DELEGATED REPORT / CASE OFFICER'S ASSESSMENT

Ref No: ST/0650/20/PNCU
Proposal: Application to determine if prior approval is required (under the Town and Country Planning (General Permitted Development) Order 2015 - Schedule 2, Part 3, Class C) for a proposed change of use from a shop (Class A1 use) to a café (Class A3 use).
Location: 101 Prince Edward Road
South Shields
NE34 8PJ

Site Visit Made: 27/07/2020

Relevant policies/SPDs

1 DM1 - Management of Development (A, B and G)

Description of the site and of the proposals

This application is for prior approval under Part 3 Schedule 2 (change of use) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015, for the change of use of an existing shop (Class A1) to a café (Class A3) at 101 Prince Edward Road, at The Nook, South Shields. The application was amended part-way through the application to omit the 'café/takeaway (Class A3 use)' use from the description, changing this to read 'café (Class A3 use)' only. This assessment is to determine whether or not the prior approval of the authority will be required.

It is noted part-way through the application process on 1 September 2020, the Planning Use Class Order was amended (Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. As such it is considered previous use classes A1 and A3 both fall within the new 'Class E'. As such planning permission is not required for such a change of use. However, there are transitional provisions in the 2020 regulations, which operate as follows. Between 1 Sept 2020 and 31 July 2021:

- References within the GPDO to the UCO use classes should be read as the *former* uses/use classes within the UCO, at 31 August 2020.

- For applications for prior approval under the GPDO, and determinations by the LPA whether prior approval is needed, similarly references within the GPDO should be read as the *former* uses/use classes within the UCO, as at 31 August 2020.

Therefore the application is to be determined as it would have been under the GPDO, without regard to the 2020 Regulations, and this has been confirmed as the correct approach by the Council's Solicitor.

Publicity / Consultations (Expiry date 06/11/2020)

1) Neighbour responses

None

2) Other Consultee responses

Environmental Health: I have considered the application in terms of residential amenity and have no objections. Given the separation distance to the nearest residential receptor I have no comments to make on this application. *Comments relate to revised description.*

Environmental Protection: No comments in terms of land contamination or flood risk/drainage. *Comments relate to original and revised description.*

Waste (Collections): No objections. *Comments relate to original description.*

Community Safety: Content with the proposal. *Comments relate to original description.*

Traffic and Road Safety: There is no highway comment regarding this application. *Comments relate to revised description.*

Northumbria Police Architectural Liaison Officer: No objections. *Comments relate to original description.*

As a repurposing of a retail space within an established trading area, we have no objections to the application, save to query the need for a premise to open 8am till 10pm Monday to Saturday, would want to open till 11pm on a Sunday night. We would appreciate some clarity around this issue because experience has shown that sometimes can be linked to a desire to stage performance or entertainment, which might then qualify our stated position. *Comments relate to amended description*.

Assessment

The main issues relevant to the determination of this application are:

- The existing use class of the planning unit (is it within Use Class A1 under the Town and Country Planning (Use Classes) Order 1987 (as amended);
- Does the proposal comply with Limitations C.1 'Development not permitted' under Class C of Part 3 of Schedule 2 of the GPDO 2015 (as amended)?
- Does the proposal comply with Condition C.2 under Class C of Part 3 of Schedule 2 of the GPDO 2015 (as amended) – whereby the Local Planning Authority must assess whether prior approval is required and, if so, whether it can be given?

Existing Use Class of the Planning Unit

The most recent planning permission at the application site was granted on 24/10/1986. This was for the installation of a new window at the West Avenue elevation (ref. ST/0809/85//DM). An application for advertisement consent was submitted at the same time for the display of three illuminated signage boxes and one projecting sign (ref. ST/0810/85//AD). At this time the planning application referred to the site address as being The Wine Shop, 101 Prince Edward Road.

Given planning history at the application site, the premise is considered to be a shop at ground floor (Use Class A1) and a separate, premise at first floor level. The plans indicate no internal staircase with access between ground and first floor. It is therefore considered that the application site is its own planning unit and falls within the A1 use class under the Town and Country Planning (Use Classes) Order 1987 (as amended).

Under Paragraph 3 of W.1 '*Procedure for applications for prior approval under Part 3*' of Schedule 2 of the GPDO 2015 (as amended), the Local Planning Authority can refuse an application where the proposed development would not comply with a condition, limitation or restriction specific in this Part as being applicable to the development in question. In this case the proposal would comply with a restriction specific to Part 3 – namely that under Class C it would need to be solely within Use Class A1 to benefit from Permitted Development (PD). On this basis it is considered that the proposal to change the use of the application site to a café (Use Class A3) would be able to benefit from Permitted Development (PD) under Class C of Part 3 (changes of use) of Schedule 2 of the GPDO 2015 as amended, subject to the criteria below being assessed.

Limitations C.1 'Development Not Permitted' under Class C of Part 3 of Schedule 2 of the GPDO 2015 (as amended)

In order to be assessed under Condition C.2 of Class C of Part 3 of Schedule 2 of the GPDO 2015 (as amended), the proposal must not fall within certain limitations stipulated under 'Development not Permitted' C.1. In this case:

(a) The cumulative floor space of the existing building changing use under Class C would not exceed 150 square metres;
(b) The development (together with any previous development under Class C) would not result in more than 150 square metres of floor space in the building having changed use under Class C;
(c) The site is not within (i) a site of special scientific interest; (ii) a safety hazard area; or a military explosives storage area;
(d) The site is not (and does not contain) a schedule monument; and
(e) The building is not a listed building or within the curtilage of a listed building.

Condition C.2 under Class C of Part 3 of Schedule 2 of the GPDO 2015 (as amended) – Prior Approval Assessment

Condition C.2 of Class C of Part 3 of Schedule 2 of the GPDO 2015 (as amended), requires an applicant to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to:

(a) noise impacts of the development,
(b) odour impacts of the development,
(c) impacts of storage and handling of waste in relation to the development,
(d) impacts of the hours of opening of the development,
(e) transport and highways impacts of the development,
(f) whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the change of use—

(i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or
(ii) where the building is located in a key shopping area, on the sustainability of that shopping area

(g)the siting, design or external appearance of the facilities to be provided

a) and b) noise and odour

Having regard to the size of the unit and its current use as a retail unit, as well as the predominantly commercial character of this part of Prince Edward Road, it is not judged that the change of use would result in a significant increase in noise/ disturbance over and above the existing situation.

Application details state that no new cooking or external extraction equipment is proposed. As such, there should be no odour issues associated with the proposed change of use. The Council's Environmental Health Officer was consulted and confirmed no objections to the proposal given the separation distance to the nearest residential receptor.

c) storage of waste

In terms of waste management, there is a courtyard to the rear of the site; the bins will be stored there off the public highway (as they are for the existing business) and would only be put out on the public highway on the day of collection, as confirmed by the application. No objections have been received by Waste Services.

d) opening hours

The applicant has proposed operating times of 08:00 to 22:00 Monday to Friday, 10:00 to 22:00 Saturdays and 11:00 to 23:00 Sundays and Bank Holidays. Northumbria Police have commented noting a query relating to the proposed late night opening on Sundays and clarity as sometimes this can be linked to a desire to stage performance or other entertainment. The applicant has confirmed in writing there will be no live performance / entertainment at the premises.

Notwithstanding the above, given the use class changes as outlined in the description of site and proposals section, it is not considered reasonable to condition the opening times for the development as such a development can be undertaken without this application. This view has been confirmed as the correct approach by the Council's solicitor.

e) transport and highways

None of the commercial units along this section of Prince Edward Road (including the existing retail unit) currently benefit from any private off-street parking. However, there is designated on-street car parking to the front of the row of businesses, available for use by customers, as well as on-street parking available at West Avenue.

The Council's Traffic and Road Safety team were consulted and confirmed they had no highway comments to make.

It is considered that the proposed change of use to a café of the size proposed would not generate substantial trip numbers over and above those which are carried out in connection with the current A1 retail use of the unit, particular when the existing operation of the unit as a retail unit is taken into account. This is also having regard to the residential properties within walking distance which could use the business; and the position of bus stops within close proximity of the property, which provides a public transport link. As such, it is judged that the impact of the development would be acceptable in relation to highway capacity.

f) principle of change to A3 use

The site is located within The Nook district shopping centre, as set out within the Site-Specific Allocations proposals map. There is a range of commercial uses along this section of Prince Edward Road. The retail unit to which this application appears to have been last used as a clothes retailer and post office, with the associated activity which such a use brings.

Having regard to the modest size and location of the unit, it is not considered that the proposed A3 use would impact on the vitality or viability of the wider Nook shopping area, while an adequate provision of A1 and A2 units would be retained within the surrounding area.

g) design

No extension of the building or external alterations are proposed to accommodate the new use.

Conclusion

It is considered that given the nature of the development, prior approval is required. However, the development as proposed is considered to be acceptable in the context of the matters which are to be considered. It is recommended that prior approval is granted. In assessing this application due regard has been had to the requirement of section 149 of the Equality Act 2010.

Fallback position

Notwithstanding all of the above and previously stated, following the coming into force on 1 September 2020 of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, there

is a transitional period for applications for prior approval under the Town and Country Planning (General Permitted Development (England) Order 2015 (as amended). As such the above application should be determined in line with the 2015 regulations, without regard to the 2020 regulations.

Notwithstanding the above, it is considered both the previous A1 and A3 use classes fall within the new Class E as outlined within the 2020 regulations and as such planning permission would not be required for this change of use. However as an application has been submitted an assessment has been made under the 2015 regulations.

Recommendation

Prior Approval Required & Given PNCU

Conditions

1 Development permitted under Class C, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) must be completed within a period of three years starting with the prior approval date.

Informatives

1 In dealing with this application the Council has implemented the requirements of the National Planning Policy Framework to seek to approve applications for sustainable development where possible.

2 NOTE TO APPLICANT

If you wish to carry out any external alterations to this property then planning permission may be required by virtue of the Town and Country Planning Act 1990 (as amended). Similarly, the installation of signage at the premises may require express consent under the Town and Country Planning (Control of Advertisements) Regulations 2007. Further information is provided on the government's Planning Portal webpage.

List of approved plans for standard note

Plan Reference

Location Plan received 24/08/2020

Floor Plan received 28/07/2020

Case officer: Nick Graham
Signed: N. Graham
Date: 04/12/2020

Authorised Signatory:
Date:

«END»