CASE OFFICER'S REPORT

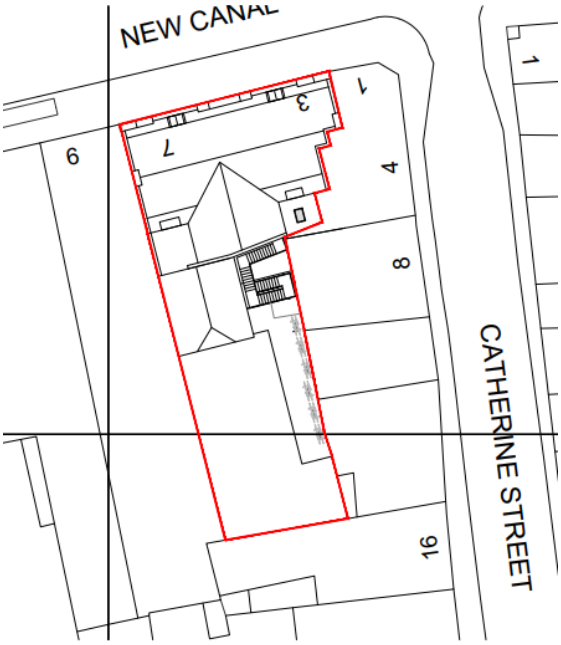
Application Reference: **PL/2023/10405**
Publicity Expired: **21/05/2024**
Target Date: **31/05/2024**

SITE CONSTRAINTS:

The application site is located in the Salisbury Community Area, within the defined settlement boundary of Salisbury (identified as a Principal Settlement in the Wiltshire Core Strategy Settlement Strategy under Core Policy 1), Salisbury Central Shopping Area, within Salisbury Conservation Area and a Primary Shopping Frontage.

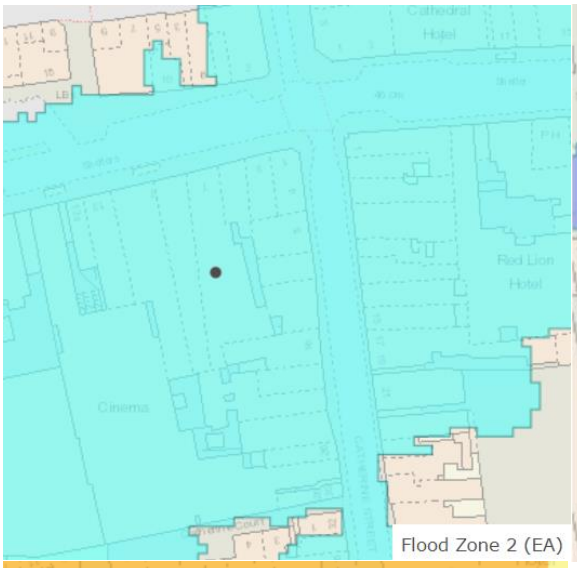
The building is unlisted but is within the historic medieval Chequers area (New Street Chequer) of the Salisbury Conservation Area and within the setting of several listed buildings.

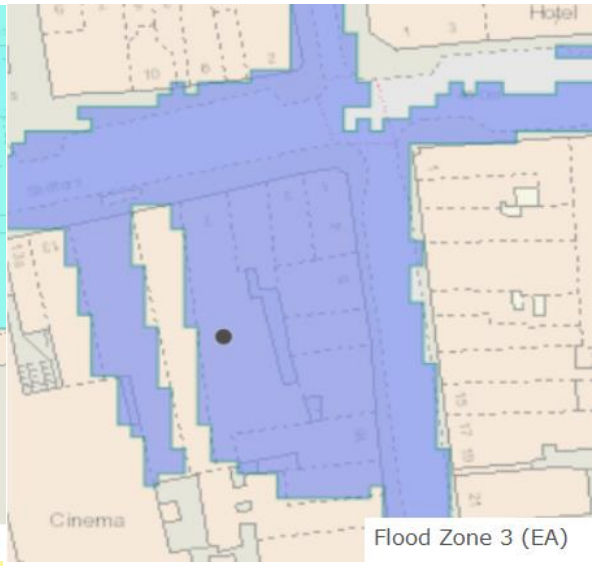
The building is five storeys high.

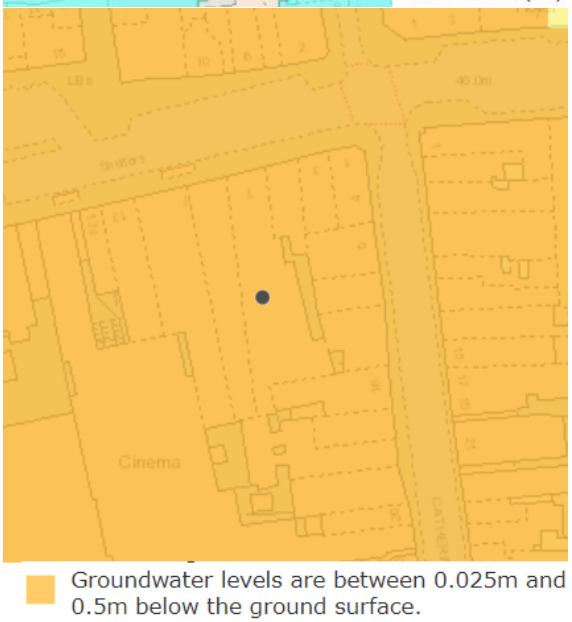




The site is at risk of flooding (identified to be within Flood Zones 2 and 3 of the EA flood maps) and is also identified to be at high risk of flooding from other sources in the LPA's Strategic Flood Risk Assessment (SFRA) where groundwater levels are between 0.025m and 0.5m below the ground surface (within this zone there is a risk of groundwater flooding to both surface and subsurface assets and there is the possibility of groundwater emerging at the surface locally).







The site is within the catchment of the River Avon Special Area for Conservation (SAC), and within the New Forest 13.8km Internationally protected sites zone of influence.

The site has no off-street parking.

The current Use Classes were last updated on 1 September 2020 and Class A1 (retail) and B1 (Offices) were revoked, replaced by **Class E - Commercial, Business and Service**:

E(a) Display or retail sale of goods, other than hot food
E(b) Sale of food and drink for consumption (mostly) on the premises
E(c) Provision of:
E(c)(i) Financial services,
E(c)(ii) Professional services (other than health or medical services), or
E(c)(iii) Other appropriate services in a commercial, business or service locality
E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,)
E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)
E(f) Creche, day nursery or day centre (not including a residential use)
E(g) Uses which can be carried out in a residential area without detriment to its amenity:
E(g)(i) Offices to carry out any operational or administrative functions,

E(g)(ii) Research and development of products or processes
E(g)(iii) Industrial processes

The ground and first floor are in former Class A1 retail use which now falls within Use Class E (the ground floor unit at no.7 occupies the majority of the first floor). The upper floor accommodation currently has no means of independent access and has therefore been used for a combination of ancillary retail accommodation and offices, all of which fall within Use Class E.

RELEVANT PLANNING HISTORY:

Application Reference	Description	Decision
PL/2023/10277	Alterations to existing shopfront to provide independent entrance doorway to serve the upper floors of accommodation	Approved with Conditions 05/03/2024 – Decision Notice Attached at Appendix A
18/02618/ADV	3-5 New Canal Salisbury Proposal to paint outside of the store, as it currently stands (with no modifications) black, and two simple white "Craghoppers' signs affixed above the windows. Two hanging projecting signs, black with white writing saying "Craghoppers" and "Discover your World"	Finally disposed of 20/04/2023
18/02478/FUL	3-5 New Canal Salisbury Current retail outlet to be turned into Craghoppers Premium Outdoor Clothing Store. Proposal to paint outside of the store, as it currently stands (with no modifications) black, and two simple white "Craghoppers' signs affixed above the windows. Two hanging projecting signs, black with white writing saying "Craghoppers" and "Discover your World"	Finally disposed of 20/04/2023
S/1989/0984	5 New Canal Salisbury A/D Application - Non-Illuminated Hanging Sign, Internally Illuminated Fascia Sign	Decision issued 22/09/1992
S/1989/0983	5 New Canal, Salisbury New Shopfront for Shop Unit	Approved with Conditions 04/09/1989
S/1988/2370	3/5 NEW CANAL SALISBURY L/B Application - Removal of Existing Shop Front, Demolition of Single Storey Link In Rear Yard With Associated Minor Alterations To Rear Escape Stairs	Approved with Conditions 25/01/1989
S/1978/0253	3-5 New Canal, Salisbury, Single Storey Extension New Opening Between 5-7 And	Approve 26/04/1978

	Adapt Shop Front Including New Fascia At 3,5 And 7 New Canal Road	
S/1978/0028LB	3-5 New Canal, Salisbury, Demolition of Brick Feature Reslating Of Roofs and Provision Of Guard Rail	Approved with Conditions 25/10/1978

PROPOSAL & CONCURRENT SHOPFRONT ALTERATION PLANNING APPLICATION:

The application is put forward in line with Class MA of Part 3 of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). A Planning Statement accompanies the application, setting out how it is believed that the proposal complies with the criteria in Class MA of the GPDO.

Detailed plans of the proposed building's conversion accompanied the application including a Flood Risk Assessment, a Fire Statement and covering letter, setting out how it is believed that the proposals comply with the criteria in Class MA of the GPDO.

Class MA does not permit any operational development (which includes external alterations including new window/door openings).

No external alterations are proposed to the building and all works are to be contained within the existing footprint/massing of the existing building.

The application was revalidated following receipt of elevation plans, and dimensioned drawings (a requirement of paragraph W of the GPDO which sets out the procedure for applications for prior approval under Part 3.

The application was submitted concurrently with a stand-alone 'companion' application for alterations to the shopfront (PL/2023/10277) to allow the creation of a separate access to the upper floors. This application has been approved (the decision notice is attached at appendix A) although the use of the building remains unchanged. The supporting information submitted with the shopfront application explains:

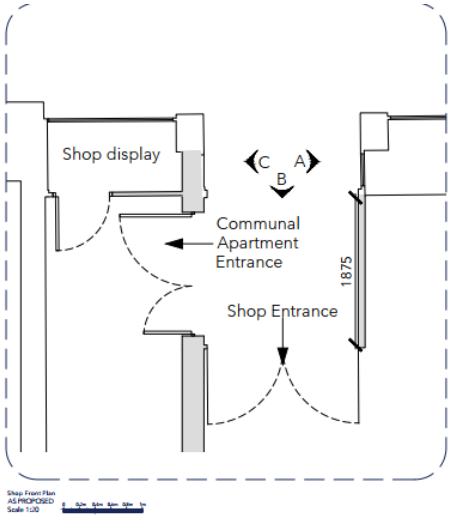
'Class MA is a Permitted Development provision that allows some commercial accommodation be converted to residential where certain criteria are met, but significantly, does not permit any external changes to a building within its provisions. In these circumstances where changes are required, a separate planning application must be made, and this is the purpose of this submission.

Notwithstanding the companion nature of this submission, the provision of separate and independent access to the upper floor accommodation is required irrespective of the outcome of the Class MA submission. The determination of the application should therefore be based in its individual design merits and any impact the limited loss of retail frontage might have.

Procedurally, this application would need to be approved, but not implemented, in advance of the determination of the Class MA Prior Notification cited above. The Prior Notification could then be approved with the inclusion of a negatively worded planning condition. This would require the full implementation of the works proposed in this planning application ahead of the occupation of any units consented under Class MA. The validity of this approach is firmly established via caselaw; namely LW Zenith Ltd v Secretary of State for Levelling Up, Housing and Communities [2022] EWHC 3317 (Admin); [2023] J.P.L.'

The officer report to the stand-alone shopfront changes application explained that whilst the shopfront proposals would reduce the floor area of the ground floor retail unit; the supporting statement referred to this allowing *'the independent use of the upper floors which are currently vacant and have been underutilised due to limitations imposed through the absence of independent access.'*

The shopfront proposals were also revised to minimise the impact to the shop frontage by retaining the existing central entrance to the unit (but setting it back and creating an internal lobby area), with the separate entrance to access the upper floors inset, with resultant minimal impact on the external appearance of the shopfront and also maintains a window display across the frontage.





The case law referenced is attached at appendix B. This states (paragraph 23) that 'A negative condition may be imposed on a prior approval (*Grampian Regional Council v City of Aberdeen District Council* (1984) 47 P&CF and *Pressland v Hammersmith and Fulham LBC* [2016] EWHC 1763 (Admin)).'

In that case it was considered that a condition could be added (paragraph 27) *'stipulating that flats should not be occupied before the installation permitted in 2019 was carried out. Such a condition would not derogate from the principle that the change of use is permitted once the prior approval is given.'* Further explanation is given in paragraphs 32-34 (copied for ease):

32. ….It is clear that had there been no planning permission for the installation of the windows, then the inspector had no power to consider the merits of such installation on the prior approval application. However, there was such permission, and so the merits of that operational development had been considered and found acceptable in planning terms by the authority. The imposition of a condition requiring the entirety of the 2019 permission to be carried out may not have been appropriate, but in my judgment there is nothing in the wording of paragraph W(13) or in the PPG to prevent the imposition of a negative condition, relating to occupation, as now suggested on behalf of the claimant. The only requirement was that the condition must reasonably relate to the subject matter of the prior approval, and in my judgment such a negative condition clearly does so.

31. Whilst this was not suggested by anyone, in my judgment it was an obvious solution to allowing the change of use and meeting the requirement for all habitable rooms to have natural light. By failing to grapple with this, the inspector failed to have regard to a material consideration.

32. That is sufficient for the decision of the inspector to be quashed and to be resubmitted for redetermination. It is not in dispute that the consequential cost order must in that event also be resubmitted and redetermined.

POLICIES:

Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (general development orders)

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (PPG)

Town & Country Planning (Permitted Development) (England) Order 2015 (as Amended) (GPDO)

PRIOR NOTIFICATION PROCESS:

Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations. In some cases, the permitted development right will require the Local Planning Authority to approve certain matters (a process generally referred to as 'prior approval').

The PPG explains that an LPA cannot consider any other matters other than specified elements:

What is prior approval?
Prior approval means that a developer has to seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed. The matters for prior approval vary depending on the type of development and these are set out in full in the relevant Parts in Schedule 2 to the General Permitted Development Order. A local planning authority cannot consider any other matters when determining a prior approval application.
Paragraph: 026 Reference ID: 13-026-20140306
Revision date: 06 03 2014

What types of development require prior approval?
Prior approval is required for some change of use permitted development rights. Certain other types of permitted development including the erection of new agricultural buildings, demolition and the installation of telecommunications equipment also require prior approval. The matters which must be considered by the local planning authority in each type of development are set out in the relevant Parts of Schedule 2 to the General Permitted Development Order.
Paragraph: 027 Reference ID: 13-027-20140306
Revision date: 06 03 2014

Is a prior approval application like a planning application?
The statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications. This is deliberate, as prior approval is a light-touch process which applies where the principle of the development has already been established. Where no specific procedure is provided in the General Permitted Development Order, local planning authorities have discretion as to what processes they put in place. It is important that a local planning authority does not impose unnecessarily onerous requirements on developers, and does not seek to replicate the planning application system.
Paragraph: 028 Reference ID: 13-028-20140306
Revision date: 06 03 2014

Class MA of Part 3 of Schedule 2 to the GPDO permits the change of use of a building and any land within its curtilage from a use falling within Use Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a use falling within Use Class C3 (dwellinghouses) of Schedule 1 of the Order.

This application seeks the conversion of the second, third and fourth floors to provide a total of 11no. self-contained C3 flats and the application for prior approval has been submitted on that basis to be considered against the provisions of Class MA of the GDPO.

In accordance with Class MA condition MA.2, before beginning the development the applicant is required to apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to:

- Transport impacts of the development, particularly to ensure safe site access;
- contamination risks in relation to the building;
- flooding risks in relation to the building;
- impacts of noise from commercial premises on the intended occupiers of the development;
- where— the building is located in a conservation area, and the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
- the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and
- where the development involves the loss of services provided by— a registered nursery, or
  (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 200657, the impact on the local provision of the type of services lost; and
  (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

The Council may also request and consider the following information if deemed necessary:
• Assessment of impact or risks
• Statements setting out how impacts or risks are to be mitigated

The provisions of Paragraph W of Part 3 of the GPDO are also relevant to this process as it sets out the procedure for applying for prior approval. It states that the Local Planning Authority must have regard to the National Planning Policy Framework in so far as it is relevant to the subject matter of the prior approval, although there is no requirement to have regard to the development plan in the consideration of such an application.

It must however be remembered that Class MA effectively confirms that the proposed change of use is permitted development and does not need planning permission. The principle of the proposed change of use is therefore established. The Local Planning Authority can only consider the acceptability of the detailed scheme against the very limited criteria set out in the Class (outlined above). The adopted development plan policies are not relevant in this regard.

REPRESENTATIONS:

Highways – Comments on revised submission:

Thank you for sending me the further revision to the cycle parking.

The cycle parking as shown is relatively inaccessible, cycle users will have to manoeuvre their cycles through 4 doorways and around 6 corners before they get to this space, then have to lift the cycles into place when other cycles are already parked. I also assume that it is not covered, so in reality I am unsure how likely it is that residents will want to park their bicycles outside and in this location. The plans do not show any lighting.

Therefore, although cycle parking is proposed, I am unsure if it will be utilised, however, I will be guided by you on this matter with regards to the Prior Approval application process.

If you are minded to support the development, I wish to raise no highway objection providing the following condition is imposed:

> The development hereby permitted shall not be occupied, until the cycle parking facilities shown on the approved plans have been provided in full and made available for use. The cycle parking facilities shall be retained for use in accordance with the approved details at all times thereafter.
> REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.

Previous comments:

I refer to the revised plans for the above application.

I note the cycle parking is shown; however this is shown on the first floor rather than the ground floor.

I am aware that you have requested revised drawings to show this on the ground floor.

I await this drawing and will respond once received.

Comments on original submission:

I refer to the above planning application for Prior Approval Part 3, Class MA - Conversion of the second, third and fourth floors to provide a total of 11no. self-contained C3 flats including the creation of an entrance at ground floor level and including refuse and cycle storage.

The site is located in the city centre of Salisbury and I therefore accept a car free development.

Cycle parking spaces are proposed, however the plans only show 12 spaces (11 are mentioned in the statement) and the development consists of 17 bedrooms in total in 11 flats. To meet the standards in the Wiltshire Local Transport Plan Cycling Strategy the following is required:

1 covered space per bedroom for up to 3 bedroom dwellings or Houses in Multiple Occupation (HMOs).
3 covered spaces per unit for 4 bedroom dwellings.
4 covered spaces per unit for 5 bedroom dwellings, (etc)
+ 1 visitor space per 20 bedrooms.

Therefore 17 spaces are required.

These spaces shown are also not convenient for the easy parking and removal of cycles in any order as depicted in the Wiltshire Local Transport Plan Cycling Strategy. Cycles would have to be lifted over other cycles to park the cycles closest to the wall.

From reading the submitted, covering letter statement, it is clear that some of the ground floor is available to the applicant, therefore, please can the cycle parking proposal be re-assessed and amended accordingly to meet the standards set out above.

Public Protection – Comments following submission of Acoustic Report

Thank you for consulting this department regarding the Acoustic Report which has been submitted in support of the above application.

The application is made under Prior Approval Part 3, Class MA. It's noted that we can only consider the impact of industrial noise, and not road traffic noise, on future occupants of the properties under this class. We note the Acoustic Report has determined the industrial plant located to the rear of the development site is only in operation during the daytime hours, and no noise from the plant was observed during the night time hours.

For noise source 1 (at the rear of the development site), the background sound level was determined to be 41dB and the specific sound level for the plant at the façade of the nearest proposed dwelling window was calculated to be 42dB. Whilst the author of the report did not notice any tonal/ intermittency element to the sound of the plant, from our experience plant of this nature can develop noise characteristics such as an audible hum, buzz or clunk which may make the sound more annoying; we would therefore expect an acoustic feature correction of at least 3-6dB to be routinely applied to any calculation. By adding in this correction to the calculation, the specific sound level at the façade would be 45-48dB. Whilst this is 4-7dB above background sound level, with a partially open window the internal noise level would be 30-33dB during the day time when the plant is operating and would meet the criteria outlined in BS8233 for internal ambient sound levels.

For noise source 2 (at the rear of the development site), the background sound level was determined to be 46dB. For this particular plant, the author of the report applied an acoustic character correction to the calculation and the resulting specific sound level for the plant at the façade of the nearest proposed dwelling window was calculated to be 44dB. With a partially open window the internal noise levels would be in the region of 29dB and therefore the meet the criteria outlined in BS8233 for internal ambient sound levels.

No industrial noise was identified which would potentially have an impact on the front façade of the development site, however road traffic noise was dominant and mitigation was outlined in the report which included replacement windows and installation of mechanical ventilation to avoid the need for open windows. Whilst not opening windows is not something that Wiltshire Council supports, we have to consider that the application site is in the centre of the city, and other nearby properties overlooking New Canal have already been converted to residential dwellings. Therefore, future occupants should have an expectation that they will hear anonymous city noise if windows are open.

It is accepted that this department cannot recommend conditions in relation to mitigating road traffic noise, and the applicant cannot replace the windows without submitting a full planning application, however we do strongly recommend that an informative is applied to any approval of this application as follows:

• The Apple Environmental Acoustic Report, dated April 2024, demonstrates that future occupiers of the dwellings may be adversely impacted by road traffic noise on New Canal and recommends replacement windows or secondary glazing plus mechanical ventilation. This department therefore strongly recommends, in the absence of a full planning application for replacement windows, suitable secondary glazing (to achieve reduction of at least 30dB) and mechanical ventilation is installed on all habitable rooms (Including open plan kitchen/ living/ dining rooms) facing New Canal to minimise the adverse impact of road traffic noise on future occupiers.

Comments on original submission

I write regarding the above application for change of use to residential. As discussed I have noted a proposed bedroom in a flat on the 2nd floor will not have any windows. See snip below for clarification:



I haven't visited site, however I have carried out a desk top survey of the area, and it would appear that building services plant is located on the flat roof at the rear of the development site (see snip below). I am unsure what the plant is or which property it is connected to, but I believe it would be located immediately outside of the windows of the habitable windows on the rear of the property on the 2nd / 3rd floor.



The legislation allows us to consider the impact of noise from commercial premises for applications of this nature, and the plant identified would be for commercial use. The applicant should therefore engage the services of an acoustic engineer to carry out a full BS4142 assessment to demonstrate that internal ambient noise levels as details in BS8233/ WHO can be achieved. The assessment needs to be based on the assumption that windows will be ajar for purge ventilation, particularly for bedrooms at night. Whilst carrying out the assessment, they should also consider the impact of noise from road traffic on New Canal and provide details of appropriate glazing specification. I have attached herewith our guidance document for the information of the applicant.

Without submission of the noise assessment, I recommend refusal of this application.

Conservation – Comments on revised proposals:

The proposed use of the upper floors for residential, without external changes, raises no concerns with regard to the character of the CA.

Comments on original submission:

The application is for a change of use, but it appears to rely entirely on the provision of a new front door to New Canal. This doorway, indicated on the plans as if already approved, would be inappropriate in the location shown, it would be unduly prominent and disruptive of the traditional shopfronts of the ground floor. The change of use would also be likely to generate other proposals, such as replacement windows,

which would also require careful consideration for their impact on the building's positive contribution to the Salisbury City CA. As submitted, it seems that the proposal could not be implemented without works requiring planning permission.

Environment Agency: No comments received

Dorset & Wiltshire Fire and Rescue Service - Comment

This application falls within the area for which Dorset & Wiltshire Fire and Rescue Service is responsible for delivering an operational and emergency response.

Building Regulation Matters
In the event the planning permission is granted for this development, the development would need to be designed and built to meet current Building Regulations requirements. The Authority raises the profile of these future requirements through this early opportunity and requests the comments made under B5 of Approved Document B, The Building Regulations 2010 be made available to the applicant/planning agent as appropriate.

The assessment of this development proposal in respect of Building Control matters will be made during formal consultation, however early recommendations are identified on the attached schedules and relate to the following areas:

• Recommendations identified under B5 of Approved Document B relating to The Building Regulations 2010
• Recommendations to improve safety and reduce property loss in the event of fire

Recommendations Identified under B5 of Approved Document B Summary

At this stage of the planning application Dorset & Wiltshire Fire and Rescue Service is required to make comment relating to section B5 of Approved Document B. Essentially, this relates to the provision of reasonable facilities to assist fire fighters within the building and to enable fire appliances to gain access to the building.

Complying with these requirements, in advance of the formal Building Regulations consultation process, will assist during that process and are made without prejudice to it.

Access and Facilities for the Fire Service
Consideration is to be given to ensure access to the site, for the purpose of fire fighting, is adequate for the size and nature of the development.

Water Supplies for Fire Fighting
Consideration should be given to the National Guidance Document on the Provision of Water for Fire Fighting and the specific advice of this Authority on the location of fire hydrants.

The proposed development should be served by the necessary water supply and fire hydrants for use in the event of fire. It is important these requirements are established prior to the commencement of development. This ensures a fire fighting water supply is in place during the construction phase, hydrants are connected at the right locations, at the right time and the cost is covered by the developer.

Fire Safety Legislation
Once constructed and put to use, commercial premises will be subject to the Regulatory Reform (Fire Safety) Order 2005. Further information can be found on the Dorset & Wiltshire Fire & Rescue Service website, where published guides are available to download.

Salisbury City Council – No comments received to revised proposals

Comments on original submission: Object

Salisbury City Council objects supporting public protection comments, supporting overlooking concerns of neighbours' properties, supporting the highways department comments regarding the cycle storage, and supporting the conservation officer's comment for the ground floor, developers should take the opportunity to restore symmetry to ground floor.

Third party representations –

1 comment received on revised submission – summarised

- Fire Risk - The shared fire escape (may be over 100m long and starts beside Catherine Court and exits beside the Odeon) is used by most of the shops in Catherine Street may need to be reviewed if this conversion goes ahead and the occupiers of the flats use it (Routine maintenance may not take place owing to shared ownership)
- Good that empty retail in Salisbury may be turned into accommodation.

2 Comments on original submission: Objection

- Proposed flats will have windows directly looking into existing dwelling/s (main dwelling affected is attic apartment Flat 4 2-8 Catherine Street which is below the level of the flats and has skylights to living room and bathroom)
- Complete loss of privacy (photographs included with representation shown clear glazing to the bathroom skylight)
- Safety and security concerns - adjacent property will be accessible via fire escape
- Disruption and noise

MAIN PLANNING ISSUES:

The main considerations which are material to the determination of this application are listed below:

- Whether the proposal constitutes permitted development
- Whether the prior approval of the Local Planning Authority is required

PLANNING ASSESSMENT:

As is identified above, Class MA of the GPDO confirms that *'Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order',* is permitted development.

The objections/representations from the City Council and third parties including concerns relating to amenity impacts (disruption, noise, privacy), safety and security (including fire escape and maintenance of) are not considerations that the LPA can take account of under Class MA. The Local Planning Authority can only consider the acceptability of the detailed scheme against the very limited criteria set out in the Class.

There are also a number of caveats to this general acceptability set out in paragraphs MA.1, MA.2 and MA.3 of this Class. These will also therefore be assessed in more detail below.

Paragraph MA.1 Permitted Development Criteria:

Paragraph MA.1 of this Class confirms that Development is not permitted by Class MA:

Unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;

'The building proposed for conversion has been in the ownership of the applicants since July 2023. With the exception of the ground floor unit at no.7 which also occupies the majority of the first floor, the whole building has been vacant since then and is understood to have been vacant for some period up to its sale.

A period of vacancy exceeding three months has therefore been readily achieved.'

The parts of the building which the Class MA application relate to are confirmed in the covering letter and planning application form as having been vacant for a continuous period of at least 3 months prior to submission of the application and thus this criterion is satisfied.

Whilst the application was valid 07/02/2024, so this criterion is still considered relevant to this application; the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024 (Statutory Instrument 2024 No. 141) which came into force on 5th March 2024 removed this requirement.

Unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

The current Use Classes were last updated on 1 September 2020 and use class A1 (which included shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices, pet shops, sandwich bars, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafes) was revoked. It is effectively replaced with the new Class E (Commercial, Business and Service).

Subparagraph (2) confirms the classes mentioned in sub-paragraph (1)(b) are -
the following classes of the Schedule as it had effect before 1st September 2020—
Class A1 (shops);
Class A2 (financial and professional services);
Class A3 (food and drink);
Class B1 (business);
Class D1(a) (non-residential institutions – medical or health services);
Class D1(b) (non-residential institutions – crèche, day nursery or day centre);
Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink);
on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2)

The supporting information explains that *'the ground and first floor is in former Class A1 retail use which now falls within Use Class E. The upper floor accommodation currently (h)as no means of independent access and has therefore been used for a combination of ancillary retail accommodation and offices, all of which fall within Use Class E. This use has existed for many years and was the use on the qualifying date of 01/09/2020'*

Whilst the areas of the building to which the Class MA application applies are currently vacant, the existing building's lawful (and last use) was as Class E and this part of the GDPO is therefore applicable to its proposed conversion into residential units. The proposals therefore satisfy the requirements of this criterion.

if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;

The GIA floorspaces for each flat are included on the application plans and this amounts to a total of 585m2 which is within this floorspace allowance set out in this criterion.

Whilst the application was valid 07/02/2024, so this criterion is still considered relevant to this application; the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024 (Statutory Instrument 2024 No. 141) which came into force on 5th March 2024 removed this requirement.

if land covered by, or within the curtilage of, the building—
is or forms part of a site of special scientific interest;
is or forms part of a listed building or land within its curtilage;
is or forms part of a scheduled monument or land within its curtilage;
is or forms part of a safety hazard area; or
is or forms part of a military explosives storage area;

The site does not form part of a Site of Special Scientific Interest (SSSI). The building is not listed and does not sit within the curtilage of a listed building. The site is not a scheduled ancient monument (SAM) or with the curtilage of a SAM. The site is not within a safety hazard area and does not form part of a military explosive storage area. The proposals therefore satisfy the requirements of this criterion.

if the building is within—
an area of outstanding natural beauty;
an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981; the Broads; a National Park; or a World Heritage Site;

The site and building that is the subject of this application are not in an area of outstanding natural beauty (AONB); are not in an area specified by the Secretary of State as part of the Wildlife & Countryside Act 1981; and are not in the Broads; a national park; or world heritage site. The proposals therefore also satisfy this criterion.

if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

The application form confirms that the site is not occupied under an agricultural tenancy and therefore the proposals satisfy this criterion.

before 1 August 2022, if—
the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

No applications under Class O of the GDPO have ever been submitted for this site/building and no Article 4 directive has been issued that concerns this site or building. This criterion is also therefore satisfied.

Paragraph MA.2 Prior Approval criteria:

Paragraph MA.2 of the Class confirms that before any such development occurs the developer must apply to the Local Planning Authority for a determination as to the potential impacts of the development on transport; contamination; flooding; noise; and conservation areas. It also confirms that such development must be assessed with regard the amount of natural light that is afforded to the new unit/s; any potential conflict between uses if the new residential development is to be introduced into a wider industrial site; if the proposals involve the loss of important services; and whether it meets fire safety requirements. This paragraph also confirms that such a prior notification application must not be submitted prior to 1st August 2021 and states that Class W of the GDPO is relevant to the Local Planning Authority's prior approval considerations.

Paragraph MA.2 finally confirms that any such successful prior notification development must be completed within a period of 3 years starting with the prior approval date; and that any building permitted to be used as a dwellinghouse under this Class must remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

In considering whether prior approval is required, the Local Planning Authority must have regard as to whether the development would result in an adverse impact for the following matters:

Transport impacts of the development, particularly to ensure safe site access:

The site is situated within an area with a mix of residential and commercial uses and the site has no off-street parking and none is proposed.

The site is also in a sustainable location being within easy walking distance of public transport and other local facilities for shopping, leisure, education, health and employment, thus minimising the need for a private car.

The consideration of transport impacts does not specifically mention cycle/or parking requirements as a matter for consideration. However, an inspector (Appeal Reference: APP/L5240/W/22/3307735) has clarified the scope of transport impacts that may be considered under permitted development Class MA prior approval matters, refusing an application for an award of costs against a London borough council for seeking promotion of sustainable modes of transport and cycle parking provision in a scheme to change the use of a vehicle workshop to four flats. The appeal decision is attached at Appendix C.

The Inspector's report includes:

'Although MA.2(2)(a) refers particularly to safe site access, this does not preclude the consideration of other direct transport impacts of development.' (paragraph 6) and '14. I am required to have regard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval, as if the application were a planning application. The Framework sets out that opportunities to promote cycling should be identified and pursued when considering development proposals, and that appropriate opportunities to promote sustainable modes of transport can be taken up. It has not been demonstrated how the proposal would include secure cycle parking, with a resultant impact on the provision of sustainable transport.'

The Salisbury City Area Framework (CAF) document provides a set of recommendations which include reducing motor vehicle movements through the city whilst ensuring the city remains accessible to all through supporting public transport, cycling and walking.

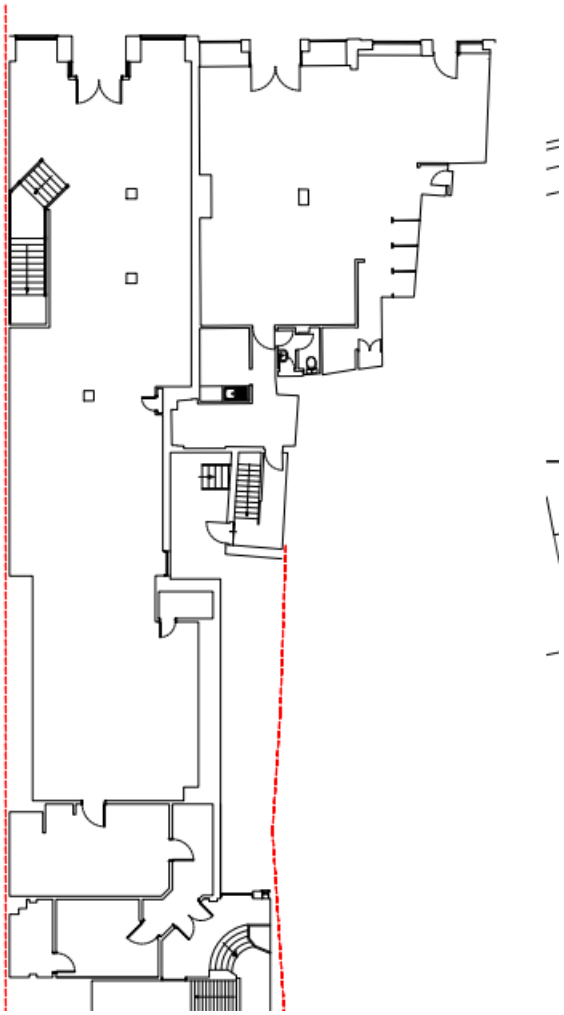
Cycle parking standards are also set out in appendix 4 of the Wiltshire Local Transport Plan 2011 – 2026 Cycling Strategy as follows:
1 covered space per bedroom for up to 3 bedroom dwellings.
3 covered spaces per unit for 4 bedroom dwellings.
4 covered spaces per unit for 5 + bedroom dwellings
+ 1 visitor space per 20 bedrooms.

Paragraph W of Part 3 of the GPDO sets out the procedure for applying for prior approval. It states that the LPA must have regard to the NPPF in so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application but there is no requirement set out to have regard to the development plan in the consideration of such an application.

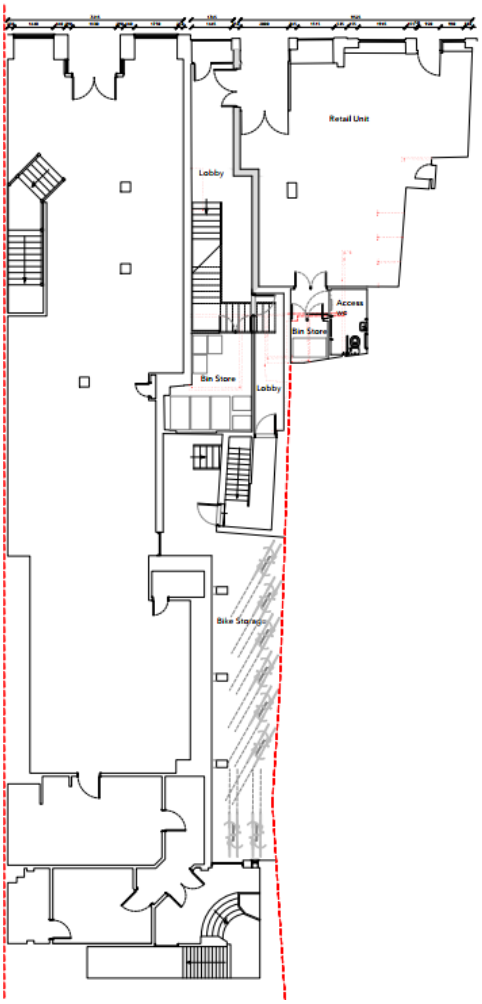
The NPPF states that:

108. Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:
c) opportunities to promote walking, cycling and public transport use are identified and pursued;

Cycle parking is included on the proposed plans with the internal lobby accessing this area resulting from the approval of the alterations to the shopfront under PL/2023/10277 to create a separate entrance from the street separated from the retail unit:



Existing ground floor plan



Proposed ground floor plan

The cycle parking proposed does not meet the cycle parking standards set out in the LTP and the highways authority has also raised concern about the accessibility and practicality of its use being stacked and at the rear of the building accessed via corridors. However, as paragraph W states that there is no requirement to have regard to the cycle parking standards set out in the LTP and as there is limited space for cycle parking provision given the site constraints, it is considered that the cycle parking proposed is the only option available without compromising on the retail unit within the primary shopping area. The proposals will also result in the reuse of vacant floors within a sustainable principal settlement which is encouraged by the Wiltshire Core Strategy and the purpose of the permitted development provided by Class MA of the GPDO.

Paragraph W (13) provides that the LPA may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

In conclusion, **the prior approval of the LPA is required** in respect of the *transport impacts of the development, to ensure cycle parking is provided.* This prior approval may be granted, subject to an appropriately worded condition to secure the cycle parking for the dwellings.

Contamination risks in relation to the building:

The Council's Public Protection Team has raised no objection in this regard to the proposals.

In conclusion, **the prior approval of the LPA is NOT required** in respect of the contamination risks in relation to the building.

Flooding risks in relation to the building:

The site is at risk of flooding (identified to be within Flood Zones 2 and 3 of the EA flood maps) and is also identified to be at high risk of flooding from other sources in the LPA's Strategic Flood Risk Assessment (SFRA) where groundwater levels are between 0.025m and 0.5m below the ground surface (within this zone there is a risk of groundwater flooding to both surface and subsurface assets and there is the possibility of groundwater emerging at the surface locally).

Sites in Flood Zones 2 and 3 requires consultation with the EA and submission of a Flood Risk Assessment (FRA) under paragraph W (Procedure for applications for prior approval under Part 3):

(2) The application must be accompanied by—
(e) where sub-paragraph (6) requires the Environment Agency to be consulted, a site specific flood risk assessment.

(6) Where the application relates to prior approval as to the flooding risks on the site, on receipt of the application, the local planning authority must consult the Environment Agency where the development is—
(a) in an area within Flood Zone 2 or Flood Zone 3; or
(b) in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.

The EA have been consulted, but no comments have been received. However, the proposals are covered by the EA Local Flood Risk Standing Advice (Advice Note 8 Upper floor conversions and/or upper floor extensions). This is attached at appendix D.

The relevant Flood Risk standing advice refers to the need to consider flood levels (that all habitable accommodation is above the estimated river 1 in 100 year flood event (including an allowance for climate change), the structural stability of lower levels subject to flooding over 600mm, flood warning and evacuation plans and flood resistance and resilience measures if required.

The supporting documentation includes a Flood Risk Assessment which explains that '*Whilst the proposals seek to introduce a more vulnerable use, this use relates to upper floors which are well above any anticipated flood levels'* and also refers to the *'Salisbury River Park project will help reduce the likelihood of flooding in the area, and as such no additional protection measures are proposed.'*

The entire site is also identified to be at high risk of flooding from groundwater in the Strategic Flood Risk Assessment, but there are no requirements to consult the EA or require the FRA to consider this type of flood risk. It would be appropriate to add an informative advising the applicant of the identified risk of groundwater flooding instead (and that they may wish to incorporate additional flood mitigation measures which may require separate planning consent).

The relevant EA standing advice includes that it may be necessary for the LPA to condition a flood warning and evacuation plan to ensure that owners and occupiers of the property are aware that the land is at risk of flooding and the appropriate course of action to be taken in the event of a flood event and this standing advice is caveated *'*Please note the Environment Agency should not be consulted, and would not be providing comments, if the above are conditioned by your Authority*'*

The FRA explains that access to the flats will be at ground level and that this is in Flood Zone 3 *'The proposal sees the provision of a private ground floor access point for the residential units, slightly narrowing the retail unit at 3-5 New Canal. The ground floor will accommodate a bin and bike store for the residential units. The site area stands at 529m2, with the full site being situated within Flood Zone 3.'*

In light of this, it is therefore considered appropriate that a Flood Warning and Evacuation Plan should be conditioned.

In conclusion, **the prior approval of the LPA is required** in respect of the *flooding risks of the development, to ensure a Flood Warning and Evacuation Plan is provided.* This prior approval may be granted, subject to an appropriately worded condition to secure a Flood Warning and Evacuation Plan for the dwellings.

Impacts of noise from commercial premises on the intended occupiers of the development;

Whilst road traffic noise is not a consideration under Class MA, identifying commercial building services plant at the rear of the site; the public protection officer advised that a full BS4142 assessment would be required to demonstrate that internal ambient noise levels as detailed in BS8233/ WHO could be achieved and that this assessment needs to be based on the assumption that windows will be ajar for purge ventilation, particularly for bedrooms at night.

The Acoustic Report determined that the plant located to the rear of the development site is only in operation during the daytime hours, and no noise from the plant was observed during the night time hours. The public protection officer's comments (attached in full above) explain that for the noise sources at the rear of the building with a partially open window the internal noise levels would meet the criteria outlined in BS8233 for internal ambient sound levels.

The public protection officer refers to the report noting that road traffic noise from New Canal was dominant and outlined mitigation including replacement windows/secondary glazing and installation of mechanical ventilation (to avoid the need for open windows). As external alterations are not permitted under Class MA and traffic noise is not a consideration under Class MA, the public protection team recommended an informative supporting the mitigation recommendations (although any changes to the glazing/replacement windows would require planning consent).

In conclusion, **the prior approval of the LPA is NOT required** in respect of the impacts of noise from commercial premises on the intended occupiers of the development.

Where—
the building is located in a conservation area, and
the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;

The site is situated in a conservation area. The Conservation Officer has raised no concerns with regard to the proposed change of use on the character or sustainability of the conservation area.

In conclusion, **the prior approval of the LPA is NOT required** in respect of the impact of that change of use on the character or sustainability of the conservation area.

The provision of adequate natural light in all habitable rooms of the dwellinghouses;

No external alterations are proposed to the building (confirmed by the submission of revised plans). The existing building is however, already well served by windows and the revised floor plans indicate that the habitable rooms would benefit from original windows. Overall, it is therefore considered that the proposed development is served by adequate natural light and there are no habitable rooms that could not be served by existing window/s.

In conclusion, **the prior approval of the LPA is NOT required** in respect of the provision of adequate natural light in all habitable rooms of the dwellinghouses.

The impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and

Although there are nearby commercial uses, the site is not within an area where there are any general/heavy industry, waste management, storage/distribution or mix of such uses.

Where the development involves the loss of services provided by—
(i) a registered nursery, or
(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 200657 , the impact on the local provision of the type of services lost; and

The proposals will not result in the loss of registered nursery or health centre.

Where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

The fire risk condition is identified in the Interpretation for Class MA and states:

Interpretation of Class MA

MA.3. Development meets the fire risk condition referred to in paragraph MA.2(2)(i) if the development relates to a building which will—

(a) contain two or more dwellinghouses; and

(b) satisfy the height condition in paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015[60].

From the DMP Amendment Order 2021 Article 9A Fire Statements:

(3) The height condition is that—

(a)the building is 18 metres or more in height; or

(b)the building contains 7 or more storeys.

Where the application relates to prior approval as to fire safety impacts, on receipt of the application, (paragraph MA.2(4)(a) and (c)) the local planning authority must consult the Health and Safety Executive.

The height of a building is measured from ground level to the top floor surface of the top storey of the building, but ignoring any storey which is a roof-top machinery or plant area, or which consists exclusively of machinery or plant rooms. A storey is ignored if it is below ground level (which is satisfied if any part of the finished surface of the ceiling of the storey is below the ground level immediately adjacent to that part of the building). A mezzanine floor is counted as a storey if its internal floor area is at least 50% of the internal floor area of the largest storey in the building which is not below ground level.

The covering letter accompanying the application refers to the need for a Fire Statement:

'On first reading and given the overall height of the building, it would appear that a Fire Statement is required and therefore one is submitted. Notwithstanding the inclusion of a Fire Statement, a more detailed assessment suggests that the 18m. height criteria refers to the floor level height of any proposed upper floor accommodation. In this regard the upper floor (fifth) is below this threshold and therefore a Fire Statement is not strictly required but is, in the interests of completeness.'

The accompanying Fire Statement refers to 'The property, 3-7 New Canal, SP1 2AA, is presently arranged as a 5 storey building with Ground and First Floor occupied by retail area, and the remaining stories ancillary in use to the retail space'…*'The Building Height is determined by measuring from the Ground Level to top habitable storey (floor level). In this case this measurement is 14.0m. As such this building does not meet the threshold for a 'relevant building' and thus does not require a fire statement.'*

It is agreed that a Fire Statement is not a requirement and therefore it is not necessary to consult the Health and Safety Executive. Fire safety will also be a building regulation requirement.

Dorset & Wiltshire Fire and Rescue Service Fire Safety Advisor has however, made comments on the

application referring to building regulations requirements and their own recommendations to improve safety and reduce property loss in the event of fire, which can be added as an informative.

Other Matters:

Neighbouring amenity concerns

A third party representation includes objections about overlooking from the windows of the new residential units into neighbouring windows and resultant loss of privacy. However, the Local Planning Authority can only consider the acceptability of the detailed scheme against the very limited criteria set out in the Class. PPG explains that an LPA cannot consider any other matters other than specified elements and impact on neighbouring amenity is not something that can be taken into account in determining if prior approval is required.

Clause 3 of the GPDO (Permitted Development)

The procedural notes for permitted development, in clause 3 of the GDPO raises a few other matters that are also relevant to this prior notification application in respect of the Habitat Regulations and Floor Areas of the proposed units:

Habitat Regulations:

Subject to the provisions of this Order and regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (general development orders), planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.

As is identified above, this site falls within the catchment of the River Avon SAC and the development has potential to cause adverse effects, alone or in combination with other developments, through discharge of phosphorus in wastewater. The provisions of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regulations) are therefore relevant to the development, regardless of the outcome of this application.

As is identified above, this site falls within the catchment of the River Avon SAC and the development has potential to cause adverse effects, alone or in combination with other developments, through discharge of phosphorus in wastewater. The provisions of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regulations) are therefore relevant to the development, regardless of the outcome of this application.

The site is also within the recreational buffer of the New Forest SAC, SPA and RAMSAR sites and thus the creation of new households in this area has potential to increase pressure on these designations.

The provisions of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regulations) are therefore relevant to the development, regardless of the outcome of this application.

Matters of ecology are not issues that are identified in the Class MA criteria for consideration as part of the prior notification process. It is also not appropriate to insist that the applicant instead applies for planning permission on this matter.

However, this part of the overall GDPO makes it clear that permitted development rights do not override the requirements of the Conservation of Habitats and Species Regulations (the Habitats Regs) and that Regulations 75-78 still apply. The Habitats Regs address the requirements for protecting sites that are internationally important for threatened habitats and species (for example, as is relevant in this instance, SACs and SPAs (often referred to as European Sites). This includes a requirement for assessment of ‘plans and projects’ by ‘the competent authority’ (e.g., the local planning authority) which are likely to have a significant effect on the sites.

Regulation 75 of the Habitats Regs states that it is a condition of any planning permission granted by the GPDO made on or after 30 November 2017 for development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and which is not directly connected with or necessary to the management of the site, must not be begun until the developer has received written notification of the approval of the local planning authority under Regulation 77. Essentially the purpose of Regulation 75 is to, therefore, ensure that, when necessary, permitted development is subject to Appropriate Assessment in the same way as development requiring a planning application.

Regulation 77 sets out the process for applying for the written approval of the local planning authority as to whether the development is likely to have an adverse effect upon the integrity of a European Site. It states that an application to the local planning authority for approval, must be made with a relevant fee paid. This process is outside of the Class MA considerations and is undertaken separately to the Class MA Prior Notification Procedure.

This part of the GDPO however confirms that the approved permitted development cannot be lawfully commenced until the application under Regulation 77 of the Habitats Regs has been made and approved by the local planning authority. Therefore, and although a Prior Notification application can be approved without the Appropriate Assessment taking place, the commencement of the development cannot lawfully happen until the separate application under Regulation 77 is approved. An informative can be attached to the decision to draw this to the applicant's attention.

Floor areas:

(9A) Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse—where the gross internal floor area is less than 37 square metres in size; or that does not comply with the nationally described space standard issued by the 35 S.I. 2010/490. Commented [S19]: Replaced by 2017 No. 1012 (Page 12 of 266) Department for Communities and Local Government on 27th March 201536.
(9B) The reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it.

Floor areas to each unit are included with the application documentation, meeting the required internal floor areas:

Flat No	GIA/m2	No Beds
1	61	2
2	44	1
3	61	2
4	45	1
5	62	2
6	41	1
7	62	2
8	45	1
9	61	2
10	42	1
11	61	2

Processing of the application:

During the course of the application, it was noted that dimensioned plans and rear elevations of the building had not been provided. The provisions of Paragraph W of Part 3 of the GPDO set out the procedure and requirements for applying for prior approval.

(2) The application must be accompanied by—

(bc) in relation to development proposed under Class G, M, MA, N, O, PA or Q of this Part, a floor plan indicating the total floor space in square metres of each dwellinghouse, the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses;

Following receipt of external elevations and the dimensions to each room being provided, the application was restarted with a new start date of 07/02/2024. Following that an Acoustic Report was submitted with an accompanying extension of time agreed with the planning agent to allow the LPA to consider it and determine the application.

CONCLUSION:

The proposed development is considered to comply with all of the criteria set out in paragraph MA.1 of Class MA of the GPDO, thereby making it development that could benefit from permitted development.

The prior approval of the LPA is only required in respect of the transport impacts of the development, to ensure cycle parking is provided and the flooding risks of the development, to ensure a Flood Warning and Evacuation Plan is provided.

This prior approval **may be granted**, **subject to appropriately worded conditions** to ensure the approved cycle parking is provided and a Flood Warning and Evacuation Plan is provided.

Subject to conditions, the proposals would satisfy the requirements of Class MA, paragraphs MA.2 and MA.3; and Clause 3 – Permitted Development of the GPDO thereby confirming that prior approval of the Local Planning Authority may be granted subject to conditions.

RECOMMENDATION: **The local planning authority has determined in this case that its prior approval will be required in respect of the transport impacts and flooding risks of the development and is GRANTED subject to conditions.**

(1) The development hereby permitted shall be carried out in accordance with the following approved plans:
Drawing No: 1679-P-101 Rev D Plans as Proposed, dated 15/05/2024, received by this office 15/05/2024
Drawing No: 1679-P-104 Rev A Rear Elevation as Existing/Proposed, dated 02/05/2024, received by this office 03/05/2024
Drawing No: 1679-P-105 Side Elevations as Existing/Proposed, dated February 2024, received by this office 07/02/2024
Drawing No: 1679-P-102 Rev A Plans as Proposed, dated 24/01/2024, received by this office 30/01/2024
Drawing No: 1679-P-01 Rev B Plans As existing, dated 17/11/2023, received by this office 27/11/2023
Flood Risk Assessment - 1679- FRA, received by this office 27/11/2023
Drawing No: 1679-P-02-A Existing 1st, 2nd, 3rd & 4th Floor Plan, dated 10/11/2023, received by this office 27/11/2023
Drawing No: 1679-P-03 Existing Front Elevation, received by this office 27/11/2023
Drawing No: 1679-P-103 Shop front as Proposed, dated 29/01/2024, received by this office 30/01/2024
REASON: For the avoidance of doubt and in the interests of proper planning.

(2) The development hereby permitted shall not be first occupied, until the cycle parking facilities shown on the approved plans have been provided in full and made available for use. The cycle parking facilities

shall be retained for use in accordance with the approved details at all times thereafter.
REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.

(3) The flats hereby approved shall not be first occupied until a Flood Warning and Evacuation Plan has been submitted to and approved in writing by the Local Planning Authority and then implemented.
REASON: To ensure that owners and occupiers of the property are aware that the land is at risk of flooding and the appropriate course of action to be taken in the event of a flood event.

(4) The flats hereby approved shall not be first occupied until the works approved under PL/2023/10277 (Alterations to existing shopfront to provide independent entrance doorway to serve the upper floors of accommodation) have been completed in accordance with the approved plans.
REASON: To ensure that the dwellings can be accessed independently.

INFORMATIVES TO APPLICANT:

Regulation 77 of the Habitat Regulations:

The Applicant is reminded that the site is situated within the catchment of the River Avon Special Area for Conservation and within the New Forest 13.8km Internationally protected sites zone of influence and therefore has potential to have an adverse effect upon the integrity of these European sites. Regulation 75 of the Habitats Regulations states that it is a condition of any planning permission granted by the Town and Country Planning (General Permitted Development) Order that development which is likely to have a significant effect must not begin until the developer has received written notification of the approval of the local planning authority under Regulation 77.

The approved permitted development cannot be lawfully commenced until an application under Regulation 77 of the Habitats Regs has been made and approved by the local planning authority. The purpose of the Regulation 77 application is, therefore, to enable the local planning authority, along with the appropriate nature conservation body, to make the Appropriate Assessment of the implications for the European site(s). The local planning authority can then only approve the Regulation 77 application if it is satisfied that the development would not adversely affect the integrity of the site(s).

More details are available on the council's website: https://www.wiltshire.gov.uk/article/3586/Planning-permission

Standard conditions:

The applicant's attention is drawn to the standard conditions under MA.2 (5) and (6):
(5) Development must be completed within a period of 3 years starting with the prior approval date.
(6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

Noise mitigation measures:

The Apple Environmental Acoustic Report, dated April 2024, demonstrates that future occupiers of the dwellings may be adversely impacted by road traffic noise on New Canal and recommends replacement windows or secondary glazing plus mechanical ventilation. The Public Protection department therefore strongly recommends, in the absence of a full planning application for replacement windows, suitable secondary glazing (to achieve reduction of at least 30dB) and mechanical ventilation is installed on all habitable rooms (Including open plan kitchen/ living/ dining rooms) facing New Canal to minimise the adverse impact of road traffic noise on future occupiers.

Extent of development permitted under Class MA & External alterations:

The developer is reminded that permitted development under Class MA only permits the change of use of a building and any land within its curtilage and does not include any provisions for any building or other operations and planning permission would be required for any such development.

No external alterations are permitted under Class MA (and there are also no permitted development rights applicable once Prior Approval is granted). Replacement windows are not approved by this prior approval application and would need separate consent. Flood mitigation works which affect/alter the external appearance of the building would also require separate consent.

Flood Warning & Evacuation Plan:

See Planning Practice Guidance available from https://www.gov.uk/guidance/flood-risk-and-coastal-change#para47 and
ADEPT/EA Flood Risk Emergency Plans for New Development | ADEPT (adeptnet.org.uk)

Groundwater flood risk:

The site is identified to be at high risk of flooding from groundwater in the Strategic Flood Risk Assessment. The applicant may wish to consider/incorporate flood mitigation measures (which may require separate planning approval).

Dorset & Wiltshire Fire and Rescue Service:

This application falls within the area for which Dorset & Wiltshire Fire and Rescue Service is responsible for delivering an operational and emergency response.

Building Regulation Matters
In the event the planning permission is granted for this development, the development would need to be designed and built to meet current Building Regulations requirements. The Authority raises the profile of these future requirements through this early opportunity and requests the comments made under B5 of Approved Document B, The Building Regulations 2010 be made available to the applicant/planning agent as appropriate.

The assessment of this development proposal in respect of Building Control matters will be made during formal consultation, however early recommendations are identified on the attached schedules and relate to the following areas:

• Recommendations identified under B5 of Approved Document B relating to The Building Regulations 2010
• Recommendations to improve safety and reduce property loss in the event of fire

Recommendations Identified under B5 of Approved Document B Summary

At this stage of the planning application Dorset & Wiltshire Fire and Rescue Service is required to make comment relating to section B5 of Approved Document B. Essentially, this relates to the provision of reasonable facilities to assist fire fighters within the building and to enable fire appliances to gain access to the building.

Complying with these requirements, in advance of the formal Building Regulations consultation process, will assist during that process and are made without prejudice to it.

Access and Facilities for the Fire Service
Consideration is to be given to ensure access to the site, for the purpose of fire fighting, is adequate for the size and nature of the development.

Water Supplies for Fire Fighting
Consideration should be given to the National Guidance Document on the Provision of Water for Fire

Fighting and the specific advice of this Authority on the location of fire hydrants.

The proposed development should be served by the necessary water supply and fire hydrants for use in the event of fire. It is important these requirements are established prior to the commencement of development. This ensures a fire fighting water supply is in place during the construction phase, hydrants are connected at the right locations, at the right time and the cost is covered by the developer.

Fire Safety Legislation
Once constructed and put to use, commercial premises will be subject to the Regulatory Reform (Fire Safety) Order 2005. Further information can be found on the Dorset & Wiltshire Fire & Rescue Service website, where published guides are available to download.

APPENDIX A:
Decision Notice to PL/2023/10277

Wiltshire Council

The Town and Country Planning Act 1990

Approval of Full Planning Permission with Conditions

Application Reference Number: PL/2023/10277

Decision Date: 05 March 2024

Applicant:	Lainston Securities c/o agent
Particulars of Development:	Alterations to existing shopfront to provide independent entrance doorway to serve the upper floors of accommodation
At:	3 New Canal, Salisbury, Wilts, SP1 2AA

In pursuance of its powers under the above Act, the Council hereby **GRANT PLANNING PERMISSION** for the above development to be carried out in accordance with the application and plans submitted (listed below).

In accordance with paragraph 38 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the economic, social and environmental conditions of the area.

Subject to the following conditions:

Conditions: (2)

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the following approved plans:
Drawing Reference: 1679-P-01 Rev B Location Plan dated 17/11/2023, received by this office 27/11/2023
Drawing Reference: 1679-P-02 Rev A Existing Floor Plans dated 10/11/2023, received by this office 27/11/2023
Drawing Reference: 1679-P-101 Rev B Floor & Elevation Plans as Proposed dated 24/01/2024, received by this office 30/01/2024
Drawing Reference: 1679-P-103 Rev B Shop Front Plan as Proposed dated 29/01/2024, received by this office 30/01/2024
REASON: For the avoidance of doubt and in the interests of proper planning.

Informatives: (2)

Extent of development
This application only approves alterations to the existing shopfront to provide an independent entrance doorway to serve the upper floors. It does not approve any changes of use of the building, for which separate consent is required.

Groundwater flood risk
The site is identified to be at high risk of flooding from groundwater in the Strategic Flood Risk Assessment. The applicant may wish to consider/incorporate flood mitigation/resilient measures (which may require separate planning approval).

Parvis Khansari - **Corporate Director, Place**

APPENDIX B:
Case law

Neutral Citation Number: [2022] EWHC 3317 (Admin)

Case No: CO/1057/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2022

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court
Between :

THE KING (LW ZENITH LIMITED)	**Claimant**
- and -	
SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	**Defendant**
-and-	**Interested**
HART DISTRICT COUNCIL	**Party**

- -
- -

Mr Jonathan Clay (instructed by **Fladgate LLP**) for the **claimant**
Mr Horatio Waller (instructed by **Government Legal Department**) for the **defendant**
The interest party was not present or represented

Hearing date: 8 December 2022
- -

Approved Judgment

This judgment was handed down remotely at 10.00am on Wednesday 21 December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives..

HHJ JARMAN KC:

Introduction

1. The claimant challenges a decision of an inspector appointed by the defendant, the Secretary of State, dismissing its appeal under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) against the refusal of the interested party as local planning authority (the authority) to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O, Paragraph O.2(1) of the Town and Country Planning (General Permitted development)(England) Order 2015 (the GPDO).

2. Class O permits a change of use from Class B1a office use to residential use, providing certain requirements set out in O.2(1) (a)-(e) are met. The claimant wishes to use those rights to change the use of a three storey office building called Zenith House, Fleet, into 34 residential flats. The sole ground on which the authority refused approval was that that permitted development right had been removed by the Hart Employment Land Article 4 Direction. The inspector, in her decision letter dated 15 February 2022 based on written representations, decided that the permitted development rights relied upon had not been so removed.

3. Had matters ended there, the appeal would have succeeded. However, it is not in dispute that the inspector, in considering whether to give prior approval, had a duty to consider whether the requirements set out above were met. In particular in this case, the requirement in sub paragraph (e) is that there should be provision of adequate natural light in all the habitable rooms of the flats. This is met in respect of 23 of the proposed flats in Zenith House as it currently stands. However, in respect of the remaining 11 proposed flats, further windows would be needed in the roof space and on the ground floor. Planning permission for these operations was granted by the authority in 2019. At the time of the inspector's decision this permission was extant and has since been implemented.

4. As this issue had not been addressed in the written representations of the claimant or the authority, the inspector raised it, with other matters, in correspondence with them, in these terms:

> "2. Do the parties accept that Condition O.2(1)(e) would apply in this case?
>
> 3. If the Inspector were to find that it did, the brief views of the parties are sought on whether the proposal would provide adequate natural light in all habitable rooms of the dwellinghouses proposed. This should explain how the physical differences (ie dormer windows and enclosure of undercroft parking area) between the existing and proposed plans but not covered by Class O would be secured. Could the Inspector have your concise comments on this by 14 January. This correspondence has been sent to both main parties."

5. The claimant's agent replied as follows:

> "Point 2 - Do the parties accept that Condition O.2(1)(e) would apply in this case? - Yes
>
> Point 3 It is acknowledged that the issue of a Prior Approval pursuant to class O of the GDPO does not grant PP for works which involve material physical alterations to the building and that a separate planning permission is required for such works. The attached 'Proposed Elevation' drawing (05) 100 Rev G, is on the LPA.'s Planning Application web page for this application and in the Zip folder of plans submitted with the appeal (regrettably it is not listed on the applications drawings list). As may be seen this shows the proposed additional fenestration of the infill ground floor undercroft parking area and the 3rd floor in the existing roof. Save for the addition of specified dimensions this is identical in terms of window locations both at ground and roof level as were approved by the LPA on 17th April 2019."

6. The reply of the authority was more detailed and ran to four pages and was entitled supplementary comments. Those comments included that the claimant cannot be compelled either to implement or complete the operational development that was permitted under the 2019 permission, and the prior approval could not be tied to that permission by condition. It was further stated that the inclusion of indicative operational development on the proposed plans was not a source of contention for the authority. However, it should be considered whether the change of use sought, in respect of layout and number of residential units proposed, could be carried out without implementing operational development. Class O required that a building's existing fabric must be capable of conversion to the proposed residential use and number of units stated.

7. Those replies were not shared by anyone with the other party to the appeal. The inspector issued her decision, without further recourse to the parties to the appeal. She found that the imposition of a condition to require the completion of the 2019 permission was not a proper use of condition, and that even if it were possible to word a condition to require this development before any permitted change of use occurred, that would necessitate work beyond the permitted development and involve a level of complexity beyond the "light-touch prior approval process."

8. There are three grounds of challenge to that approach. Mr Clay, for the claimant, took the first two together, and accepted that the outcome in respect of those will impact upon the third. Grounds 1 and 2 are that the inspector misinterpreted the GPDO, Planning Policy Guidance (PPG) and the National Planning Policy Framework (NPPF). Further or alternatively she had regard to irrelevant considerations and failed to have regard to relevant considerations. Ground 3 is that the inspector acted unfairly by failing to disclose to the claimant the authority's supplementary comments or by failing to notify the claimant that she intended to determine the appeal on a basis which had not been canvassed with or between the parties.

The inspector's decision

9. The relevant reasoning of the inspector is set out in her decision letter as follows:

> "28. Paragraph W(13) of the [GPDO] allows prior approval to be granted unconditionally or subject to conditions. However, this is not a general power and such conditions must be reasonably related to the subject matter of the prior approval. The imposition of a condition to require the completion of other consented development in its entirety as part of the prior approval process would be analogous with one of the circumstances outlined in the PPG9 where it is stated that planning conditions should not be used.
>
> 29. Even if it were possible to word a condition to require the sequencing of otherwise approved operational development before any permitted change of use occurred, this would necessitate work beyond the scope of the permitted development concerned and involve a level of complexity that would go considerably beyond the deliberately light-touch prior approval process described in the PPG10. Accordingly, based on the evidence before me I am not convinced that it would pass the test of reasonableness. Hence, it would not be reasonably related to the subject matter of the prior approval.
>
> 30. Therefore, I find that the change of use of the present building would be incapable of providing adequate natural light to all habitable rooms of the dwellinghouses shown. Whilst physical works could probably address this, such works fall outside of the relevant prior approval regime, and there is no guarantee that they would otherwise be satisfactorily secured. As a result, prior approval should not be given under paragraph O.2(1)(e) of the [GPDO]."

The statutory framework

10. In order to consider the grounds, it will be necessary to compare the regime for applying for planning permission under the 1990 Act on the one hand, with what the inspector called the light-touch prior approval process. It was not in dispute before me that each of these form part of the complete code set out in planning legislation which must be read as a whole. There are several relevant provisions of the 1990 Act.

11. An application for prior approval is not the same as an application for planning permission. The local planning authority in determining the latter type of application must have regard to all material considerations (see section 70(2)). It has wide powers to impose conditions on a grant of such permission, including conditions requiring the carrying out of works (section 72(1)(a)).

12. In contrast, the GPDO specifies those planning matters for which approval must be sought, and those delimit the controls which the local planning authority is able to exercise and the considerations it is entitled to take into account, when determining an application for prior approval (per Holgate J in *Cab Housing Ltd* v *Secretary of State for Levelling Up Housing and Communities* [2022] EWHC 208 (Admin) at paragraph 32). The requirement for prior approval limited to restricted planning issues does not confer upon local planning authorities a power to grant planning permission for

development outside the defined class of permitted development (see Hickinbottom LJ in *New World Payphones Ltd v Westminster City Council & Anor* [2019] EWCA Civ 2250 at paragraph 49).

13. Under section 58(1) planning permission may be granted either (a) by a development order made by the Secretary of State or "(b) by the local planning authority...on an application to the authority...in accordance with a development order".

14. Section 59 provides, in relation to the grant of planning permission by a development order, where material:

> "(1) The Secretary of State shall by order (in this Act referred to as a "development order") provide for the granting of planning permission.
>
> (2) A development order may…itself grant planning permission for development specified in the order, or for development of any class specified."

15. Section 60(1) provides that planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.

16. Section 60(1A) provides that where a development order grants planning permission "the order may require the approval of the local planning authority … to be obtained" for specified matters.

17. In respect of a change of use, section 60(2A) provides:

> " Without prejudice to the generality of subsection (1), where planning permission is granted by a development order for development consisting of a change in the use of land in England, the order may require the approval of the local planning authority, or of the Secretary of State, to be obtained —
>
> (a) for the use of the land for the new use;
>
> (b) with respect to matters that relate to the new use and are
>
> specified in the order."

18. The procedure for applying for such approval is set out in paragraph W of the GPDO. Paragraph W (2) materially provides that the application must be accompanied by (a) a written description of the proposed development…(b) a plan indicating the site and showing the proposed development, and (bc) a floor plan showing the dimensions and proposed use of each room and the position and dimensions of windows.

19. Paragraph W(12) provides that the development must be carried out, where prior approval is required, in accordance with the details approved by the local planning authority. Paragraph W(13) provides that the local planning authority may grant prior

approval unconditionally or subject to conditions "reasonably related to the subject matter of the prior approval."

20. The policy background to the GPDO and the prior approval process is set out in paragraph 7.1 of the explanatory memorandum to the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020, as follows:

> "Permitted development rights have an important role to play in the planning system. They provide a more streamlined planning process with greater planning certainty, while at the same time allowing for local consideration of key planning matters through a light-touch prior approval process. Permitted development rights can incentivise certain forms of development by providing developers with a greater level of certainty, within specific planning controls and limitations. Individual rights provide for a wide range of development and include measures to incentivise and speed up housing delivery."

21. The issue of natural light in habitable rooms of new homes is dealt with in paragraphs 7.19-21. The aim is to improve the quality of new homes delivered under permitted development rights. The requirement of floor plans showing the position and dimensions of windows is to enable local planning authorities to consider the provision of adequate natural light.

Case law

22. There are several relevant principles of statutory interpretation which were not in dispute before me. Common words in permitted development rights should be given their common meaning. The ordinary meaning of the language used is to be ascertained in a broad, commons sense manner (per Lindblom LJ in *Mawbey v Lewisham LBC* [2020] PTSR 164 at paragraph 20). The approach to the interpretation of planning conditions is to ask what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole (per Lord Hodge in *Trump International v Scottish Ministers* [2015] UKSC 74 at paragraph 34).

23. A negative condition may be imposed on a prior approval (*Grampian Regional Council v City of Aberdeen District Council* (1984) 47 P&CF and *Pressland v Hammersmith and Fulham LBC* [2016] EWHC 1763 (Admin)). However, there is no obligation on a planning inspector to cast about for a condition where none is suggested (per Mann LJ in *Top Deck Holdings Ltd v Secretary of State for the Environment* [1991] JPL 961 at 965). On the other hand, as Sir Duncan Ouseley put it in *Thorpe Hall Leisure Ltd v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 44 (Admin), paragraph 69:

> "I do not consider that it was for the Inspector to devise a condition to meet her concerns. The authorities do not support any obligation on an Inspector to think of solutions or devise wording for conditions. There might be very obvious cases,

> where the Inspector sees a simple answer by condition to a problem which could be imposed, and there may be nothing wrong with such a condition."

24. The prior approval process is intended to be simple to operate (per Richards LJ in *Murrell v Secretary of State for Communities and Local Government* [2011] 1 P&CR 6 at paragraph 29).

Policy

25. In terms of policy, the PPG on use of conditions explains that conditions can enhance the quality of development and enable it to proceed where otherwise permission may be refused. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable (paragraph 1). This is underlined by NPPF, paragraph 55, which provides that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

26. The PPG warns that refusing permission on a planning ground capable of being dealt with by conditions risk an award of costs on the basis of unreasonable behaviour by a local planning authority (paragraph 49). However, examples are given as to when conditions should not be used, one of which is to require development to be carried out in its entirety, as there may be enforcement issues.

Grounds 1 and 2

27. I turn now to consider the first two grounds. Mr Clay submits that the inspector's interpretation of paragraphs W(13) of the GPDO was too narrow. There is nothing in the wording which prevents a suitable condition being imposed restricting occupation of the flats until the windows permitted under the 2019 had been installed. The inspector at paragraph 26 of her decision letter accepted that such installation as so permitted was consistent with the details shown in the proposed layout plans submitted in the prior approval applications. The installation permitted by the 2019 permissions was considered on its merits and had been found to be acceptable. Although, as the inspector says in paragraph 28, she could not require the installation to be carried out, her citation of PPG refers to a different type of inappropriate condition requiring the development permitted to be carried out in its entirety. That does not prevent a condition stipulating that flats should not be occupied before the installation permitted in 2019 was carried out. Such a condition would not derogate from the principle that the change of use is permitted once the prior approval is given.

28. Mr Clay continues that the scope of paragraph W(13) is limited only by the requirement that any condition is reasonably related to the subject matter of the prior approval. As the provision of natural light in every habitable room is a requirement for such approval in the present case, a condition to secure that requirement must reasonably relate to the subject matter of the prior approval. On a common sense reading of the GPDO, there is nothing to indicate that there is no power to impose such a condition. The imposition of such a condition was an obvious and simple solution which would have been familiar to the parties.

29. Mr Clay accepts that, with hindsight, the questions posed by the inspector to the parties may be taken to have raised this issue, but this was not clear at the time and it was obvious from the claimant's responses that this was not clear to the claimant. There was nothing to support the inspector's reference in paragraph 29 of the decision letter that a condition would involve a level of complexity going beyond the light-touch prior approval process. On the contrary, it would enhance that light-touch approach, and it was a simple way of achieving the permitted change of use with the minimum of formalities. By not considering that option, a material consideration was left out of account.

30. Mr Waller for the Secretary of State takes a markedly different approach. He submits that there is simply no power on a Class O prior approval application to give approval on the basis that operational development is carried out, even when that development is permitted by an extant planning permission. Other classes, such as Class Q, which permit a change of use from agricultural buildings to dwellings and building operations, also expressly permits building operations necessary for such a change. In that class, reference is made to the existing building. Class O permits only change of use, and not building operations, necessary or not, and so does not refer to the existing building. Operational development cannot be permitted under Class O. It was misconceived for the claimant to include details of installation of windows in the application for prior approval, when such approval was limited to change of use.

31. Mr Waller continues that the grant of prior approval in the present case subject to a condition that windows would be installed to let natural light into each habitable room would amount to a derogation from the planning permission granted by the GPDO It is inconsistent to grant prior approval for change of use, but on the basis that such change may not take place until operational development, namely the installation of windows, is carried out. The inspector was thus correct to reject the imposition of a condition requiring the sequencing of otherwise approved operational development before any permitted change of use occurred. It was not a very obvious case where the imposition of a condition preventing occupation of flats until the windows permitted under the 2019 permission were installed. This could have been suggested on behalf of the claimant in response to the inspector's queries but was not. The solution should have been for the claimant to install the windows before seeking prior approval.

32. In my judgment, Mr Clay's submissions are to be preferred. It is clear that had there been no planning permission for the installation of the windows, then the inspector had no power to consider the merits of such installation on the prior approval application. However, there was such permission, and so the merits of that operational development had been considered and found acceptable in planning terms by the authority. The imposition of a condition requiring the entirety of the 2019 permission to be carried out may not have been appropriate, but in my judgment there is nothing in the wording of paragraph W(13) or in the PPG to prevent the imposition of a negative condition, relating to occupation, as now suggested on behalf of the claimant. The only requirement was that the condition must reasonably relate to the subject matter of the prior approval, and in my judgment such a negative condition clearly does so.

33. Whilst this was not suggested by anyone, in my judgment it was an obvious solution to allowing the change of use and meeting the requirement for all habitable rooms to

have natural light. By failing to grapple with this, the inspector failed to have regard to a material consideration.

34. That is sufficient for the decision of the inspector to be quashed and to be resubmitted for redetermination. It is not in dispute that the consequential cost order must in that event also be resubmitted and redetermined.

Ground 3

35. For the sake of completeness, I shall also deal with ground 3. There was no procedural requirement for the inspector to disclose to the claimant the authority's supplementary comments. The issue is whether fairness demanded that this should be done, and that involves an objective test (see *R(Patel)* v *Secretary of State for Communities and Local Government* [2016] EWHC 2254 (Admin)).

36. It should have been obvious to the inspector from the replies on behalf of the claimant that the question of a condition to deal with natural light had not been picked up by the claimant. It was picked up by the authority, who gave reasons why it was not appropriate to tie in the prior approval with the 2019 permission. Given that the only ground on which the authority refused to give its approval related to an entirely different matter, then although the inspector had a duty to consider all the requirements under Class O before giving prior approval, as a matter of fairness she should have given the claimant the opportunity to respond to the authority's comments. I cannot be satisfied that the result would have been the same had she done so, and it seems to me that in that event there would have been a real possibility that the condition now suggested and the arguments in support of it would have been put forward and could have made a difference.

37. I would therefore quash the decision and resubmit the same, together with costs, for redetermination. I am grateful to counsel for their assistance. They helpfully indicated that any consequential matters not agreed can be dealt with on written submissions, and a draft order and any such submissions should be filed within 14 days of hand down of this judgment.

APPENDIX C:
Appeal Decision APP/L5240/W/22/3307735
Clarifying the scope of transport impacts that may be considered under permitted development Class MA

The Planning Inspectorate

Appeal Decision

Site visit made on 13 June 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 JULY 2023

Appeal Ref: APP/L5240/W/22/3307735
1 and 2 Grant Place, Croydon CR0 6PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
- The appeal is made by Mr David Hancock against the decision of the Council of the London Borough of Croydon.
- The application Ref 22/03135/GPDO, dated 25 July 2022, was refused by notice dated 13 September 2022.
- The development proposed is change of use of existing building at 1-2 Grant Place to form 4 dwellings.

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr David Hancock against the Council of the London Borough of Croydon. This application is the subject of a separate Decision.

Preliminary Matters

3. There are minor variations in the location of the proposed development as given on the application form and subsequent documents. I have used the location as given on the appeal form as this accurately represents the appeal site.

4. It was requested that I view the appeal site from the neighbouring property of 56 Grant Road, and I was able to do so at my visit.

Main Issue

5. The main issue is the transport impacts of the development.

Reasons

6. Class MA of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses). Paragraph MA.2 sets out that development under Class MA is permitted subject to an application to the local planning authority for a determination as to whether prior approval is

required in relation to the matters set out in paragraph MA.2(2). This includes matter MA.2(2)(a) which relates to the transport impacts of the development, particularly to ensure safe site access. Although MA.2(2)(a) refers particularly to safe site access, this does not preclude the consideration of other direct transport impacts of development.

7. Vehicular and pedestrian access to the appeal site is via a narrow lane which also serves a number of other properties, including a row of garages directly opposite the site. Due to the limited width of this lane, any obstruction placed in the highway would be likely to hinder the movement of vehicles and pedestrians, as well as the manoeuvring of vehicles associated with the garages opposite the site.

8. The submitted plans do not show a dedicated space for the storage of refuse. This would be likely to result in refuse bins being stored to the front of the building. The appeal site is located close to the edge of the highway, and it has not been demonstrated that there is sufficient space for bin storage without this projecting onto the highway. Given the limited width of the rear lane, the number of refuse bins arising from 4 dwellings would lead to an unacceptable effect on the movement of vehicles and pedestrians along the highway of the rear lane.

9. The Council also refers to a lack of evidence regarding access for refuse vehicles and operatives. However, it has not been demonstrated how these concerns in respect of the appeal proposal differ from waste storage arising from the original business use. Nevertheless, this does not lead me to a different conclusion regarding the storage of refuse bins to the front of the site.

10. There would be no dedicated car parking provision associated with the proposal. The Council refers to parking congestion in the area, and I observed that there were few on-street spaces available at the time of my visit. I am also mindful that my visit took place during the day when the greatest demand for parking in this residential area is likely to be in the evening and at weekends.

11. The matter of car parking could be addressed through the submission of a legal agreement preventing residents of the proposal obtaining parking permits. However, there is no such mechanism before me.

12. The appellant refers to the parking standards of the London Plan, and submits that the existing use of the site would generate a need for 4 parking spaces, which would be greater than the parking generated by the proposal. However, there are vehicular access doors to the front of the building, and some parking would therefore be available in the existing workshop area. This facility would be removed as part of the proposal. There is also no substantive evidence that the original business generated on-street parking demand in the area, even given the parking standards of the London Plan.

13. Based on what I have seen and read, the proposal would not make suitable provision for car parking and would lead to an increase in demand for on-street parking, with resultant harm to highway safety and access to on-street parking that nearby residents could reasonably expect.

14. I am required to have regard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval, as if

the application were a planning application. The Framework sets out that opportunities to promote cycling should be identified and pursued when considering development proposals, and that appropriate opportunities to promote sustainable modes of transport can be taken up. It has not been demonstrated how the proposal would include secure cycle parking, with a resultant impact on the provision of sustainable transport.

15. Two of the dwellings would be accessed from an alleyway to the side of the site, which would not appear to be part of the adopted highway. However, the submitted plans indicate that the extant building has access to the alley, and there is no evidence that this access would not be available to future residents of the building. The submitted plans also indicate that the proposal would not alter access to nearby residential properties served by this alley compared to the existing situation.

16. Notwithstanding my conclusions in respect of access to the alleyway and for refuse vehicles, I conclude that the transport impacts of the development would be unacceptable in respect of the effect on the movement of vehicles and pedestrians along the rear lane, parking congestion and the provision of sustainable modes of transport. The proposal would therefore be contrary to the Framework with regards to promoting sustainable transport. Insofar as they are relevant to this issue, the proposal would conflict with Policies DM13 and DM30 of the Croydon Local Plan 2018 with regard to the safe provision of refuse and recycling as well as the provision of cycle parking.

Other Matter

17. Reference has been made to private rights of way to the side and rear of the building which serve adjacent properties, and the potential encroachment of built development. Class MA of the GPDO relates to the change of use of a building and any land within its curtilage. Had I been minded to allow this appeal I would have considered the matter of curtilage further.

Conclusion

18. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR

APPENDIX D:
Environment Agency local Flood Risk Standing Advice V1.2

Advice Note 8 - Upper floor conversions and/or upper floor extensions

This advice note is for upper floor (1st floor and above) that have floor levels above the design climate change flood level only. For all more vulnerable and highly vulnerable ground floor or basement conversions and/or extensions please consult the Environment Agency.

Requirements to comply with LFRSA

- The LPA should confirm that all habitable accommodation be above the estimated river or sea 1 in 100 year flood level
(including an assessment of the impacts of climate change).
- If the building will be flooded at lower levels, the building should remain structurally sound considering the forces of the water.
- The development should be supported by a robust flood warning and evacuation plan. The safety of the flood evacuation plan
should be considered in discussion with the emergency planning department. The site may benefit from the EA's Flood
Warnings service, more information is available here: Sign up for flood warnings

Evidence/Justification required to be submitted by the applicant to support the planning application

- The FRA should confirm the 1 in 100 year flood level (including an assessment of the impacts of climate change) and
comparison to existing floor levels (to mAOD), ensuring there is no flooding on floor levels where conversion and/or extension is
proposed.
- Confirmation of flood depths surrounding the property and provision of an appropriate flood warning and evacuation plans
designed to ensure occupant safety against the specific flood risks.
- Confirmation of proposed flood resistance and resilience if required.

Conditions

It may be necessary for the LPA to condition elements of the scheme*:

- Condition that a Flood Warning and Evacuation Plan to ensure that owners and occupiers of the property are aware that the
land is at risk of flooding and the appropriate course of action to be taken in the event of a flood event.
- Condition confirmation that the building would remain structurally sound if subjected to flood depths of a certain level (600mm or
greater is generally accepted to cause potential issues).

*Please note the Environment Agency should not be consulted, and would not be providing comments, if the above are conditioned by your Authority