

Delegated Report

Planning Ref: 24/00331/P3CMA
Applicant: Mrs Kathryn Gear
Ward: Barwell



Hinckley & Bosworth
Borough Council

Site: 8 Chapel Street, Barwell

Proposal: Proposed change of use of shop floor (Class E) to 3no. flats (Class C3)

1. Recommendations

- 1.1. **Grant planning permission** subject to:
- Planning conditions outlined at the end of this report.

2. Planning application description

- 2.1. This is an application for prior notification under Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of the entire ground floor of 8 Chapel Street, Barwell from a commercial space (Class E) into the provision of three 1-bedroom residential apartments (Class C3.)

3. Description of the site and surrounding area

- 3.1. The application building is a two-storey terraced building that has an existing access fronting Main Street in the centre of Barwell. The application relates solely to the ground floor of the building, which currently consists of a shop floor, kitchen, and unused space/garage to the rear. The site does not fall within the High Street Conservation Area. The site is surrounded by a mix of residential and commercial properties of varying designs and scales.

4. Relevant planning history

07/01264/COU

- Change of use from cycle shop to a tanning shop
- Permission
- 25.01.2008

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents.
- 5.2. No neighbour responses were received.

6. Consultation

- 6.1. The consultation responses are below:
- Barwell Parish Council – No objections.
 - HBBC Drainage Officer – No objections.
 - HBBC Pollution Officer – No objections.
 - HBBC Waste Officer – No objections subject to a condition.
 - LCC Highways – No objections subject to a condition.

7. Policy

- 7.1. Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 3 Class MA
- 7.2. National Planning Policies and Guidance
- National Planning Policy Framework (NPPF) (2023)

- Planning Practice Guidance (PPG)

8. Appraisal

- 8.1. The main considerations in respect of this application are whether the proposed change of use meets the criteria for permitted development of Class MA of the Town and Country Planning (General Permitted Development) Order 2015, which relates to 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) Schedule 2 to that Order.

MA.1. – (1) Development is not permitted by Class MA –

- (b) *unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;*

The last permitted use of the building was for a tanning salon which prior to September 2020 would have been a sui generis use. Since amendments to the Use Classes Order on 1st September 2020, there have been several appeal cases considering whether such a use would now fall within Use Class E (c) (iii) as ‘Other appropriate services in a commercial, business or service locality’. Given the mixed commercial nature of the locality and known use of the building as a hair salon alongside the tanning use, the LPA are satisfied that the use would now be Class E. Whilst vacant for some time the use of the building falls within one or more of the classes specified in sub-paragraph (2) and did so for a continuous period of at least 2 years prior to the date of the application for prior approval.

- (d) *if land covered by, or within the curtilage of, the building—*
- (i) *is or forms part of a site of special scientific interest;*
 - (ii) *is or forms part of a listed building or land within its curtilage;*
 - (iii) *is or forms part of a scheduled monument or land within its curtilage;*
 - (iv) *is or forms part of a safety hazard area; or*
 - (v) *is or forms part of a military explosives storage area;*

The land covered by, or within the curtilage of the building isn’t and doesn’t form a part of any of the specified areas.

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

The site is not within any of these specified areas.

- (f) *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 site is not occupied under an agricultural tenancy.

- (g) *before 1 August 2022, if—*

- (i) *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*
- (ii) *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.*

The site has never been permitted by Class O.

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

See consideration of condition (b) above.

Conditions

MA.2. – (1) Development under Class MA is permitted subject to the following conditions

- (2) *Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—*
- (a) *transport impacts of the development, particularly to ensure safe site access*

The site does not have an existing access to the highway, a new access is not proposed.

There is a public car park to rear of property situated within the Barwell & District Constitutional Club and also potential to use land adjacent to the site to add three car parking spaces with access from Stanley Street, should these be required.

The LHA has been consulted and confirms that a small shop would require a minimum of two car parking spaces. Ideally, one car parking space should be provided for each one bed flat. On the basis that the existing shop has a shortfall of two car parking spaces, the proposals would only result in a further shortfall of one parking space. Notwithstanding the above, the site is located in the centre of Barwell and is within a 50m walking distance to bus stops serving regular buses between Nuneaton and Leicester.

In addition, there is a comprehensive package of Traffic Regulation Orders limiting and restricting parking throughout the village centre which should prevent inappropriate parking from occurring within the highway. As stated by the Applicant, a public car park is also situated to the rear of the site. On this basis, the LHA advise it could not justify any additional parking provision is necessary within the site. Nevertheless, the LHA would ask the Applicant to provide secure, undercover cycle parking for the benefit of future residents and to encourage sustainable travel modes. This can be dealt with by means of a condition.

- (b) *contamination risks in relation to the building;*

The site is not on contaminated land, nor does the site have any historical uses which would have resulted to any type of contamination as described in 2A of the Environmental Protection Act 1990.

- (c) *flooding risks in relation to the building;*

The site lies within Flood Risk Zone 1 and no additional groundworks or extensions are proposed that may increase this risk.

- (d) *impacts of noise from commercial premises on the intended occupiers of the development;*

The site does not neighbour any commercial premises that have the potential to cause unacceptable noise impacts. There is no objection from HBBC Environmental Health.

- (e) *where—*

- (i) *the building is located in a conservation area, and*
- (ii) *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 building is not located within a Conservation Area.

- (f) *the provision of adequate natural light in all habitable rooms of the dwellinghouses;*

The scheme provides adequate windows and natural light into each habitable room within each of the three apartments. The proposal provides adequate natural light for the habitable uses in the unit.

- (g) *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;*

These uses are not prevalent in this location and as such would not impact upon the prospective occupiers.

- (h) *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 2006, the impact on the local provision of the type of services lost; and*

The development does not involve the loss of services provided by a registered nurse or a health centre maintained under Section 2 or 3 of the National Health Service Act 2006.

- (i) *where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building*

The development meets the fire risk condition of article 9A because the building is not 18m or higher and does not contain 7 storeys or more as required by The Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021.

- (3) *An application for prior approval for development under Class MA may not be made before 1 August 2021.*

The application was submitted in 2024.

- (4) *The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if—*
 - (a) *for paragraph (e) of sub-paragraph (2) there were substituted—*
 - “(e)where—*
 - (i) *sub-paragraph (6) requires the Environment Agency to be consulted, a site-specific flood risk assessment;*
 - (ii) *sub-paragraph (6A) requires the Health and Safety Executive to be consulted, a statement about the fire safety design principles, concepts and standards that have been applied to the development,”;*
 - (b) *in the introductory words in sub-paragraph (5), for “and highways impacts of the development” there were substituted “impacts of the development, particularly to ensure safe site access”;*
 - (c) *after sub-paragraph (6) there were inserted—*
 - “(6A) Where the application relates to prior approval as to fire safety impacts, on receipt of the application, the local planning authority must consult the Health and Safety Executive.”;*
 - (d) *in sub-paragraph (7) for “(5) and (6)” there were substituted “(5), (6) and (6A)”;*

No comment from planning officer necessary.

- (5) *Development must be completed within a period of 3 years starting with the prior approval date.*

No comment from planning officer necessary.

- (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

The building is to remain in use as a dwellinghouses within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose.

Interpretation of Class MA

MA.3. – (1) 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

The development meets the fire risk condition referred to in paragraph MA.2(2)(i)

9. Equality implications

9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states: -

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

9.3 There are no known equality implications arising directly from this development.

9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

10.1. The application meets the conditions of Class MA of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It is considered that the application is acceptable and is in accordance with the conditions and the provision of Paragraph W of the General Permitted Development Order (2015) (as amended).

11. Recommendation

11.1 Prior approval required and granted subject to:

- Conditions outlined at the end of this report

11.2 Conditions and Reasons

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:
 - As proposed plan & elevations - Drg No. 002
 - As proposed plan – Apartment A, B & C – Drg. No. 003

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

2. The development hereby permitted shall not be occupied until such time as secure cycle parking shall be provided in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Thereafter the onsite cycle parking provision shall be kept available for such use in perpetuity.

Reason: To promote travel by sustainable modes in accordance with Policy DM17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016) and the National Planning Policy Framework (December 2023).

3. No development shall take place until a scheme makes adequate provision for waste and recycling storage of containers and collection across the site which has been submitted to and approved in writing to the Local Planning authority. The details should address accessibility to storage facilities and confirm adequate space is provided at the adopted highway boundary to store and service wheeled containers.

Reason: To ensure that the development makes adequate provision for waste and recycling storage in accordance with Section 46 of the Environmental Protection Act 1990 and visual amenity of the area in accordance with Policy DM10 of the SADMP.

Notes to applicant

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at buildingcontrol@hinckley-bosworth.gov.uk or call 01455 238141.