

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	JR	22.04.2022
Planning Development Manager authorisation:	JJ	22/04/2022
Admin checks / despatch completed	ER	27/04/2022
Technician Final Checks/ Scanned / LC Notified / UU Emails:	CC	27.04.2022

**Application:** 22/00383/LUPROP                      **Town / Parish:** Thorpe Le Soken Parish Council

**Applicant:** Mr Peter Thompson Bates

**Address:** 7b, 6, 6a, And 5 Rice Bridge Estate Station Road

**Development:** Proposed conversion to residential use in accordance with PD right class PA.

### **1. Town / Parish Council**

N/A

### **2. Consultation Responses**

N/A

### **3. Planning History**

20/01015/COUNOT	Proposed conversion of B1 commercial units in to six residential dwelling units. (Class PA)	Determination	27.11.2020
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### **4. Relevant Policies / Government Guidance**

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Class PA, Part 3, Schedule 2 (Change of use of premises in light industrial use to dwellinghouses)

**This class of prior approval has ended with decisions having to be issued on or before 1st October 2020.**

### **5. Officer Appraisal**

#### Proposal

This lawful development certificate has been submitted under section 192 of the Town and Country Planning Act 1990 (as amended) to confirm if the site and buildings, which were the subject of Prior Approval application reference 20/01015/COUNOT has prior approval under Class PA of the 2015 Order by default, due to the Local Planning Authority failing to determine the application in line with Paragraph W (11) (c) Part 3 Schedule 2 of the 2015 Order which states:

*(11) The development must not begin before the occurrence of one of the following—*

*(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.*

Class PA permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(c) (light industrial) of Schedule 1 to the Town and

Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C3 (dwellinghouses) of that Schedule.

Paragraph PA.1 states the criteria under which development is not permitted by Class PA and any application for Prior Approval under Class PA is required to be assessed against this criteria to determine whether the proposed development falls within the definitional scope of the Class. The proposed development is also subject to the conditions stated under paragraph PA.2 including the need to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required and that the provisions of paragraph W of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), apply in relation to that application.

#### Site description and background information

The Rice Bridge Industrial Estate comprises of a mix of office and light industrial units located close to the railway bridge and railway station in Thorpe-le-Soken. The two storey office building at the entrance to the estate has been converted into residential flats under prior approval application reference 20/00465/COUNOT.

The prior notification application reference 20/01015/COUNOT (referred to above in the 'Planning History' section) related to 7b, 6, 6a, and 5 Rice Bridge Industrial Estate, Station Road, Thorpe-le-Soken. These units are single storey and located to the east of the site which at the time the prior approval application was submitted were occupied by various B1 commercial activities. To the north of the site was an existing car MOT and serving garage.

#### Timeline of events

The prior notification application reference 20/01015/COUNOT (mentioned above) was submitted by Stanfords (Agent) on behalf of Mr De Roy on 30<sup>th</sup> July 2020 and comprised of the following:

	Completed application form
Drawings:	Site Plan, with the site edged in red and other land in the same ownership edged in blue
	Levels
	Topography
	DRB – 06 Rev B - Existing and Proposed elevations and floor plans
Reports:	Acoustic report – by Sharps Redmore dated 30 <sup>th</sup> March 2020 relating to Units 7 and 7A Rice Bridge Industrial estate (not the application site)
	Flood Evacuation Plan
	Flood Report – Ref: EAn/2019/155029 dated 24/12/19
	Planning Statement and Flood Risk Assessment – Stanfords dated July 2020
Fee:	£96

The application was deemed to be valid and an acknowledgment letter was sent to the Agent dated 18<sup>th</sup> August 2020 which confirmed the decision date as 24<sup>th</sup> September 2020.

The Site Notice was erected at the site on 20<sup>th</sup> August 2020, with an expiry date of 10<sup>th</sup> September 2020.

Consultation letters were sent out to ECC Highways, Environmental Protection (TDC) and Environment Agency on 18<sup>th</sup> August 2020 with an expiry date of 8<sup>th</sup> September 2020.

Neighbour notification letters were sent out to the occupiers of the neighbouring units on 18<sup>th</sup> August 2020 with an expiry date of 8<sup>th</sup> September 2020.

#### Consultation responses:

The Environment Agency (EA) responded by letter dated 3<sup>rd</sup> September 2020 with an objection to the proposed development. It concluded that there may be an unacceptable risk to the health and

safety of the occupants in a residual risk breach flood event. The letter also included ways in which the applicant could overcome this objection.

Environmental Protection (EP) requested additional details for the Acoustic report as the report submitted did not relate to the buildings/units which were the subject of this prior approval application.

### Extension of Time Agreements

The agent was made aware of the EA comments via email dated 3<sup>rd</sup> September 2020 and responded via email on 9<sup>th</sup> September 2020 to request an extension of time until 28<sup>th</sup> September 2020 to allow them (the Agent) time to respond to the consultee comments in respect of the acoustic report and the Flood Risk Assessment (FRA). The Council responded by email 11<sup>th</sup> September 2020 to agree the extension of time request for the prior approval. This request was confirmed via email on 11<sup>th</sup> September 2020 by a colleague of the Agent at Stanfords due to the Agent being on leave until 21<sup>st</sup> September 2020. The extension of time was therefore agreed until 28<sup>th</sup> September 2020 (the 'First EOT').

On 25<sup>th</sup> September 2020 the Council sent the agent an email noting that the current extension of time was running out and that anything submitted in response to the EA would need to be subject to further consultation with the EA. At that time the options were identified as being to refuse the application, to agree a further extension of time, or for the application to be withdrawn and resubmitted with information to satisfy the EA.

On 28<sup>th</sup> September 2020 following a telephone conversation between the Council and the Agent, the Council sent an email requesting a further extension of time to the decision date to determine the prior approval application. The agent responded via email on the same day formally agreeing to the extension of time until 23<sup>rd</sup> October 2020 ('the Second EOT').

Class PA (Change of use of premises in light industrial use to dwellinghouses) has been terminated by central government and is no longer a 'live' Prior Approval Class. Paragraph PA.1(c) of Class PA provides that development is not permitted by Class PA if the prior approval date falls on or after 1<sup>st</sup> October 2020.

No determination was made on the application 20/01015/COUNOT for prior approval by 1st October 2020 being the last date on which the Council could issue a decision to determine an application for prior approval under Class PA (for further clarity also see part c under 'Assessment of Proposal against the criteria of Class PA' below).

A further extension of time agreement was sought and agreed to allow further time to resolve the outstanding matters and to re-consult with the EA, with the final expiry date agreed as 26<sup>th</sup> November 2020 ('the third EOT'). This was notwithstanding that it was no longer possible for the Council to determine the application for prior approval under Class PA.

Additional information with regard to the acoustic information (report by Sharps Redmore dated 20<sup>th</sup> September 2020) was received, whilst the report referred to the correct units the report assessed the units as Prior Approval under Class O, (offices to dwellinghouses) which was incorrect.

Further information to overcome the EA objection was received on 3<sup>rd</sup> November 2020 and the EA were re-consulted on 5<sup>th</sup> November 2020, however no reply appears to have been received and their objection was never withdrawn.

### Decision issued by the Local Planning Authority

A decision was issued on the Prior Approval application dated 27<sup>th</sup> November 2020, however due to the confusion and incorrect information contained within the Acoustic report the Council inadvertently assessed the prior approval application under Class O (offices to dwellinghouses). However, it is not possible for this decision to be relied upon as the buildings/units in question were never offices (not disputed by the applicant) and therefore no development under Class O can be

carried out. To be clear, the permitted development criteria under Class O is not met irrespective of the decision issued and is therefore the proposed development is outside the definitional scope of this Class.

It was also erroneously understood that the EA objection had been overcome due to the site being within an area which benefits from flood defences. However due to the single storey nature of these units and the lack of adequate first floor refuge (such as that provided for Units 7 and 7a) the EA objection remained at the time the Council's decision was made.

### **Assessment of Proposal against the criteria of Class PA**

#### **Permitted development**

**PA.** Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(c) (light industrial) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule.

#### **Development not permitted**

**PA.1.** Development is not permitted by Class PA if—

- (a) an application under paragraph PA.2(1) in respect of the development is received by the local planning authority on or before 30th September 2017;

**The application was received on 30<sup>th</sup> July 2020 therefore the proposal complies**

- (b) the building was not used solely for a light industrial use on 19th March 2014 or, 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 building/units were used solely for a light industrial use on 19<sup>th</sup> March 2014, therefore the proposal complies**

- (c) the prior approval date falls on or after 1st October 2020;

**Due to the extension of times agreed between the Agent, on behalf of the applicant and the Council, the decision date falls after the 1<sup>st</sup> October 2020. Therefore the proposal does not comply.**

- (d) the gross floor space of the existing building exceeds 500 square metres;

**The gross floor space of the existing building/units does not exceed 500 square metres therefore the proposal complies**

- (e) 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, therefore the proposal complies**

- (f) less than 1 year before the date the development begins—

- (i) an agricultural tenancy over the site has been terminated, and  
(ii) the termination was for the purpose of carrying out development under this Class, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural purposes;

**Not applicable to the development proposed**

- (g) the site is, or forms part of—

- (i) a site of special scientific interest;
- (ii) a safety hazard area;
- (iii) a military explosives storage area;

**The site is not and does not form part of any of the above, therefore the proposal complies**

- (h) the building is a listed building or is within the curtilage of a listed building; or

**The building/units are not listed and are not within the curtilage of a listed building therefore the proposal complies**

- (i) the site is, or contains, a scheduled monument.

**The site is not and does not contain a scheduled monument, therefore the proposal complies**

### **Conditions**

**PA.2.—**(1) Development is permitted by Class PA subject to the condition that before beginning the development, the developer must—

- (a) submit a statement, which must accompany the application referred to in paragraph (b), to the local planning authority setting out the evidence the developer relies upon to demonstrate that the building was used solely for a light industrial use on the date referred to in paragraph PA.1(b);

#### **Submitted**

- (b) apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
  - (i) transport and highways impacts of the development,
  - (ii) contamination risks in relation to the building,
  - (iv) flooding risks in relation to the building,
  - (iv) where the authority considers the building to which the development relates is within an area that is important for providing industrial services or storage or distribution services or a mix of those services (which includes, where the development relates to part of a building, services provided from any other part of the building), whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services,

#### **Prior Approval applied for**

and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

#### **See below**

(2) Development under Class PA is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date.

#### **Development not permitted**

Provisions of Paragraph W:

#### **Procedure for applications for prior approval under Part 3**

**W.**—(1) The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.

(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,

### **Submitted**

together with any fee required to be paid. **Fee Paid**

(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.

(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.

(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.

### **Highway Authority consulted**

(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.

### **Environment Agency consulted**

(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).

### **Consultation undertaken**

(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;
  - (ii) provides the address of the proposed development;
  - (iii) 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.

### **Site Notice displayed at site**

(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.

### **Additional information with regard to EA flood risk and acoustic report requested**

(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

(ii) if they determine that the site will be contaminated land, refuse to give prior approval.

### **The Council's Environment Protection team consulted**

(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.

**The 56 days under Part 11 (c) was extended three times by the agreed extension of time agreements as outlined in the report above**

(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.

**N/A**

(13) The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

**N/A**

### **Interpretation of Class PA**

**PA.3.** For the purposes of Class PA—

“curtilage” (except in paragraph PA.1(h)) means—

- (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the building in light industrial use, closely associated with and serving the purposes of that building, or
- (b) an area of land immediately beside or around the building in light industrial use no larger than the land area occupied by the building, whichever is the lesser;

“industrial services” means services provided from premises with a light industrial use or a use falling within Class B2 (general industrial) of the Schedule to the Use Classes Order;

“light industrial use” means a use falling within Class B1(c) (light industrial) of the Schedule to the Use Classes Order;

“storage or distribution services” means services provided from premises with a use falling within Class B8 (storage or distribution) of the Schedule to the Use Classes Order.”.

### Conclusion

It is clear that an agreed Extension of Time was in place on the 24<sup>th</sup> September 2020 (the statutory decision date) expiring on 28<sup>th</sup> September 2020 (the First EOT), extended again to 23<sup>rd</sup> October 2020 (the Second EOT) and then finally extended to 26<sup>th</sup> November 2020 (the Third EOT). Therefore prior approval cannot be deemed to have been granted by default, i.e. no decision on the application has been made by the statutory decision date under paragraph W(11)(c) of the 2015 Order as outlined above, as the 56 day period was lawfully extended to a date after the expiry of Class PA.

The 56 days referred to in paragraph W(11)(c) may be extended “by the applicant and the authority in writing” (see article 7(c) of the 2015 Order. This is confirmed by the Court of Appeal in **Gluck v SSHCLG** [2020] EWHC 161 (Admin). The extension of time is therefore valid irrespective of the expiry date of Class PA. No evidence has been submitted with the application to the contrary.

In this instance the 56 days did not expire because they were extended by an agreement between the applicant (via their Agent acting on behalf of the applicant) and the Local Planning Authority Council in writing three times, with a final expiry date of 26<sup>th</sup> November 2020.

It is claimed by the applicant that as no decision by the Council was made on or before the last extension of time expired (26<sup>th</sup> November 2020), the application automatically defaults back to the original determination date of 24<sup>th</sup> September 2020, whereby no decision had been issued. Regardless of when the decision was made by the Council, and in this instance the decision was incorrect, the three extension of time agreements are valid and replace the original determination date of 24<sup>th</sup> September 2020.

Pursuant to PA.1(c) development is not permitted under Class PA if “the prior approval date falls on or after 1<sup>st</sup> October 2020”. Under the section headed Interpretation of Part 3 the legislation provides that the ‘prior approval date’ is the date on which:

“(a) Prior approval is given; or  
 (b) A determination that such approval is not required is given or the period for giving such a determination set out in paragraph W(11)(c) of this Part has expired without the applicant being notified whether prior approval is required, given or refused.”

The effect of PA1(c) when read together with the definition of prior approval date is that conversion could only take place relying on Class PA if, prior to 1 October 2020, the 56 days had expired, or the Council had taken a decision that prior approval was not required, or the Council had granted prior approval. For the reasons set out above none of those occurred.

Therefore the decision of the Council is that under paragraph:-

**PA.1 - Development is not permitted by Class PA if—**

(c) the prior approval date falls on or after 1st October 2020

The proposal is therefore considered to fail sections PA.1 (c) of Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

It is noted that had the application been determined before the expiry date of Class PA (1st October 2020), prior approval would have been refused due to the application failing to comply with Condition PA.2 (b) (iii) with regard to the flooding risks in relation to the building as outlined in the EA objection letter.

**6. Recommendation**

REFUSE - LUPROP

**7. Reason for Refusal**

The proposal fails to comply with section PA.1 (c) of Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and the application for a Certificate of Lawfulness of Proposed Use or Development is refused..

<p><b>Are there any letters to be sent to applicant / agent with the decision?          If so please specify:</b></p>		<p>NO</p>
<p><b>Are there any third parties to be informed of the decision?          If so, please specify:</b></p>		<p>NO</p>