

PD15187/SS/LED

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14 March 2024

Planning Department
Warwick District Council
Riverside House
Milverton Hill
Leamington Spa
CV32 5HZ**Planning Portal Ref: PP-12891306**

Dear Sir/Madam,

**1 AUGUSTA PLACE AND 36 REGENT STREET, LEAMINGTON SPA, CV32 5EL
TOWN & COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 2015 (AS AMENDED)
SCHEDULE 2, PART 3, CLASS MA: PRIOR APPROVAL FOR CHANGE OF USE FROM COMMERCIAL (USE CLASS
E) TO DWELLINGHOUSE (USE CLASS C3)**

We write on behalf of the applicant, NJAY Investments Ltd ("the Applicant"), to submit an application ("the Application") for determination as to whether the prior approval of Warwick District Council ("WDC") is required for the proposed change of use from office (Use Class E) to residential (Use Class C3) at 1 Augusta Place and 36 Regent Street, Leamington Spa, CV32 5EL ("Site / Building").

The description of development is as follows:

'Change of use of first and second floors from office (Use Class E) to residential (Use Class C3) to create 3 self-contained flats under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).'

This Application seeks the Council's confirmation that prior approval is not required in exercising permitted development rights, or if it is required, it is given, allowing the change of use of the existing office space.

Site and Planning Context

The Site is located at 1 Augusta Place and 36 Regent Street, Leamington Spa, CV32 5EL, with retail use (Use Class E) on the ground floor and offices (Use Class E) on the upper floors. This Application seeks to change the use of the office to residential on the first and second floors of the Site.

The Building extends to 2 and 3 storeys, incorporating lower ground shop fronts at ground floor level fronting the High Street, providing active frontages.

The main access to the Site is from Augusta Place at ground floor level, with an internal staircase providing access to the upper floors. Four retail units are located at the ground floor and are understood to be a Warhammer Shop, two beauty shops and a retail unit. The surrounding area is characteristic of its high street location, with the local context predominately characterised by commercial uses at ground floor and residential and office above.

The Site is located around 0.5 miles from Leamington Spa Station, or approximately a 10-minute walk. The nearest bus stops to the Site are Regent Hotel and Regent Street, around 0.2 miles away or a 3-minute walk.

On 13 May 2022, a full planning application (ref. W/21/0962) (“the Full Application”) was refused for the ‘conversion of first and second floor offices and erection of an additional storey at second floor to provide 6no. 2-bed flats.’ The reason for the refusal was as follows:

“...Based on the combined potential nuisances of noise and odours, it is likely that future occupiers of the development would need to keep their windows closed the majority of the time. Officers do not consider that this would provide a satisfactory living environment for residential occupiers.

...

On this basis Officers consider that a poor living environment would be provided for future occupiers.”

The reason for refusal was therefore on the basis that the application did not provide acceptable standards of amenity for future users and occupiers of the development.

Environmental Designations

The Site has the following environmental designations:

- Royal Leamington Spa Conservation Area; and
- The Site is located within Flood Zone 1 (low probability of flooding).

Permitted Development Rights

The Application is made in accordance with Schedule 2, Part 3, Class MA (Commercial, Business and Services uses to Dwellinghouses) of the Town and Country Planning (General Permitted Development (GDPO)) Order 2015 (as amended) (GPDO) which permits development consisting of a change of use of a building and any land falling within its curtilage from a use falling within Class E to a use falling within Class C3.

From 05 March 2024, the Secretary of State for Levelling Up, Housing and Communities effected changes to the requirements of Class MA to residential. These changes removed the maximum floorspace limit and vacancy requirements as had been set out in the GDPO. As such, this Application does not consider these aspects.

Permitted Development Rights under Part 3 Class MA Part MA.1 sets out the criteria for which development is not permitted under this right these reasons are considered within the table below:

Part MA.1 – Development is <u>not</u> permitted by Class MA -	Assessment
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 first and second floors of the building have been in use as an office (Use Class E) since the Applicant acquired the Site in November 2021. It is understood they were uses as offices prior to this date too.
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	The Site is not located within any of the stipulated designations.

(v) is or forms part of a military explosives storage area;	
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(1); (iii) the Broads; (iv) a National Park; or (v) a World Heritage Site;	The Site is not located within any of the stipulated designations.
If the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;	The Site is not occupied under an agricultural tenancy.
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.	N/A – application post-dates 1 August 2022. However, we confirm the Site is not located within any current Article 4 direction.

The Applicant confirms that the Site fulfils the relevant criteria in accordance with condition MA.2. of Class MA and WDC does not currently have any active Article 4 Directions to remove this right. On this basis, the proposed development is considered permitted development.

Under the Conditions of Class MA (2), before commencing the development, the developer must apply to the local planning authority for determination as to whether the prior approval of the authority will be required in relation to:

- (a) transport and highways impacts of the development;
- (b) contamination risks on the site;
- (c) flooding risks on the site;
- (d) impacts of noise from commercial premises on the intended occupiers of the development;
- (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;
- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (g) the impact on intended occupiers of the residential use in an area considered important for general or heavy industry, waste management, storage and distribution;
- (h) an assessment of the impact on the locality where the proposal involves the loss of a registered nursery or health centre;
- (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

In accordance with the requirements set out in Schedule 2, Part 3, Class MA of the GPDO, we enclose the following documents to support this application:

- a) A written description of the proposed development, in the form of this cover letter and the accompanying application form;
- b) Existing and proposed plans indicating the Site and showing the proposed development, prepared by AT Architects. These consist of the following:
 - Existing Plans; and
 - Proposed Plans
- c) Acoustic Report, prepared by Auricl;
- d) MVHR Specification, prepared by Mark Heat Recovery Systems; and
- e) MVHR Specification, prepared by Vent-Axia.

A summary of each of the prior approval considerations is set out below:

Transport

The Site is located within the centre of Royal Leamington Spa and is therefore well served by a range of sustainable transport modes. In addition to this, no parking is present at the Site nor is any proposed as part of this development and therefore there will be no adverse effect on the traffic levels currently experienced at the Site and the wider surroundings. Due to the Site's location within the defined town centre, many of the roads also include pay-by-phone time restricted parking opportunities which only allow for a maximum stay of 2 hours in the event the Site is required to be accessed via a vehicle.

The above is considered to evidence that the proposed development will have a negligible impact on the transport and highways environment currently experienced at the Site. In this regard, this requirement of the GDPO is considered to have been satisfied.

Contamination

The Site is considered to have a low contamination risk with no recent or known historic land uses that pose a risk. In any event, this Application does not propose to break ground and the Site is already established with commercial premises on the below floor. As such, there is not considered to be a contamination risk with this application.

Flooding

The Site is located entirely within Flood Zone 1 and as such, flood risk is considered to be low. The completed development would not be subject to significant levels of flood risk when considered over a 100-year projected development lifetime. The Site is predominately at a very low risk of surface water flooding, with a small area at a low risk. As such, the proposal is acceptable in respect of flooding.

Noise

It is noted that, within the Decision Notice of the Full Application which was refused, the reason for refusal is set out as being the 'combined potential nuisances of noise and odours' that would not 'provide a satisfactory living environment for future residential occupiers.' It is understood this is based on the Site's proximity to the Fizzy Moon Brewhouse and Murphys Bar located on the northern side of Regent Street as well as proximity to two restaurants situated on Augusta Place and it not being possible to achieve suitable internal noise levels without the use of sealed windows and mechanical ventilation.

Under a prior approval application, the relevant assessment with regards to the acceptability of the development is the impacts of noise from commercial premises on the intended occupiers of the development. The perceived residual impact of achieving a satisfactory noise environment on the amenity of future occupiers, for example, occupiers having to rely on mechanical ventilation, is not a material consideration under such an application. Therefore, provided that a satisfactory noise level can be achieved, prior approval should be given.

This Application is supported by an Acoustic Report, prepared by Auricl. The report makes a number of recommendations, the first stating a requirement to improve the façade's sound reduction performance in order to mitigate the impact of noise

generated by the commercial uses on Augusta Place and Regent Street. The Applicant is committed to upgrading the performance of the facades to improve the living environment of the proposed residential units and it is considered that this can be secured via a suitably worded condition.

The Acoustic Report further recommends that the glazed and non-glazed areas of the facades throughout the development should be provided to a high standard and be well sealed. The provision of windows to this standard will ensure the noise mitigation performance of the building is effective in creating a suitable living environment for future residents. As with the above, it is recommended that the upgrades to the windows are secured via a suitably worded condition.

Lastly, the Acoustic Report notes that the internal noise level limits will likely be exceeded in the event the windows are open. It is therefore recommended a mechanical ventilation system is installed at the premises. This will limit the need to open the windows as the mechanical ventilation system will circulate fresh air throughout the building using ducts and fans. It is proposed that the installation of the mechanical ventilation system is secured via an appropriately worded condition.

In considering the above, on the basis that the proposed conditions are positively discharged as part of the Application, there are no noise-related reasons why the prior approval should be withheld. Indeed, the reason for refusal under the Full Application is not a material consideration under a prior approval application.

Conservation Area Impact

The Site is located within the Royal Leamington Spa Conservation Area. However, as the proposed development only relates the first and second floors of the building and not the ground floor, consideration of the potential impact upon the Conservation Area is not required as per Condition E set out within the GDPO.

In conclusion therefore the proposals are acceptable in traffic and sustainable transport terms and therefore meets the criteria of the prior approval.

Adequate Natural Light

All habitable rooms will be served by windows ensuring sufficient natural daylight and sunlight. Furthermore, the surrounding built form is of a relatively low scale ensuring that access to daylight and sunlight is not constrained.

It is noted that, within the Delegated Report for the Full Application, the Officer states that '*the proposed development is considered to provide adequate light...for the future occupiers of the development.*'

As such it is concluded that the proposed development is acceptable in daylight and sunlight terms.

Co-Location of Residential Use with Industry

The Site is not in a location considered by the Council to be important for general or heavy industry, waste management, storage and distribution. Therefore, an assessment to understand this impact on a proposed residential use is not required as part of this prior approval.

Loss of a Registered Nursery or Health Centre

The Site is not designated as either a registered nursery or health centre. As such, an assessment on the impact of the loss of this type of uses is not required to accompany this prior approval application.

Fire Safety

The building is only 2 to 3 storeys and under 18 metres, as such no Fire Statement is required to be submitted as part of this prior approval.

However, any future works to the building will be compliant with the most up-to-date Building Regulations and have fire safety features inform the design of the development.

Closing

On the above basis, it is considered that the proposed change of use complies with the criteria and conditions set out in Class MA of the GPDO, and therefore Prior Approval should not be required (or if it is required, that it should be granted) in respect of this development.

The application is submitted along with the requisite fee of £439, as set out in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017 (as amended). A fee of £439 has been submitted via the Planning Portal today, calculated on the basis of £125 per dwelling plus £64 service charge.

We trust the submitted information is satisfactory and look forward to receiving confirmation that this application has been registered. Should you have any questions or queries, please do not hesitate to contact Sam Stackhouse (sam.stackhouse@montagu-evans.co.uk / 07826 947 254) or Louis Earle-Davis (louis.earle-davis@montagu-evans.co.uk / 07341 805 215) of this office in the first instance. .

Yours faithfully,



Montagu Evans LLP