

Case Officer: Wayne Campbell

Recommendation:

Applicant: Waterperry Court Development Ltd

Proposal: Removal of Condition 11 (use of building) of 89/00546/N

Expiry Date: 9 December 2022

Extension of Time:

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is a vacant office building located in the commercial area of Banbury Town Centre. The building is a mixed height of 2 and 4 storey and occupies a prominent position on a busy junction. The building is adjacent to Banbury's train station and close to the town's bus station and to the south is Banbury's main Royal Mail sorting office with associated parking and service-yard areas.
- 1.2. The site is located adjacent to the Banbury Conservation Area and to a grade II listed building. Areas of the site to the rear are located within Flood Zone 3.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1. This application seeks the removal of Condition 11 (use of building) attached to the initial permission CHN.89/00546/N for six office units in terrace formation with undercroft and surface parking to provide a total 59 car spaces together with a new access.
- 2.2. Condition 11 is a restrictive condition which requires the building to be used only for the purpose of B1(a) and B1(b) and for no other purpose whatsoever.
- 2.3. The reason for the condition was to maintain the character of the area and safeguard the amenities of the occupants of the nearby residential premises.
- 2.4. The removal of condition 11 is sought in order to allow the building to be used for any activity specified under Class E of the Use Classes Order, as amended September 2020. This was reflected in the description of development as submitted but given it sets out the rationale for the application rather than what is applied for it has been amended/shortened. Officers note the recent appeal decisions / case law in respect of change of use between sub-parts of use classes, which may impact on the applicant's belief that removal of Condition 11 would allow for any use within Class E.

3. RELEVANT PLANNING HISTORY

- 3.1. The following planning history is considered relevant to the current proposal:

21/03918/F Conversion of 2-6 Waterperry Court to a hotel (Use Class C1) including eastern extension, associated car parking, landscaping and ancillary Approved

21/00303/F Removal of Condition 11 (use of building) of 89/00546/N Withdrawn

20/03558/O56 Prior Approval for the change of use from office (Use Class B1a) to residential (Use Class C3) to create 30 self-contained flats Refused

20/02817/O56 Prior Approval for the Change of Use from office (B1a) to residential (C3) to create 30 self-contained flats Withdrawn

18/01785/F Change of use from office use (B1) to driving centre (sui generis) Withdrawn
04/02191/F Change of use of ground floor and part first floor to recruitment agency class A2 use (Unit 4) Approved

CHN.546/89 Six office units in terrace formation with undercroft and surface parking to provide a total 59 car spaces. New access. Approved

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 letters sent to properties adjoining the application site that the Council has been able to identify from its records. The overall final date for comments was **8 November 2022**.

5.2. No comments have been raised by third parties.

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.

TOWN COUNCIL

6.2. BANBURY TOWN COUNCIL: no objections, however, comment on a concern over the combination of uses that might occur.

OTHER CONSULTEES

6.3. OCC HIGHWAYS: No objections

6.4. LLFA: No objections

6.5. CDC ECONOMIC DEVELOPMENT: Comment. Whilst principle of incorporating E-Class uses within the premises appears reasonable to support appropriate businesses and service providers, several elements appear to be missing within the proposal and its supporting documents. Further information required.

6.6. ENVIRONMENT AGENCY: The FRA confirms to our agreement the level of flood risk at this site. The risk of future flood risk has also been considered. The basement should be restricted to non-habitable uses.

6.7. CDC BUSINESS SUPPORT UNIT: No comments received

6.8. CDC CONSERVATION OFFICER: No comments received

7. RELEVANT PLANNING POLICY AND GUIDANCE

- 7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 (CLP 2015) was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The CLP 2015 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2015)

- ESD6: Sustainable Flood Risk Management
- ESD15 - The Character of the Built and Historic Environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development

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 removing the condition
- Impact on flooding

Principle of Removal of Condition

- 8.2. The principle of development was granted in 1989 for the construction of the office block. A condition was imposed to ensure the development remained in a B1 (Office) use only to safeguard the amenities of the nearby residential properties and the character of the locality.
- 8.3. Therefore, consideration must be given to whether removal of the condition would harm residential amenity and the character of the locality.
- 8.4. Since the application was approved, the use classes have altered. Class E was introduced in the 2020 changes, and includes ex-A1, A2, A3 and B1 uses along with some other uses including indoor sports.
- 8.5. The rationale behind this agglomeration is that these are all uses that could be used within a residential area without a detrimental impact on the amenities of the nearby residential properties.
- 8.6. If the effect of granting permission for the current proposal is that the subject building would be capable of being used for any purpose within Class E, then it is considered that none of the other uses within Class E would have a significantly different impact on the character of the area or the amenity of nearby residential properties to that incurred by a Class B1 use.

- 8.7. The Council's Environmental Health team does not have an objection to the proposal; and overall it is considered that the removal of the condition would not have an adverse impact on the amenities of the nearby residential neighbours.
- 8.8. The application site is located within close proximity to the town centre, where there are a number of different uses within the E class as well as residential. The application does not seek to make any changes to the external appearance of the building. Therefore, the character would still remain as it is.
- 8.9. It is noted that the Council's Economic Growth Officer has some concerns regarding the proposed removal of the condition and poses various questions including why the hotel use is not being implemented, whether it is intended to retain Class B1 uses on the upper floors, what uses are being considered at ground floor level, how the uses would combine to create a viable development and asking about the applicant's vision and ambition for the site.
- 8.10. While the questions and concerns are noted, it is not considered necessary to pose these questions. Should this planning permission be granted, the applicant/owner may still choose to implement the hotel permission and the premises may still be used for Class B1 purposes. As mentioned above, the effect of the permission would be to allow for a greater number of uses to take place than is presently permitted.
- 8.11. Overall, the removal of the planning condition would not result in a detrimental impact to residential amenity and therefore the principle of the proposal is considered acceptable.

Flooding

- 8.12. The site is located within Flood Zone 3, therefore there is a potential for a detrimental impact on flooding. The Environment Agency ('EA') originally objected to the proposal. The applicant has submitted additional information intended to overcome the EA's objection. The EA now agrees with the submitted FRA, and that non-habitable uses should be allowed within the basement area. Importantly, Class E does not allow for residential uses, the uses within Class E being considered less vulnerable – whereas residential uses are considered 'more vulnerable'. It is considered that the condition of the original planning permission, requiring the basement area to be used for parking, would ensure that more vulnerable uses are not at risk of flooding; this condition would need to be re-imposed.

Conditions of the original permission

- 8.13. The development was implemented and so Condition 1 of 546/89 does not need to be reapplied. For the same reasons, the materials condition (no. 2), finished floor levels (no. 3) is no longer necessary to impose. The landscaping condition (no. 4) and the new boundary condition (no. 6) would be imposed but do not include a trigger requiring the subject matter to be implemented or to be retained, are therefore not enforceable and so do not meet the tests for condition. Condition 5 (landscaping maintenance) only applied for the first five years of the development and so does not need to be reimposed. Conditions 7 and 9 relating to the means of access and parking/servicing respectively do not include a requirement for the development to be retained as approved. Condition 8, relating to visibility splays, does need to be reimposed, as does Condition 10, mentioned earlier in this report and relating to the undercroft parking spaces. Condition 12 is no longer necessary given that the Banbury Inner Relief Road from Oxford Road to Hennef Way has been provided.

9. PLANNING BALANCE AND CONCLUSION

- 9.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 requires that the three dimensions to sustainable development (economic, social and environmental) are not undertaken in isolation, but are sought jointly and simultaneously.
- 9.2. The proposed removal of the planning condition is considered to be acceptable, as it will not have a detrimental impact on the character of the area nor the amenities of the nearby residential properties. The applicants have overcome the concerns of the Environment Agency.

10. RECOMMENDATION

That permission is granted, subject to the following conditions:

1. The undercroft car parking spaces shall be kept free of obstructions at all times and used only for the specified purpose.

Reason – In the interests of highway safety and flood risk and to ensure a proper standard of development and to accord with Policies ESD6 and ESD15 of the Cherwell Local Plan 2011-2031 and Government guidance in the National Planning Policy Framework.

2. The vision splays measuring 4.5 metres x 50 metres as required by Condition 8 of the original planning permission shall not be obstructed by any object, structure, planting or other material including the wall to the south of the proposed access shown on the approved plans.

Reason – In the interests of highway safety and to accord with Policy ESD15 of the Cherwell Local Plan 2011-2031 and Government guidance in the National Planning Policy Framework.

Case Officer: Katherine Daniels

DATE:

Checked By: Nathanael Stock

DATE: 22.08.2023
