

Case Officer: Lewis Knox

Applicant: Cherwell District Council

Proposal: Certificate of Lawfulness of Proposed Development for an internal fit out to the ground and first floor of an existing unit, within Castle Quay Shopping Centre

Ward: Banbury Cross and Neithrop

Councillors: Cllr Banfield, Cllr Hodgson, and Cllr Perry

Reason for Referral: Application affects Council's own land, and the Council is the applicant

Expiry Date: 1 November 2021

Committee Date: 2 December 2021

SUMMARY OF RECOMMENDATION - TO ISSUE CERTIFICATE CONFIRMING LAWFULNESS

1. APPLICATION SITE AND LOCALITY

- 1.1. The application site is located within the existing Castle Quay shopping centre which lies within Banbury town centre. The site is part of a former department store unit which has been empty for a prolonged period of time.

2. DESCRIPTION OF PROPOSED DEVELOPMENT

- 2.1 This certificate of lawfulness application (proposed development) seeks the Local Planning Authority's opinion as to whether the proposals for the change of use of the unit from Class E(a) Retail to Class E (cii) Professional Services and the associated internal refit is permitted development.
- 2.2 This application is before Planning Committee for determination as the proposal is located on Council owned land and the applicant in Cherwell District Council.

3. RELEVANT PLANNING HISTORY

- 3.1 The following planning history is considered relevant to the current proposal:

CHN.205/94

Redevelopment to form extension of Castle Quay and new covered shopping centre, together with the provision of link road from Castle Street to inner relief road, car parking, landscaping and ancillary facilities and the relocation of the bus station
Application Permitted

96/00923/F

Redevelopment to form extension of Castle Centre and new covered shopping centre, new link road from Castle Street to Inner Relief Road, car parking, landscaping and ancillary facilities. Relocate bus station. Amended Plans 14.10.96
Application permitted

13/01601/OUT

Outline planning permission for the redevelopment of land adjacent to the Oxford Canal comprising; the demolition of the Castle Quay Shopping Centre northern car

park and the General Foods Sports and Social Club; change of use of part of the ground floor of the Castle Quay Shopping Centre southern car park and associated works; the erection of a retail foodstore (Use Class A1), hotel (Use Class C3), cinema (Use Class D2), restaurants and cafes (Use Class A3 and A4) and altered vehicular and pedestrian accesses, landscaping, construction of infrastructure, car parking and associated works, including glazed canopy over the Oxford Canal and the construction of pedestrian/cycle bridges over the Oxford Canal and River Cherwell. Details of new vehicular access off Cherwell Drive and alterations to Spiceball Park Road
Application Permitted

17/00284/REM

Reserved Matters Application to 16/02366/OUT across the whole development site is sought. Application for approval of reserved matters for scale, layout, appearance and landscaping.

Application permitted

18/01426/F

Installation of new entrance doors in north western elevation of former BHS unit to allow pedestrian access to shopping centre from south multi-storey car park.

Application permitted

4. PRE-APPLICATION DISCUSSIONS

4.1 No pre-application discussions have taken place with regard to this proposal.

5. RESPONSE TO PUBLICITY

5.1 This application has not been publicised due to the nature of the application, which is a certificate application, seeking the Local Planning Authorities opinion as to whether the works proposed are lawful.

5.2 No comments have been raised by third parties.

6. RESPONSE TO CONSULTATION

6.1. No consultations have taken place in regard to this application

7. RELEVANT PLANNING POLICY AND GUIDANCE

7.1. Article 3(1A) of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Part A, Class E of Schedule 2 to the Order

8. APPRAISAL

8.1. The key issues for consideration are:

- Whether the change of use is lawful
- Whether the proposed internal works are lawful

Legislative Context

8.2. Section 55 of the Town and County Planning Act sets out the definition of development from a planning perspective, which is the carrying out of building, engineering, mining and other operations, in, on, over or under land, or the making of any material change of use of any buildings or other land.

- 8.3. Section 192 of the Town and County Planning Act 1990 allows for an application to be made to the Local Planning Authority to ascertain whether proposed development is lawful.

Whether the change of use is lawful

- 8.4. The most recent (approved use) and proposed uses of the site now both fall within the same use class (Schedule 2, Class E). Under Article 3(1A) of the Use Classes Order (as amended), where a building or other land is used for a purpose of any class specified in Schedule 2, the use of that building or that other land for any other purpose of the same class is not to be taken to involve development of the land.
- 8.5. The site was most recently in use for retail purposes (Marks and Spencers) and as such was within Use Class E(a) - Display or retail sale of goods, other than hot food. The proposed alterations would see a change of use to a unit to provide professional services. This would fall within Use Class E(cii). Assessed against the provisions of Article 3(1A) of the Use Classes Order 1987 (as amended), the change of use would not involve development of the land.
- 8.6. There are no planning conditions or legal obligations placed on the unit which would restrict the ability to change the use of the unit within the same use class and as such the Local Planning Authority does not retain planning control over the proposed change of use from Class E(a) Retail to Class E (cii) Professional Services.

Whether the proposed internal works are lawful

- 8.7. The refit of the unit would not involve any changes to the external appearance of the building. The internal layout would remain largely as existing with some internal partition walls removed and some new private office spaces created. The bulk of the changes would be the addition of desking.
- 8.8. There are no planning conditions or legal obligations placed on the unit which would restrict the ability to refit the internal area of the units and as such the Local Planning Authority does not retain planning control over the internal layout of the unit. It is considered that the proposed development does not require planning permission and is therefore lawful.

9. CONCLUSION

- 9.1. The proposed use of the unit (E(cii) Professional Services) would fall within the same use class as the most recent use and approved use of the unit (E(a) retail) and as such the change of use would not, in the absence of any restrictions, require planning permission. There are no restrictive planning conditions attached to the unit that would prevent the internal refit of the unit without prior consent from the LPA.
- 9.2. The proposals are considered to be lawful and would not require planning permission.

10. RECOMMENDATION

**RECOMMENDATION - TO ISSUE A CERTIFICATE CONFIRM THE
LAWFULNESS OF THE SPECIFIED WORKS SUBJECT TO THE SCHEDULES
BELOW**

First Schedule

Change of Use from E(a) to E(cii) and internal refit of the unit (35 Bridge Street) within Castle Quay Shopping Centre in accordance with: Drawing No. 7002.100, 7002.102 and Application Form

Second Schedule

35 Bridge Street Banbury OX16 5PN

Third Schedule

Under the provisions of Article 3(1A) of the Town and Country Planning (Use Classes) Order 1987 (as amended), the proposed change of use from retail to professional services does not require planning permission and the associated internal refit does not constitute development as defined by Section 55 of the Town and Country Planning Act 1990 (as amended).