APPLICATION NUMBER: 20/01408/PRA56

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
20/01408/PRA56	Ryan Killeen	7 January 2021

Address: 2 Cemetery Street Middleton M24 6UP

Proposal: Prior approval for the change of use from offices (Class B1) to 8 self contained Flats (Use class C3) including installation of new doors and windows on front elevation

PUBLICITY	**Weekly list expired?**	Y	**Site notice expired?**	Y
	Neighbour letters expired?	Y	**Press Notice expired?**	N/A

DELEGATION	**Significant departure from local plan?**	N	**Contrary to national policy?**	N
	Applicant a Council Member or officer?	N	**Contrary to previous decision?**	N
	Major with 10 or more objections and recommending approval?	N	**Called in or Planning Panel objection?**	N

COMMENTS	**Planning Panel comments received?**	N
	Neighbour comments received?	N

EIA	**Screening opinion completed and saved to Onbase?**	N/A

CONDITIONS	**Pre-commencement conditions proposed?**	N
	Pre-commencement conditions agreed (or notification period expired)?	N/A

RECOMMENDATION	

CHECKED AND SIGNED OFF BY: KN DATE: 13/01/2021

SITE

This application relates to Optima House, no.2 Cemetery Street, a two-storey terraced property located off Long Street which forms the north-south axis of the Middleton Town Centre Conservation Area. Cemetery Street is a short 40m cul-de-sac which runs perpendicular to Long Street and culminates in the entrance to the burial grounds. Access to the rear courtyard of nos.30-32 Long Street and nos.1-5 Market Place is also available here.

The property itself is of a simple pitched roof and white render construction and faces south towards the highway. The property features two roller shutter garage doors at ground floor level which are not for fit for vehicular due to the absence of a suitable kerb and its size.

The side elevation of the property adjoins the rear elevation of the New Inn, a public house. The rear of the property is partially built into the raised topography to the rear, with the provision of fenestration to only the first floor as a result.

The property was most recently occupied by distributor and stockist of commercial IT equipment.

PROPOSAL

The application is submitted is for determination whether prior approval is required for the change of use of the site from office (Class B1(a)) to dwellinghouse (Class C3) as permitted under The Town and County Planning (General Permitted Development) (England) Order 2015) as amended – Schedule 2, Part 3 Class O.

The application proposes 8 apartments with kitchenettes and en-suit bathrooms. Bin storage is proposed within the application site.

RELEVANT PLANNING POLICY

Legislation

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

National Guidance

National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)

Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that when considering whether a development is permitted under class O of the above order, the LPA shall have regard to the National Planning Policy Framework as if it was a planning application, in so far as it relates to the relevant subject matters.

RELEVANT SITE HISTORY

88/D21664 Two Storey Extension to Form Workshop Storeroom and Offices
Refused June 1988

84/D16369 Change of Use From Garage and Storeroom to Workshop, Storeroom, Showroom and Office and Construction of New Roof

Granted Subject to Conditions – April 1984

CONSULTATION RESPONSES

Highways And Engineering
No comments received to date

REPRESENTATIONS

The application has been publicised with a site notice and neighbour notification letters.

One letter of objection was received which raised concern over the impact the development would have on parking and the subsequent loss of trade that may occur.

ANALYSIS

RECOMMENDATION

The application is submitted for determination whether prior approval is required for the change of use of the site from office (Class B1(a)) to dwellinghouse (class C3) as permitted under The Town and County Planning (General Permitted Development) (England) Order 2015) as amended – Schedule 2, Part 3 Class O.

To take advantage of the above the existing use of the site must fall under B1 Office Use. Part O.1 (b) of the class also states that development is not permitted by Class O if the building was not used for a use falling within Class B1(a) (offices)

i) On the 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.

The planning history of the site, which is detailed in full above, includes one permitted change of use to a seemingly mixed use of storage, workshop, showroom and offices. This decision however predates the Use Classes Order becoming written into legislation and therefore it is not possible to determine the specific office Use Classes involved for the purpose of establishing a B1(a) use, it is considered that the property undoubtedly comprised of a mixed use at this time.

The application was not submitted with any supporting information other than existing and proposed floor plans and elevations. Additional information was sought by the local authority to which the applicant provided a copy of the title deeds and internal photography showing various features associated with office use.

Whilst it is conceded that the property most likely has facilitated some office use, in the absence of any substantive evidence relating to historic floor plans, lease details or written accounts, or a Certificate of Lawful Use, it cannot be accepted that the lawful use of the whole property on 29th May 2013 was as B1(a) offices on this date.

It is acknowledged that the most recent tenant occupied the property on a 5 year lease from approximately 19th April 2013 to 30th May 2018, therefore this period of use has little bearing on establishing a lawful use of the property.

The previous tenant "*JE Spares"* was a radio control parts and models retailer, which occupied the property between approximately 2005 (year of incorporation) and 2013. Publicly available evidence suggests the occupier as an online physical goods retailer, and given the nature of the 2 Cemetery Street, it is likely that the property provided a storage function, in addition to an office.

Notwithstanding these considerations, there is insufficient substantive evidence to demonstrate 10 years of continuous use of the building under the same use. As such, it is deemed reasonable that the local authority default to the most recent consented use of the property, in this case would be planning permission 84/D16369 for use as a Workshop, Storeroom, Showroom and Office, which for the purposes of an assessment under the classes of Part 3 of Schedule 2 of the GDPO would be considered as a mixed A1/B1/B8 use.

Overall the LPA are not satisfied that there is sufficient evidence to establish that the lawful use of no.2 Cemetery Street on 29th May 2013 was B1(a) Offices. As such the site cannot benefit from the permitted development rights set out under Part 3 Class O and the application is refused.

Given the above, there is no requirement for an assessment into whether the proposal meets the requirements of the conditions under O.2 or Paragraph W

RECOMMENDATION **REFUSE**

There is insufficient evidence to establish that a lawful Class B1(a) office use operated at the site on 29th May 2013. The proposed development is therefore not permitted by virtue of failing to accord with criterion (b)i) of Class O of Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and planning permission is required.

Notes for Applicant:

For the avoidance of doubt, this decision notice relates to the following drawings:

2020_10_02_00 – Location plan
2020_10_02_01 – Existing and Proposed Site Plan
2020_10_02_02 – Existing Ground Floor Plan

2020_10_02_03 – Existing First Floor Plan
2020_10_02_04 – Existing Elevations
2020_10_02_05 – Proposed Ground Floor Plan
2020_10_02_06 – Proposed First Floor Plan
2020_10_02_07 – Proposed Elevations

Report Author Ryan Killeen