

DELEGATED REPORT

Application Number	21/1509M
Proposal	Prior approval of a change of use from licensed betting shop to a bar.
Location	102, MILL STREET, MACCLESFIELD, CHESHIRE, SK11 6NR
LDFC	11-Apr-2021
Expiry Date	14-May-2021
Constraints	MBC Local Plan Borough of Macclesfield Boundary MBC Local Plan Macclesfield Local Plan Boundary MBC Local Plan Boundary of Town Centre MBC Local Plan Secondary Shopping Area

SUMMARY RECOMMENDATION

Refuse

MAIN ISSUES

Whether prior approval is granted in relation to the specified matters, including amenity impact, external appearance, air traffic / defence impacts and any impact on a protected view.

Description of Site and Surroundings:

The application site relates to the ground floor building located at 102 Mill Street, in Macclesfield town centre. The site is located within a secondary shopping frontage.

Details of Proposal:

The application seeks prior approval for the change of use from licensed betting shop to a bar.

Planning History:

None relevant.

Consultations:

In accordance with Paragraph C.2(1) of the GPDO (as amended), the Local Highway Authority and Environmental Protection were consulted on the application. Their responses are set out below.

Environmental Protection (CEC):

Objections.

Head of Strategic Infrastructure (CEC Highways):

No objections.

Officer Appraisal:

Policy Background:

Permitted Development Rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted Development Rights are subject to national Conditions and Limitations. Where a Relevant Permitted Development Right is in place, there is no need to apply to the Local Planning Authority for permission to carry out that work.

In a small number of cases, however, it may be necessary to obtain Prior Approval from a Local Planning Authority before carrying out permitted development. Prior approval means that a developer has to seek approval from the Local Planning Authority that specified elements of the development are acceptable before work can proceed. The matters for prior approval vary depending on the type of development and these are set out in full in the relevant Parts in Schedule 2 to the General Permitted Development Order.

A Local Planning Authority cannot consider any other matters when determining a prior approval application.

The statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications. National Planning Policy Guidance advises that this is deliberate, as prior approval is a light-touch process which applies where the principle of the development has already been established. It is important that a Local Planning Authority does not impose unnecessarily onerous requirements on developers and does not seek to replicate the planning application system.

In this instance, the Council cannot consider impacts on privacy, waste management, or living conditions outside of those listed below.

Schedule 2, Part 3, Class O:

This is notification for determination as to whether prior approval is required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Class O allows the change of use of a building and any land within its curtilage to a use falling within Class C3 (dwelling house) of the schedule of the Use Classes Order from a use falling within Class B1(a) (offices) of that schedule subject to several restrictions/conditions.

Compliance Class O.1, Part 3, Schedule 2 of the GPDO (Limitations):

O.1.	Limitation
(a)	the building is on article 2(5) land; DELETED
Assessment	Not Applicable
(b)	the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order— (i) on 29th May 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use;
Assessment	Complies
(c)	the use of the building falling within Class C3 (dwellinghouses) of that Schedule was begun after 30th May 2016; DELETED
Assessment	Not Applicable
(d)	the site is, or forms part of, a safety hazard area;
Assessment	Complies
(e)	the site is, or forms part of, a military explosives storage area;
Assessment	Complies
(f)	the building is a listed building or is within the curtilage of a listed building; or
Assessment	Complies
(g)	the site is, or contains, a scheduled monument.
Assessment	Complies

Compliance Class O.2(1), Part 3, Schedule 2 of the GPDO (Prior Approval):

Development under Class O is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required.

It is considered that the prior approval of the Local Planning Authority is not required for the following reasons: -

0.2(01).	Prior Approval
(a)	transport and highway impacts of the development,
Assessment	<p>Acceptable</p> <p>The proposed change of use would not be expected to result in a material change in the volume of traffic generated by the site; therefore, there are no grounds for refusal based on sustainability.</p> <p>The existing pedestrian and vehicular access to the site from Mill Street is acceptable for the proposed use.</p> <p>No off-street parking provision is associated with the existing commercial use and none is proposed with the change of use. This is acceptable, on the basis that parking demand associated with the existing use, which would have been accommodated on-street, is not likely to be materially different to that associated with the proposed use.</p> <p>The commuter peak hour and daily traffic generation associated with the change of use, would not be expected to have a material impact on the safe operation of the adjacent or wider highway network.</p> <p>The Head of Strategic Transport has no objection to the planning application.</p>
(b)	contamination risks on the site,
Assessment	Acceptable
(c)	flooding risks on the site,
Assessment	<p>Acceptable</p> <p>The application site is in Flood Zone 1 where there is a low probability of flooding.</p>
(d)	impacts of noise from commercial premises on the intended occupiers of the development,

Assessment**Unacceptable**

The proposal is for the ground floor use as a bar which will operate from midday until 1am on any day of the week.

The noise produced as a former licensed betting shop and the days / hours of use will be far different to the noise produced from the proposed operation of a bar.

The days and hours of use will include sensitive hours during which most persons will expect to be able to sleep within their own home.

Appropriate and effective noise control measures are therefore important considerations to protect the residential amenity of the resident of the flat above the proposed bar and also residents of neighbouring apartments.

The application form has included the following question: -
'Please provide details of any noise impacts and how these will be mitigated': The response is noted as being: 'There is a flat above, but there has always been adequate sound and fire separation which was done in the past'.

There is insufficient information contained within the comment on the application form to determine what works have been undertaken in the past and whether it will be 'adequate' / acceptable for the new bar use.

As a bar use, noise will be caused from an accumulation of persons who are socially drinking together and the resultant accumulation of raised voices, laughter etc.

The noise will be concentrated into the bar space and will transmit via the party ceiling / floor and possible other routes, such as along wiring / service pipes etc.

In addition to an 'accumulation of people noise' - plant and equipment such as refrigeration plant, beer coolers and an air conditioning system will be essential to the operation of a bar. Refrigeration / cooling units are likely to be located outdoors and will operate on a constant basis. Such noise has high potential to impact the nearest residential flats particularly when apartment windows are in an open position during warm weather conditions.

Care therefore needs to be employed as regards the choice of plant and equipment (quietest model), location of plant and equipment, and possible noise attenuation measures such as acoustic housing around plant and equipment.

There is no information as regards the provision of ventilation to the bar. An accumulation of persons will require cooling and ventilation to be introduced into the bar. If the applicant is reliant on the opening of doors to provide air flow – then this in turn will lead to the escape of noise and will potentially detrimentally affect the residential apartment above the site and also other nearby residential apartments.

It is therefore recommended the installation of an effective mechanical ventilation system for the comfort of patrons and to avoid doors and

(e)	the provision of adequate natural light in all habitable rooms of the dwellinghouses.
Assessment	Not applicable

Compliance with Paragraph W, Part 3, Schedule 2 of the GPDO (*Procedure for applications for prior approval*):

The provisions of paragraph W (prior approval) apply in relation to that application.

W.(1).	Procedure for applications for prior approval
(2)	The application must be accompanied by— (a) a written description of the proposed development, which, in relation to development proposed under Class C, M, N or Q of this Part, must include any building or other operations; (b) a plan indicating the site and showing the proposed development; (c) the developer's contact address; (d) the developer's email address if the developer is content to receive communications electronically; and (e) where sub-paragraph (6) requires the Environment Agency(1) to be consulted, a site-specific flood risk assessment, together with any fee required to be paid.
Assessment	2(b), (c) and (d) - Complies. 2(a) and (e) - Not applicable.
(3)	The local planning authority may refuse an application where, in the opinion of the authority— (a) the proposed development does not comply with, or (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.
Assessment	Not applicable.
(4)	Sub-paragraphs (5) to (8) and (10) do not apply where a local planning authority refuses an application under sub-paragraph (3) and for the purposes of section 78 (appeals) of the Act such a refusal is to be treated as a refusal of an application for approval.
Assessment	Not applicable.
(5)	Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority must consult — (a) where the increase or change relates to traffic entering or leaving a trunk road, the highway authority for the trunk road; (b) the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority; and (c) the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway.

Assessment	Not applicable.
(6)	Where the application relates to prior approval as to the flooding risks on the site, on receipt of the application, the local planning authority must consult the Environment Agency(2) where the development is — (a) in an area within Flood Zone 2 or Flood Zone 3; or (b) in an area within Flood Zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency for the purpose of paragraph (zc)(ii) in the Table in Schedule 4 to the Procedure Order.
Assessment	Not applicable.
(7)	The local planning authority must notify the consultees referred to in sub-paragraphs (5) and (6) specifying the date by which they must respond (being not less than 21 days from the date the notice is given).
Assessment	Complies.
(8)	The local planning authority must give notice of the proposed development— (a) by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which— (i) describes the proposed development; (iii) provides the address of the proposed development; (v) specifies the date by which representations are to be received by the local planning authority; or (b) by serving a notice in that form on any adjoining owner or occupier.
Assessment	Complies.
(9)	The local planning authority may require the developer to submit such information as the authority may reasonably require in order to determine the application, which may include— (a) assessments of impacts or risks; (b) statements setting out how impacts or risks are to be mitigated; or (c) details of proposed building or other operations.
Assessment	Not applicable.
(10)	The local planning authority must, when determining an application – (a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8); (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(3), so far as relevant to the subject matter of the prior approval, as if the application were a planning application; and (c) in relation to the contamination risks on the site— (i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(4), and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012(5), and (iii) if they determine that the site will be contaminated land, refuse to give prior approval.
Assessment	Noted.

(11)	The development must not begin before the occurrence of one of the following— (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required; (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.
Assessment	Noted.
(12)	The development must be carried out— (a) where prior approval is required, in accordance with the details approved by the local planning authority; (b) where prior approval is not required, or where sub-paragraph (11)(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1), unless the local planning authority and the developer agree otherwise in writing.
Assessment	Noted.
(13)	The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
Assessment	Noted.

Compliance Class O.2(2), Part 3, Schedule 2 of the GPDO (Conditions):

Development under Class O is permitted subject to the following conditions:

It is considered that the prior approval of the Local Planning Authority is not required for the following reasons: -

0.2(2).	Conditions
(a)	the development must be completed within a period of 3 years starting with the prior approval date; and
Assessment	Noted. Conditions suggested on the Decision Notice.
(b)	the developer must apply for a determination under sub-paragraph (1) on or before 31st July 2021.
Assessment	Complies. The application was received on 20-May-2021.

For the purposes of Class O, “commercial premises” means any premises normally used for the purpose of any commercial or industrial undertaking which existed on the date of application under paragraph O.2(1), and includes any premises licensed under the Licensing Act 2003 or any other place of public entertainment.

Conclusions:

Whilst the matters subject to prior approval by the LPA are acceptable in all regards, the proposal fails to comply with a limitation and condition which all development under Class 0. Insufficient information has been submitted to show that the proposed change of use would not avoid noise from giving rise to significant adverse impacts on health and quality of life. In this case, the proposed development does not comply with limitations and conditions under paragraph 0.2(01) as identified in the above assessment. Accordingly, the application is recommended for refusal.

Recommendation: **Refuse approval**

Case officer: 

Date: 23-Dec-2021

