

Delegated Report

Planning Ref: 23/00310/P3CMA
Applicant: Mrs Surinder Sehmbi
Ward: Ambien



Hinckley & Bosworth
Borough Council

Site: 44 Main Street, Higham On The Hill

Proposal: Change of use from shop(Class E) to dwelling (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 front half of the ground floor of 44 Main Street, Higham On the Hill from a commercial space (Class E) into the provision of a lounge serving the existing first floor residential unit (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. The site is located in the Higham Conservation Area, which has a mix of terraced buildings with semi and detached dwellinghouses with a brick or white rendered finish.

4. Relevant planning history

22/01024/P3CMA

- Proposed change of use from shop to lounge
- GDO Prior Approval Given
- 30.01.2023

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site and a notice was displayed in the local press.
- 5.2. No neighbour responses were received

6. Consultation

- 6.1. The consultation responses are below:
- HBBC Drainage Officer – Note to application has been suggested.
 - HBBC Conservation Officer – The proposal would enhance the Conservation Area.
 - HBBC Pollution Officer – No objections.
 - HBBC Waste Officer – No objections.
 - The Local Highway Authority – No comments to make.

No comments have been received from the following:

- Higham On The Hill Parish Council

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) (2021)
 - 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 –

- (a) *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 has been regarded as vacant for business rates purposes since 31st January 2021.

- (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;*

HBBC's Business Rates team confirmed that business rates have been paid for the property for over a period of 2 years prior to the cease of these payments on January 2021.

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

The total site area does not exceed 1,500sqm.

- (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);
 - (viii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;

The property is a Class A1 shop on and before 1st September 2020.

- (b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

The property falls under Class E (commercial, business, service) since 1st September 2020.

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 has existing available car parking to the rear of the site, which has serviced the existing first floor residential unit. The application does not seek to increase the number of bedrooms and the property, and as such no further off-street car parking spaces are required.

The application does not impact upon the existing off-street car parking facilities.

- (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 proposed amendments to the site removed the commercial unit located underneath the existing first floor residential unit, as such it is considered that there should be no further noise impacts upon the intended occupiers of the development – as the proposal seeks to extend the residential unit into the ground floor.

- (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 located within the Higham on the Hill Conservation Area and the development involves a change of use to part of the ground floor of the property. The comments received from the HBBC Conservation Area Officer confirm:

“44 Main Street is the corner building of an end terrace. The terrace dates from the late 19th century and the application building retains its original red brick wall and slate roof construction materials, and first floor window head details. A modern shop front was installed within the building during the latter half of the 20th century which has altered the character of the building from its original domestic appearance to commercial, but despite this incongruous feature the building is of historic and of some limited architectural interest. As such it contributes positively to the significance of the conservation area. The building is identified as a significant local building within the Higham on the Hill Conservation Area Appraisal (HHCAA) (2009).

The proposal would involve replacing the shopfront to the front elevation as it wraps around part of the side elevation with a single front door and front window and single window to the side elevation. The remaining area of the former shop front would be infilled with brick to match the existing walls. Both windows would have the arched header

detail to match the existing first floor window. The proposal would reinstate the domestic appearance of the building resulting in a minor enhance to its character.

In my opinion the proposal would enhance the significance of Higham on the Hill Conservation Area and when assessed against condition 2€ of Schedule 2 Part 3 Class MA of the GPDO the impact of the proposed change of use on the character of the conservation area would not be adverse or unacceptable”.

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

The scheme creates one new window on the side elevation and proposes alterations to the existing shop window to the front elevation, with a smaller replacement window; which 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 intended 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 2023.

- (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 dwellinghouse 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:

- Site Location and Block Plan - Drg No. L(2-)01
- Existing and Proposed Plans – Drg No. L(2-)02 Rev A

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).

a. 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.

2. According to the Environment Agency (EA) website, the application site is located within Flood Zone 1, designated as low probability of flooding from rivers and sea, and the principle of residential development in low flood risk areas is acceptable. The EA Surface Water mapping also indicates that the application site is located in an area at very low risk of flooding from surface water. The surface water drainage system for the proposed development should incorporate sustainable drainage principles (SuDS) to mitigate the risk of flooding on the site, and ensure that surface water runoff does not increase flood risk elsewhere. The proposals should also include measures to address issues of water quality in accordance with current SuDS guidance.