamination risks are likely to be relatively low and such assessment and any necessary mitigation could be appropriately secured by way of condition had the Council been minded to approve the application.

Flood Risk

- 8.19. The site is located within Flood Zones 2 or 3 and an FRA has been submitted during the course of the application in support of the proposals. No external operational development is proposed which would involve alterations to existing surface water drainage arrangements.
- 8.20. Whilst the LLFA has objected on the grounds of there being no surface water management strategy submitted, the EA have reviewed the submitted FRA and raise no objections in respect of flood-risk subject to the proposals being carried out in accordance with the FRA and its recommendations.
- 8.21. Given the context of the site and the nature of the development, with no external operational development, no residential units proposed in the lower ground floor and safe and suitable means of escape to the higher street levels to the front of the site being available, officers see no reason not to agree with the opinion of the EA in that subject to the development being carried in accordance with submitted information and mitigation measures with the FRA, which could be secured by way of appropriate conditions, that the proposals could be considered acceptable in terms of potential flood-risk.

Noise

- 8.22. The site sits on busy road adjacent to Banbury's train station and to Banbury's main Royal Mail sorting office with associated parking and service-yard areas.
- 8.23. With regards to the potential impacts of noise from the adjacent highway and commercial operations within the vicinity of the site in relation to the proposed development, the EPO has reviewed the Noise and Vibration Assessment from Venta acoustics referenced VA3439.201127.NIA, submitted in support of the application. Whilst the EPO considers potential impacts from vibration to be within acceptable tolerances (in accordance specified in BS 6472-:2008 Guide to evaluation of human exposure to vibration in buildings) he has raised concerns with regards to the lack of appropriate assessment of potential noise sources and whether an appropriate internal living environment would be created if noise mitigation measures rely on windows remaining shut.
- 8.24. The dominant noise sources have been identified as road traffic, trains on the main line, tannoy announcements from the station, and HGV movements at the Royal Mail sorting office.
- 8.25. Two noise sources have been identified at the Royal Mail sorting office, lorries manoeuvring and lorries unloading/loading, and these have been assessed in accordance with the methodology in BS4142 using library data (table 6.1 of the report) and not measured data. The assessment for lorries manoeuvring is shown in table 6.3 of the report; however, it is not clear how the percentage on-time of 2 minutes in a 15 minute period has been arrived at. Is there a peak time when lorries arrive and depart the site and if so the percentage on-time for this period (worst case scenario) should be used.
- 8.26. For the assessment of lorries unloading/loading in table 6.4 of the report the source sound data is shown as 56dB @ 5m (the commentary column also states lorry manoeuvring), whereas in table 6.1 the library data for this source is given as 61dB @ 5m.

- 8.27. It is unclear as to whether all noise at the Royal Mail sorting office been identified, such as plant or equipment on the building lorry movements and metal cages being wheeled across the yard as they are unloaded from the vehicle and moved into the building; and further whether are there any other potential noise sources that operates at night/early hours of the morning.
- 8.28. The EPO also notes that paragraph 2 in section 3 of the report states: 'It was noted whilst on site that announcements from the station speakers were one of the clearest noise sources affecting the local area'. However, this noise source has not been considered further in the assessment.
- 8.29. The EPO advises that to achieve satisfactory internal levels in the proposed flats windows would have to remain closed with alternative means of ventilation such acoustic trickle vents or acoustic mechanical ventilation being provided. Alternative mitigation could not be provided to the front elevation but could be provided to the rear elevation to mitigate rail noise and noise from the Royal Mail sorting office allowing windows to be opened in some of the lower level flats on this facade, and this option should possibly be considered in the assessment. Given that the proposals would require windows to remain closed there is a potential risk of the building overheating and that an overheating risk assessment needs to be undertaken to ensure that closed windows would provide an acceptable living environment.
- 8.30. In consideration of matters of noise pollution and appropriate standards of residential amenity the following policies would usually be considered relevant in the assessment of proposals requiring planning permission. Saved Policy ENV1 of the Cherwell Local Plan 1996 sets out that development which is likely to cause materially detrimental levels of noise, vibration, smell, smoke other types of environmental pollution will not normally be permitted. Further, where a source of pollution is already established and cannot be abated, the Council will seek to limit its effect by ensuring that development within the affected area maintains a suitable distance from the pollution source. Saved Policy C30 of the Cherwell Local Plan 1996 also requires development to provide standards of amenity and privacy acceptable to the local planning authority.
- 8.31. Further, Policy ESD15 of the Cherwell Local Plan Part 1 states that: *"Development should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation, and indoor and outdoor space."*
- 8.32. Given the context of the site and its relationship with adjacent commercial uses, the lack of supporting information and appropriate assessment of all relevant noise sources as identified by the EPO it is considered that the Council cannot be satisfied development would result in an acceptable living environment free from intrusive noise nuisance giving rise to 'significant adverse impacts' on health and the quality of life, contrary to the provisions and aims of the Development Policies identified above and therefore is unacceptable in this regard.

The provision of adequate natural light

- 8.33. The submitted plans demonstrate that whilst some of the units' kitchens and bathrooms do not benefit from windows the main living areas and bedrooms all benefit from having a window, which would provide a source of natural light and outlook from the respective rooms. The proposals are therefore considered acceptable in terms of the provision of adequate natural light.

Other matters

- 8.34. The EPO highlights that there are two Air Quality Management Areas in Banbury and advises that air quality impact assessment and air quality mitigation statement is required outlining the measures to mitigate the impact of the development on air quality. Whilst a significant consideration for potential new development proposals

this matter falls outside scope for consideration under the prior approval process, and as such the lack of information in this respect has not been pursued as a reason for refusal in this instance.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. For the reasons set out above, the application is not deemed to be eligible for the prior approval process under Class O, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 9.2. Having regard to transport impacts, flood risk, contamination and the provision of adequate natural light it is considered that subject to appropriate conditions these matters could be considered acceptable. However, given context of the site and its relationship with adjacent commercial uses, and the lack of supporting information and appropriate assessment it is considered that the development would not result in an acceptable living environment for future occupants free from intrusive noise nuisance giving rise to 'significant adverse impacts' on health and the quality of life, and is therefore is also unacceptable in this regard.

10. RECOMMENDATION

That permission is refused, for the following reasons:

1. Condition 11 of application Ref CHN 546/89 states that the premises shall be used only for the purpose of B1(a) and B1(b) and for no other purpose whatsoever, including any other purpose in class B1 of the schedule to the Town and Country Planning (Use Classes) Order 1987. Regulation 3(4) The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) does not permit development which would be contrary to any condition imposed by any planning permission. The change of use from B1(a) to C3 therefore requires planning permission.
2. By virtue of its siting adjacent to the commercial operations of Banbury Royal Mail Sorting Office and Banbury train station and associated Birmingham to London railway line, the proposed development would be adversely affected by noise, thereby resulting in an unacceptable living environment for the occupiers of the proposed residential units. Insufficient information has been submitted to demonstrate that such harm could be appropriately mitigated against or that an appropriate internal living environment could be provided. The development would not provide a good standard of amenity for the proposed residents and does not result in sustainable development, contrary to Policy ESD15 of the Cherwell Local Plan Part 1, saved Policies C30 & ENV1 of the Cherwell Local Plan 1996 and Government advice within the National Planning Policy Framework.

Case Officer: Bob Neville

DATE: 05/02/2021

Checked By: Nathanael Stock

DATE: 05.02.2021
