

PLANNING STATEMENT

Prior Approval Application

Class MA, Part 3, Schedule 2 General Permitted Development Order 2015

**Change of use of existing commercial office floor space to provide 8
residential flats.**

at

Ocean House, Parklands Business Park, Forest Road, Denmead. PO7 6XP

1.0 Introduction

- 1.1 This Planning Statement has been prepared on behalf of Brymor Group Southern Ltd to support a prior approval determination application under Class MA, Part 3 of the GPDO 2015 (as amended) for the change of use of existing commercial floor space within Ocean House to provide a total of 8 no. residential units.
- 1.2 The application is accompanied by the requisite plan drawings and information required under Paragraph W of the GPDO 2015 (as amended), as set out below. The application is also accompanied by a Transport Statement and an Internal Daylight Adequacy Report to assist assessment of some of the specific prior approval issues.
- Site layout plan (including location plan)
 - Existing floor plans
 - Proposed floor plans (ground, second and fourth floors)
 - Existing elevations
 - Proposed elevations
 - Planning Statement
- 1.3 Prior Approval has previously been granted on 15th April 2021 under Class O of the GPDO for a change of use of the building to a total of 8 flats under application reference 21/00397/PNCOU.
- 1.4 This application seeks prior approval under Class MA for Ocean House only. A separate Class MA Prior Approval application has been made for Brymor House.

2.0 Class MA - Qualifications and Conditions

- 2.1 Class MA of the General Permitted Development Order (GPDO) (2015), as amended, permits the change of use of buildings and any land in its curtilage from a use falling within Class E (commercial, business and service) to residential use within Use Class C3, subject to various qualifications, limitations and conditions, including the requirement to make a prior approval application to the Local Planning Authority (LPA) in respect of certain matters that can be assessed. Thus, as with its Class O predecessor, Class MA of the GPDO grants a deemed planning permission under Article 3(1) of the Order. The principle of development is therefore set by the GPDO. This prior approval application is effectively to discharge the conditions set out in the Order. (See 2.4 below).
- 2.2 The latest changes to Class MA were brought into force on 5th March 2024 by virtue of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024 (S.I. 141). This removes the vacancy requirement (paragraph a) and the floorspace threshold (paragraph c).

- 2.3 Development is not permitted under Class MA if any of the following apply. (The strike-through elements reflect the GPDO amendment noted above):-

Development not permitted.

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

- 2.4 Paragraphs 9A and 9B of the GPDO require development to meet the nationally described space standards (NDSS) and its associated notes.
- 2.5 Development under Class MA is permitted subject to a condition that before development begins, 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 the following matters:-
- 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
- Provision of adequate natural light in all habitable rooms
- [NB Other requirements of MA are not relevant as they only relate to buildings within conservation areas/where there will be a loss of nurseries/health care services/or where residential use will be impacted by general/heavy industry].

2.6 The procedural requirements for prior approval applications are set out in Paragraph W of the Order. It should be noted that only the specific requirements of Paragraph W can be insisted upon. In particular, the national and local validation checklists relevant to planning applications cannot be applied to prior approval applications under the GPDO. Furthermore, as set out in paragraph W - 10 (b) the LPA must have regard to the NPPF, “so far as relevant to the subject matter of the prior approval, as if the application were a planning application”.

Dealing with Class MA applications where external alterations are required

2.7 It is also important to note that an application under Class MA, unlike some other classes within the GPDO, cannot deal with any necessary building operations associated with the change of use. Any building operations which require planning permission must form part of a separate planning application and must be determined on its own planning merits in accordance with statute. Two important principles flow from this:-

- The need for separate planning permission does not disqualify a scheme from exercising permitted development rights under Class MA.
- It is also well established that any associated planning application for associated external alterations can be submitted before, at the same time or after the prior approval application.

2.8 Both of the above principles are well-established and confirmed by the following:-

- National Planning Practice Guidance (NPPG) – see Paragraph 055 Reference ID: 13-055-2040306 (rev date 06 03 2014).
- Regulation 14 (1A) of the 2012 Fee Regulations provides for the submission of both prior approval and planning applications together (and indeed waives the fee for the prior approval when both are submitted in parallel).
- Appeal Decisions – for example, see below extract from. This relates to a Class O application but is equally applicable to Class MA. Extract from appeal decision letter for APP/H5390/W/17/3187381

“30. Schedule 2, Part 3, Class O of the GPDO permits development consisting of the change of use of a building and land within its curtilage from office use to residential use. The Council is concerned that the alterations to the access and bin and cycle storage areas shown on the submitted drawings amount to operational development and are therefore not permitted by Class O of the GPDO.

31. I accept that permitted development under other classes of the GPDO also permit limited operational development alongside a

change in use, whereas Class O of the GPDO does not. However, the need for operational development which would require planning permission is not listed as a disqualifying factor under Paragraph O.1 of Class O of the GPDO.

32. Furthermore, the PPG states where associated physical development is required to implement the change of use, developers should consider whether it constitutes development and should ensure they have planning permission if necessary. It does not specify when any such planning permission should be secured. Moreover, whilst Paragraph W(2)(b) of Schedule 2, Part 3 of the GPDO requires a plan indicating the site and showing the proposed development, it does not state whether or not any required operational development should be shown.”

- Case Law - The High Court has reaffirmed this principle in *The King (LW Zenith Limited) v Secretary of State for Levelling Up, Housing and Communities v Hart District Council* [2022] EWHC 3317 (Admin). The Judgment reminds us of some other basic principles with Prior Approvals:- A negative condition may be imposed on a prior approval, such as one preventing occupation before windows are installed. Furthermore that refusing permission on a planning ground capable of being dealt with by conditions risks an award of costs on the basis of unreasonable behaviour by a local planning authority. In the redetermined appeal relating to the above High Court case (APP/N1730/W/21/3278561), the Inspector concluded that

“17. The previous Inspector was not prepared to attach a condition requiring the completion of other consented development in its entirety as part of the prior approval process. However, in the judgment of the High Court, His Honour Judge Jarman KC opined that there was nothing in paragraph W(13) of the Order, or in the PPG, to prevent the imposition of a negatively worded condition, relating to occupation. I favour that approach and agree that such a condition would be reasonably related to the subject matter of the prior approval”.

- 2.9 In accordance with the established principles set out above, the external alterations required to implement the proposed Class MA scheme (and shown on the floor plans and elevation plans), have to a large extent, already been approved under application reference 20221183. Some minor non-material alterations to that consent are subject to a separate application under Section 96A.
- 2.10 It is accepted that all of the external changes required to implement the prior approval scheme must be consented and implemented before the change of use permitted under Class MA can occur. As set out above and confirmed by Appeal Inspectors, there is no reason why this cannot be dealt with by a negatively worded planning condition.

3.0 Site and Surroundings

- 3.1 A red line plan identifying the application site is submitted with this application in compliance with Paragraph W of the GPDO. The application site lies on the north

west side of Forest Road and within a business park, but is now predominantly residential in use/character. The site comprises a two-storey purpose-built office building together with car parking and landscaping. To the rear (northwest) of the site lies woodland. Trees within the car park and landscaped areas of the application site are protected by Tree Preservation Orders (TPOs).

- 3.2 Immediately adjacent is Brymor House, a larger detached office building. Both buildings date from the late 1980s.
- 3.3 Since the introduction of permitted development rights to change the use of offices to residential, a large number of buildings within the vicinity of the site are now in residential use, including buildings in The Spinney to the east of the site (see Application Refs: 14/02402; 14/01416; 14/01417; 14/01421; 14/02571; 14/02572; and 15/01260) and Falcon House to the north.

4.0 The Proposals

- 4.1 This application seeks prior approval for a total of 8 flat units, 4 on the ground floor and 4 on the first floor.
- 4.2 The proposed mix will be a combination of 2bed and 3bed units, as set out below.

Ground Floor	First floor
Unit 1 - 2b3p	Unit 5 – 2b3p
Unit 2 - 1b2p	Unit 6 – 1b2p
Unit 3 – 2b3p	Unit 7 – 2b3p
Unit 4 – 1b2p	Unit 8 – 1b2p

- 4.3 Each flat has been designed to meet the nationally described space standards (NDSS) both in terms of overall floorspace but also in compliance with the notes regarding sizes of bedrooms, storage space etc.
- 4.4 Ample parking spaces [16no.] will be available for the proposed flats in the existing car park, in accordance with Winchester City Council's Parking SPD. In addition, cycle parking and refuse storage will be available in a separate building that was consented as part of application reference 21/00752/FUL.

5.0 Assessment against the GPDO 2015

- 5.1 The following assesses the proposals against Class MA of the GPDO 2015 (as amended).

Qualifications/exclusions

- 5.2 Paragraph MA.1. (1a) is no longer relevant. There is no longer a vacancy qualification.
- 5.3 Paragraph MA.1.(1c) is no longer relevant. There is no longer a floorspace threshold.
- 5.4 The site is not, nor forms part of, a SSSI, a listed building or its curtilage, a Scheduled Ancient Monument, a military explosives storage area or a safety hazard area and therefore complies with MA.1. (1d)
- 5.5 The site does not lie within an AONB, National Park, World Heritage Site or Wildlife Area or The Broads. Therefore the application complies with MA.1. (1e).
- 5.6 The site is not occupied under an agricultural tenancy and therefore the application complies with MA.1. (1f).
- 5.7 The site is not covered by an Article 4 Direction.
- 5.8 There are no restrictive planning conditions nor S106 obligations that would prevent permitted development rights under Class MA from being exercised.
- 5.9 The proposals meet the nationally described space standards and therefore complies with Article 3, Paragraphs 9a and 9b of the GPDO.

Assessment of Transport and Highway risks

- 5.10 The NPPF (2023) states in Paragraph 115 that “*development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*”.
- 5.11 The existing access arrangements are considered to be satisfactory, as acknowledged in the previous Class O determination applications. There is ample car parking within the existing car park areas to serve the proposed flats. The proposals will meet parking standards. Provision has also been made for disabled parking. Servicing arrangements (for refuse vehicles) will remain as existing. Cycle parking facilities will be provided for the proposed flats to encourage sustainable non-car modes of transport. Previous prior approval applications have raised no objections on highway grounds. There has been no change in circumstances since 2021. A number of other Class O prior approval applications have been consented within the vicinity of this site. No objections to these applications have been raised by Winchester City Council as Highway Authority.
- 5.12 There are therefore no reasons to require prior approval of highway impacts. If Prior approval is deemed to be required, there is no reason to withhold it on highway/transport grounds.

Assessment of Contamination Risks

- 5.13 The application site does not constitute “Contaminated land”. Contaminated land as described in Part 2A of the Environmental Protection Act 1990 is any land where it

appears that substances in, on or under it is likely to cause significant harm or where there is a significant possibility of such harm being caused; or where pollution of controlled waters is being or is likely to be caused.

- 5.14 There is no evidence that the site has been determined as likely to be contaminated under the above Act, or when taking into account the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012. Indeed, the original planning application for the office building recorded no contamination.
- 5.15 The current owners of the site have not been required to take any subsequent action in respect of remediation or contamination on the site.
- 5.16 The proposed development would involve no below ground disturbance in order to create the new dwelling units. No new pathways for any possible contamination which might exist would be created. No new potentially contaminated material would be brought onto the site.
- 5.17 The previous Class O prior approval applications did not raise contamination as an issue and there has been no change of circumstances since then.
- 5.18 On the basis of the above, there is therefore no reason for any mitigation of risks in respect of contamination; nor are there any reasons to determine that the land is contaminated. If it is deemed however that Prior Approval is required, then there is no reason relating to contamination for approval to be withheld.

Assessment of Flood Risks

- 5.19 The site falls within Flood Zone 1 and in an area of low flood risk. There is therefore no reason to require prior approval of flood risk. This was accepted as part of the previous Class O Prior Approval determination.



Source: Environment Agency Flood Map for Planning

Assessment of Noise Impacts (from commercial premises on future occupants)

- 5.20 The GPDO 2015 (as amended) spells out that the assessment of noise is restricted to those impacts from commercial premises. Noise from traffic is not for consideration. The application site is bounded to the rear by a vacant commercial office building, as well as residential properties, neither of which are likely to cause noise nuisance.
- 5.21 Given the above, there is no reason to withhold prior approval on the basis of noise impacts.

Assessment of Adequate Natural Light

- 5.22 The requirement to assess natural light was inserted into the GPDO by the T&C PI (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 and came into effect on 1 August 2020. Criterion 1(f) requires *“the provision of adequate natural light in all habitable rooms of the dwellinghouses”*. Habitable rooms are defined within the GPDO as meaning:- *“any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms”*.
- 5.23 All habitable rooms within the proposed scheme will have at least one good-sized window. The room plans are not particularly deep and therefore there is no reason why natural light will not penetrate sufficiently into each room. Notwithstanding this, the existing natural daylight will be supplemented by sunpipes which are shown on the submitted plans.
- 5.24 Given the above, there is therefore no reason to withhold prior approval on the basis of inadequate natural light.

6.0 Conclusion

- 6.1 In conclusion, the application meets all tests set out in the GPDO 2015 (as amended) and thus there is no reason Prior Approval should be withheld.

Report prepared by:-

Ruth Harding (Director – Gemini Planning Services Ltd)

Date: March 2024

