

RAPLEYS

Appellant Statement of Case
AEW UK REIT Plc

**CEDAR HOUSE
SPA ROAD
GLOUCESTER GL1**

17 June 2022

Rapleys Ref: 19-00428
Local Authority Ref: 21/00825/JPA

66 St James's St, St. James's, London SW1A 1NE

LONDON

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1 INTRODUCTION

- 1.1 This Statement of Case has been prepared by Rapleys LLP (Rapleys) as planning consultant on behalf of AEW UK REIT Plc (AEW, the appellant), in response to a refusal of an application made under the Town and Country Planning (General Permitted Development) (England) Order 2015 by Gloucester City Council (the local authority) at Cedar House, Spa Road, Gloucester (site plan attached at **Appendix 1**). This application sought to secure prior approval for the change of use of the building to residential (Class C3) under Class O Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015.
- 1.2 In this context, the Statement of Case relates to, and is submitted in support of, an appeal made under s.78 of the Town and Country Planning Act (as amended) (the Appeal), and is made in accordance with the Procedural Guide: Planning Appeals - England, last updated in April 2022.
- 1.3 The application subject to this appeal (the “the Prior Approval Application”, local authority reference 21/00825/JPA) was validated by the local authority on 6 July 2021, and refused on 28 February 2022. One reason for refusal was given on the decision notice (attached at **Appendix 2**), as below:
- “That the proposal by reason of the building being in part use by the Job Centre, falling in Class A2) of The Town and Country Planning (Use Classes) Order 1987 as amended and therefore not in Class B1 a) use, fails to constitute permitted development under Class O Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended 2020”*
- 1.4 The appellant’s grounds of appeal can be summarised as follows:
1. For the purposes of the application and appeal, the site - in its entirety - falls into Use Class B1 (a), and as such Class O applies;
 2. There are no other matters arising in terms of transport, contamination, flood risk, noise or provision of natural light which would prevent prior approval being granted, and
 3. Therefore, there are no matters arising that would prevent prior approval being granted under Class O.
- 1.5 It is requested that this Appeal be dealt with by way of the written representations procedure, as this is considered to be the most appropriate appeal method given the type and nature of the proposal, and the relatively discrete issue raised within the reason for refusal.
- 1.6 This Statement of Case addresses the following matters:
- Appeal Site and Surroundings
 - Planning History
 - The Proposal
 - The Determination of the Application
 - Relevant Planning Legislation
 - Planning Considerations
 - Conclusions
- 1.7 The Statement concludes by confirming that prior approval should be granted without delay.

2 APPEAL SITE AND SURROUNDINGS

SITE

- 2.1 The application site relates to an existing building, Cedar House, Spa Road. The building is in Flood Zone 1 and lies to the south of Gloucester's Town Centre, in close proximity to the amenities of Gloucester Quays, Eastgate Shopping Centre and the train station. The building is a four storey (above ground) office building. Each floor of the building extends to approximately 750sqm, with the exception of the ground floor, which extends to approximately 335sqm (with undercroft parking beneath the remainder of the upper storeys).
- 2.2 For the purposes of this application, is entirely in Use Class B1(a), and the following should be noted:
- It is a single entity in ownership terms, registered as a single freehold title;
 - The building has been let entirely to the Secretary of State for some time;
 - The upper floors have been used by the Secretary of State as administrative offices with a lobby on the ground floor as well as an area branded as a Jobcentre (prior to 2006) or Jobcentre Plus (after 2006), which also extends to part of the first floor (with the branded element occupying less than 20% of the total floorspace of the building);
 - The entirety of Cedar House is described as in "Office" use by the Valuation Office Agency (VOA) for the purposes of business rating, and
 - It is understood that planning permission has never been granted to use Cedar House for anything apart from B1 office accommodation.
- 2.3 Cedar House is not Listed, but lies within The Spa Conservation Area, however the building design is somewhat out of keeping with the predominantly 19th Century character of the Conservation Area. Within the local authority's Conservation Area Appraisal and Management Document for The Spa Conservation Area, Cedar House is identified as a 'negative building' which detracts from the character and appearance of the Conservation Area. The site does not contain a scheduled monument.
- 2.4 The site is located close to the city centre within the Spa conservation area. Immediately to the west is a Grade 2 listed building. is roughly 0.34ha in area and contains a 5 storey building with staff car parking. The building is in use on the ground and part of the first floor by the Job Centre Plus and the rest of the first floor and three floors above are used as general offices by the DWP. There are also a number of trees on the site, some subject to Tree Preservation Orders, while all would be protected under the conservation area status.

SURROUNDINGS

- 2.5 The area immediately adjoining the site is mainly characterised by residential buildings and office use. There is a park to the east and residential properties to the north, south and west with some commercial properties mixed in. There are a number of listed buildings in the vicinity of the site, both adjacent and opposite the site across Spa Road.

3 PLANNING HISTORY

- 3.1 Following a cyber-attack in December 2021, the local authority's online records are not publicly available. However, the none of the applications listed in the local authority's delegated report (attached at Appendix 3) have any implications in terms of land use, and there is no evidence that planning permission has been granted for any use of the building apart from Class B1 (a) (for the purposes of this application/appeal).

4 THE PROPOSAL

- 4.1 The proposal is to convert the building to Use Class C3, to provide 45 flats with a mix as follows: -
- 23 no. 1 bedroom 2 person
 - 14 no. 2 bedroom 3 person
 - 8 no. 2 bedroom 4 person
- 4.2 50 parking spaces would be provided, one for each of the flats, including two disabled bays, with an additional two disabled and three standard visitor spaces. 90 secure cycle parking spaces could be provided around the building and site.

5 THE DETERMINATION OF THE REFUSED APPLICATION

- 5.1 The application was submitted on 2 July 2021, and was registered on by the local authority on 6 July 2021.
- 5.2 On 9 August 2021 the local authority requested a noise assessment to address comments from the local authority's environmental health officers, in order to demonstrate that any noise from surrounding commercial activities would not adversely affect future residents. This was provided on 3 September 2021 (and is attached at **Appendix 4**).
- 5.3 On 23 September 2021, the case officer confirmed that the noise assessment was acceptable. However, the officer indicated that he did not consider that the building fell into Class B1 a), and a such could not support the application. In response to this, Rapleys forwarded a land use note to the case officer, to confirm why the applicant considered the site to be in Class B1 a) use (note attached at **Appendix 5**).
- 5.4 In response to the land use note, the case officer on 11 November 2021 considered that the areas branded as Job Centre Plus were not ancillary to the overall use of the building as B1 office space (e-mail attached at **Appendix 6**). Following this, it was agreed that a legal opinion would be secured by the applicant to confirm the position or - if the opinion did not agree with the applicant's position - the application could be amended to exclude the Job Centre Plus elements of the proposal (see e-mail from Rapleys, dated 8 December 2021 at **Appendix 7**).
- 5.5 The appellant secured a legal opinion from Charles Streeten, of Francis Taylor Building, and this was provided to the local authority on 26 January 2022 (and is attached at **Appendix 8**). The opinion confirmed unambiguously that the local authority should consider the entire building to be a single planning unit in Class B1 (a) for the purposes of the application, for the following reasons:
- 1) It is indisputable that the relevant planning unit is Cedar House, which is a single physical entity owned as a single freehold entity and occupied by a single tenant for a single purpose.
 - 2) It is clearly possible to discern a single main use of Cedar House, namely use as an office building. That is the obvious character of the use, with a lobby on the ground floor and significant office accommodation above.
 - 3) The branding of part of the ground and first floors as a Jobcentre Plus does not change the fact that the entirety of the building is occupied by the Secretary of State and that for more than 10 years Jobcentre/Jobcentre Plus has simply been a function of the relevant Government Department.
 - 4) The presence of the Jobcentre Plus branded areas is entirely functionally dependent upon, and incidental to, the Secretary of State's occupation of Cedar House as an office building. It takes place on less than 20% of the site and is intrinsically linked to that use. It is, in short, a classic example of a use lawfully ancillary to the main office use.
 - 5) This opinion is fortified by the fact that:
 - a) The VOA regards all floors as being in office use for the purposes of rating; and
 - b) The marketing particulars provided to the Barrister describe the whole of Cedar House as an office building, referring to all of the floorspace across all five floors as office accommodation.

-
- 6) Any other approach does not sit comfortably with the legal principles outlined above. A conclusion to the contrary fails properly to focus on the main use of Cedar House, and to recognise that planning law permits fluctuating ancillary uses.

5.6 However, the legal advice provided to the local authority was not accepted, and the application was refused on 28 February 2022, based on the local authority contention that the building was not in Class B1 (a) use for the purpose of the application.

6 RELEVANT PLANNING LEGISLATION

6.1 The ability to change the use of Class B1 (a) floorspace to residential (Class C3), subject to prior approval, was introduced by the Government in 2013. This was also included within the Town and Country Planning (General Permitted Development) Order 2015.

6.2 Prior to the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021, Class O (as amended up to this point) was drafted as follows:

“Class O - offices to dwellinghouses

Permitted development

O. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule.

Development not permitted

O.1 Development is not permitted by Class O if—

(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;

(d) the site is, or forms part of, a safety hazard area;

(e) the site is, or forms part of, a military explosives storage area;

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

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

Conditions

O.2.—(1) 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 as to—

(a) transport and highways impacts of the development,

(b) contamination risks on the site,

(c) flooding risks on the site,

(d) impacts of noise from commercial premises on the intended occupiers of the development, and

(e) the provision of adequate natural light in all habitable rooms of the dwellinghouses, and the provisions of paragraph W (prior approval) apply in relation to that application.

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

Interpretation of Class O

O.3. 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 2003⁴⁹ or any other place of public entertainment.”

- 6.3 Class O was further amended by the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021, which came into effect on 21 April 2021. Paragraph 7 of this legislation further amended the 2015 Order, with the following effect:

“In Class O (offices to dwellinghouses) of Part 3 of Schedule 2, in sub-paragraph (2) of paragraph O.2 (conditions), for the words from “condition that” to the end substitute—

“following conditions—

(a) the development must be completed within a period of 3 years starting with the prior approval date; and

(b) the developer must apply for a determination under sub-paragraph (1) on or before 31st July 2021”.”

- 6.4 In this context, the application was submitted before the deadline for making prior approval submissions under Class O, and registered and considered by the local authority accordingly.

7 PLANNING CONSIDERATIONS

7.1 GROUNDS OF APPEAL

7.1 As previously confirmed, the appellant's grounds of appeal can be summarised as follows:

1. For the purposes of the application and appeal, the site - in its entirety - falls into Use Class B1 (a), and as such Class O applies;
2. There are no other matters arising in terms of transport, contamination, flood risk, noise or provision of natural light which would prevent prior approval being granted, and
3. Therefore, there are no matters arising that would prevent prior approval being granted under Class O.

7.2 This section addresses the planning considerations which arise in support of these grounds.

7.3 LAND USE MATTERS

7.3 The only reason for refusal is:

“That the proposal by reason of the building being in part use by the Job Centre, falling in Class A2) of The Town and Country Planning (Use Classes) Order 1987 as amended and therefore not in Class B1 a) use, fails to constitute permitted development under Class O Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended 2020.”

7.4 The appellant's position, as set out in the land use note by Rapleys at Appendix 5 and the barrister's opinion set out at Appendix 8, is that Cedar House is a single planning unit, and should be considered Class B1 (a) for the purposes of this application. This is because:

- 1) It is indisputable that the relevant planning unit is Cedar House, which is a single physical entity owned as a single freehold entity and occupied by a single tenant for a single purpose.
- 2) It is clearly possible to discern a single main use of Cedar House, namely use as an office building. That is the obvious character of the use, with a lobby on the ground floor and significant office accommodation above.
- 3) The branding of part of the ground and first floors as a Jobcentre Plus does not change the fact that the entirety of the building is occupied by the Secretary of State and that for more than 10 years Jobcentre/Jobcentre Plus has simply been a function of the relevant Government Department.
- 4) The presence of the Jobcentre Plus branded areas is entirely functionally dependent upon, and incidental to, the Secretary of State's occupation of Cedar House as an office building. It takes place on less than 20% of the site and is intrinsically linked to that use. It is, in short, a classic example of a use lawfully ancillary to the main office use.
- 5) This opinion is fortified by the fact that:
 - a) The VOA regards all floors as being in office use for the purposes of rating; and
 - b) The marketing particulars provided to the Barrister describe the whole of Cedar House as an office building, referring to all of the floorspace across all five floors as office accommodation.
- 6) Any other approach does not sit comfortably with the legal principles outlined above. A conclusion to the contrary fails properly to focus on the main use of Cedar House, and to recognise that planning law permits fluctuating ancillary uses.

QUALIFYING MATTERS IN O.1 OF CLASS O

7.5 In terms of this section of Class O:

- The use of the building fell within Class B1(a) (offices) of the Schedule to the Use Classes Order on 29th May 2013;
- The site is not and does not form part of a safety hazard area;
- The site is not and does not form part of a military explosives storage area;
- The building is not a listed building, nor is it within the curtilage of a listed building, and
- The site is not, and does not contain, a scheduled monument.

7.6 In this context, there are no site specific issues which would prevent, in principle, the change of use of the building to residential under Class O.

MATTERS RELEVANT TO PRIOR APPROVAL

7.7 The officer's delegated report, attached at Appendix 3, addresses the matters relevant to prior approval as identified in O.2 of Class O:

- **Transport** - the Highway Authority have confirmed that they are content with the proposal with the proposal, subject to conditions relating to car park layout, electric vehicle charging and provision of cycle parking.
- **Contamination** - the local authority's Environmental Health Consultant has confirmed that as the proposal would only change the use of an existing building, there would be no contamination risk.
- **Flood Risk** - the LLFA considered that, as the proposal site was in flood zone 1, there would not be any flood risk.
- **Noise** - the submitted noise report confirms that the development would create a satisfactory environment for residential occupiers.
- **Natural light** - all habitable rooms have windows, and the proposal is acceptable in these terms.

7.8 It is also confirmed that all flats will meet nationally proscribed space standards.

7.9 In this context, there are no grounds for prior approval to be withheld in terms of the proposals presented to the local authority, and this was accepted by officers.

8 CONCLUSION

8.1 This Appeal has been submitted in response to the local authority's refusal of prior approval for the change of use of Cedar House to residential under Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

8.2 In the context of the appellant's grounds of appeal, this statement confirms the following:

1. For the purposes of the application and appeal, the site - in its entirety - falls into a single planning unit and within Use Class B1 (a), and as such Class O applies, as confirmed in the land use statement at Appendix 5 and the barrister's opinion at Appendix 8;
2. There are no other matters arising in terms of transport, contamination, flood risk, noise or provision of natural light which would prevent prior approval being granted, and
3. Therefore, there are no matters arising that would prevent prior approval being granted under Class O.

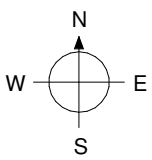
8.3 It is therefore respectfully requested that that this Appeal is allowed at the earliest possible juncture.

Appendix 1

SITE LOCATION PLAN



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Contractors must check all dimensions on site. Only figured dimensions are to be worked from. Discrepancies must be reported before proceeding. This drawing is copyright. ©

P03 08.06.21 Preliminary issue
P02 19.07.19 Issue for Planning
P01 01.07.19 First Issue

CA DK
EF DK
EF DK

Issue | Date | Revision notes | Dm | Chk'd

Client
AEW UK

Project
Cedar House Gloucester

Drawing Title
Location Plan

Project No.
294037

Drawing Number:
P-0-SITE LOCATION

Issue
P03

Scale
1:1250@A3

Status
Preliminary

Appendix 2

DECISION NOTICE

**APPLICATION NO: 21/00825/JPA
VALIDATED ON: 6th July 2021**

TO

Olivia Glenn
Rapleys
1 Rapleys LLP
33 Jermyn Street
London
SW1Y 6DN

**THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT)
(ENGLAND) ORDER 2015**

Location: Cedar House Spa Road Gloucester GL1 1XL

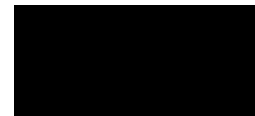
Proposal: Application for Prior Approval for the change of use from Offices (Class B1 a) to Dwellings (Class C3)

I refer to your above mentioned notification application as to whether the Council's Prior Approval is required for the change of use of the building under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Following your notification application of the above development, I inform you that in this particular case, **PRIOR APPROVAL IS REQUIRED AND IS HEREBY REFUSED** due to the reason(s) below:

That the proposal by reason of the building being in part use by the Job Centre, falling in Class A2) of The Town and Country Planning (Use Classes) Order 1987 as amended and therefore not in Class B1 a) use, fails to constitute permitted development under Class O Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended 2020

Date: 28th February 2022



Planning and Development Control Manager

Appendix 3

DELEGATED REPORT

GLOUCESTER CITY COUNCIL - DEVELOPMENT CONTROL
DELEGATED DECISION REPORT
APPLICATION NUMBER: 21/00825/JPA

Case Officer:	Ron Moss
Site Address:	Cedar House Spa Road Gloucester GL1 1XL
Proposal:	Application for Prior Approval for the change of use from Offices (Class B1 a) to Dwellings (Class C3)
Expiry Date:	31.08.2021
Extension of Time Date:	28.02.2022

SITE HISTORY

Application Number	Proposal	Decision	Decision Date
20/00959/PIP	Proposal for permission in principle for residential development via Brownfield Land Register Part 2		
21/00696/TPO	All blue and red works from the survey supplied	TPDECS	21.07.2021
21/00993/TPO	Reason for work on this tree as per report from our surveyor: It is in terminal decline with large percentage of crown dead & just a small percentage of live growth remaining. Ground level shows an area of discoloured needles at base, which doesn't seem to be the causation of the decline of the tree. (Compaction around the base of the tree could be a factor in the decline). Should it fail there are large targets in the foreground/background as well as the Car Parking area at the base of the tree. Ultimately the decline and surrounding targets are reason for suggested felling		

PUBLICITY/CONSULTATIONS

	Date Sent	Date Expires	Comments Received			Reply Received Date
			Objection	No Objection	Other Comment	
Neighbours	N/A	N/A	0	0	0	N/A
DRAENG	19.07.2021	09.08.2021	N/A	N/A	N/A	
LLFA	19.07.2021	09.08.2021	N/A	N/A	N/A	26.07.2021

EHCON	19.07.2021	09.08.2021	N/A	N/A	N/A	25.07.2021
NOISE	19.07.2021	09.08.2021	N/A	N/A	N/A	20.07.2021
HAUTH	19.07.2021	09.08.2021	N/A	N/A	N/A	22.07.2021
NOISE			N/A	N/A	N/A	07.09.2021

REPRESENTATIONS

The Highway Authority has no objection subject to conditions to provide electric vehicle charging points, cycle storage and for car parking spaces to be retained free from obstruction.

The Local Lead Flood Authority states that the development is in Flood Zone 1 and has no objection.

The Environmental Health consultant has no adverse comments to make in relation to contaminated land and has confirmed that the submitted noise assessment is satisfactory.

APPLICANT'S STATEMENT

It is accepted that the majority of the ground floor (but not all, given that the ground floor also accommodates the lobby and lift area of the offices above) is used as a Job Centre Plus by the Department of Work and Pensions (DWP), and we are advised that part of this facility also occupies approximately 45% of the first floor. However, the rest of the building is used by DWP for its wider administrative functions, and this is the overall use of the building, taking up over 80% of the building (taking into account that part of the ground floor is taken up by dedicated access to the office space above).

LAND-USE The Planning Portal Glossary defines ancillary use as:

“A subsidiary or secondary use or operation closely associated with the main use of a building or piece of land.”

In this case, the main use of the building is as offices (for the purposes of this prior approval application, Class B1(a), albeit otherwise now part of Class E), as over 80% of the floorspace of the building is used for DWP administrative functions, to which there is no public access.

In this context, the Job Centre Plus is clearly a subsidiary or secondary operation closely associated with the main use (as Class B1(a)), as it takes up less than 20% of the floor area of the building, and is used in association with the offices above (by the same Government department). Further, the Job Centre Plus is occupied under the same lease as the building as a whole.

On this basis, it is clear to the applicant that the overall land-use of Cedar House is as offices (Class B1(a), for the purposes of this application), and that the Job Centre Plus is an ancillary operation that occupies the site because of the presence of the DWP offices above, and not the other way around.

The above is confirmed by the following:

- The rating description, on all floors, is described as “offices” – see attached summary valuation, and
- The building has been accepted as B1 office space more generally – see attached marketing particulars that clearly refer to the building being in this land use, notwithstanding the presence of the Job Centre Plus.

SUMMARY

In the context of the above commentary, for the purposes of this application the building is clearly

in Class B1(a) use overall, albeit with an ancillary element on part of the lower two floors, and as such there should be no barrier to the local authority granting Prior Approval to residential use under Class O.

Neighbours Representation

1 letter received seeking clarification as to whether the flats would be for general sale or residential/housing association and requesting the back entrance be shown closed off.

Officer Note: The above queries aren't relevant to this Prior Approval application.

POLICIES AND GUIDANCE

Not Applicable

Class O, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended 2020

PLANNING OFFICERS APPRAISAL AND CONCLUSIONS

Site Description and Proposal

The site is located close to the city centre within the Spa conservation area. There is a park to the east and residential properties to the north, south and west with some commercial properties mixed in. Immediately to the west is a Grade 2 listed building. It is in Flood Zone 1. is roughly 0.34ha in area and contains a 5 storey building with staff car parking. The building is in use on the ground and part of the first floor by the Job Centre Plus and the rest of the first floor and three floors above are used as general offices by the DWP. There are also a number of trees on the site, some subject to Tree Preservation Orders, while all would be protected under the conservation area status.

The proposal is to convert the building to 45 flats with a mix as follows : -

23 no. 1 bedroom 2 person
14 no. 2 bedroom 3 person
8 no. 2 bedroom 4 person

50 parking spaces would be provided for the development, one for each of the flats, including two disabled bays, with an additional two disabled and three standard visitor spaces. The applicants state that 90 secure cycle parking spaces would be provided around the building and site.

Assessment of Proposal

It should first of all be noted that this application was received before the 1st August 2021 and therefore the application is being assessed against the O Class of Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended 2020 , rather than Class MA of The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) Order 2021.

The prior approval procedure for office to residential conversion is established on the basis of :-

- (a) transport and highway impacts of the development,
- (b) contamination risks on the site,

- (c) flooding risks on the site, and
- (d) impacts of noise from commercial premises on the intended occupiers of the development.
- (e) the provision of natural light in all habitable rooms.

With regard to the fundamental starting point as to whether the proposal constitutes permitted development, The GDPO includes at Class O a change of use provision relating to B1 offices to dwelling houses. The provision is not permitted if the building was not last used for B1a offices. Similarly, if the site is a safety hazard area, a military explosives storage area, a listed building or within its curtilage, or is or contains a scheduled monument. The proposal is compliant on the latter points.

In terms of the last use, the applicant has stated on the application form that the building was in use on 29 May 2013 (or when in last use) as an office (use class B1(a)) in The Town and Country Planning (Use Classes) Order 1987 as amended.

However, a recent site visit has indicated that the ground floor and part of the first floor are currently utilised by the Job Centre Plus. A Job Centre would constitute a Class A2 Use under the The Town and Country Planning (Use Classes) Order 1987 as amended and not Class B1 a).

The applicant has sought to demonstrate that Job Centre Plus use is a subsidiary or secondary use to an overall B1a) office use of the building , due to the percentage of the building in this use , the association with the office above and the Job Centre being occupied under the same lease. The Local Planning Authority are however of the opinion that a Job Centre Plus operates as its own clearly defined function, providing an employment service to visiting members of the public, as can be seen all around the country. There is no necessity for it to be accompanied by floors of offices above or necessity for the floors above to have a job centre attached to them. It is accepted though that it may have been helpful for the DWP to have all these operations in one building.

The applicant has further provided a legal opinion on the matter that concludes as follows :-

- a) The site is a single physical entity owned as a single freehold entity and occupied as a single tenant.
- b) It is possible to discern a single main use of Cedar house as an office building.
- c) The entire building is occupied by the Secretary of State.
- d) The presence of the Jobcentre Plus is entirely functionally dependent upon and incidental to the Secretary of States occupation of Cedar House as an office building.
- e) The valuation office agency (VOA) regard all floors as being in office use and the 'Buchanan Bond' describes the whole of Cedar House as an office building.
- f) Any other approach does not sit comfortably with outlined legal principles and recognise the focus on the main use of Cedar House and that planning law permits fluctuating ancillary offices.

In response the Local Planning Authority (LPA) reiterate again that they consider that there are two planning units on the site with the differing floor space for the Class A2 and B1a) uses clearly identified and used in clearly different ways. The Class A2 space provides a public facing function to visiting members of the public while the rest of the building is general B1a) office use. The agent and the submitted legal opinion all accept that the separate floor spaces can be identified. Then whilst the floor space for the A2 use might be no more than 20% of the overall building floor space, it is not insubstantial as the building itself is large in size.

Furthermore, as stated above, the LPA do not consider that there is dependency between the two uses. They can both function without the other. A Job Centre Plus is a clearly recognised Class A2 use that can be found in most towns and cities around the country. Ownership is then not specifically relevant to planning use of a site, while VOA ratings and building particulars may not

have picked up on the difference between a Class A2 office use and Class B1a) office use.

Overall, the LPA are therefore of the opinion that the requirement to be in Class B1a) Use fails and the proposal does not constitute permitted development under Class O.

For the purposes of completion this report does still address the prior approval requirements, although it is recognised that this is technically irrelevant with the failure to constitute permitted development.

1) Transport and highways impact's of the development

The Highway Authority confirm that they would be satisfied with the proposal, subject to conditions relating to car park layout, electric vehicle charging and provision of cycle parking.

2) Contamination risks on site

The proposal would only involve the change of use of the building and the Council's Environmental Health Consultant confirms that there would be no contamination risk.

3) Flooding risks on the site

The proposal site is with in Flood zone 1 and the Local Lead Flood Authority does not consider that there would be any flood risk.

4) Impacts of noise from commercial premises on the intended occupiers of the development.

The applicant submitted a noise report with regard to this matter and the Council's Environmental consultant confirms that it demonstrates a satisfactory environment for residential occupiers.

5) The provision of natural light in all habitable rooms.

All the proposed habitable rooms are shown with windows, therefore meeting this requirement.

It should also be noted that whilst very marginal in some cases, the flats are all shown to meet the Nationally Described Space Standards.

Finally while there are no specific ground works proposed, should the proposal have constituted permitted development with prior approval not required, then an informative would have been added to the decision notice informing that the trees subject to tree preservation orders should be protected during works being carried out to prevent any damage to them.

Conclusion

The proposal would fail to constitute permitted development under Class O Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended 2020

Human Rights Act

In compiling the recommendation full consideration has been given to all aspects of the Human Rights Act 1998 in relation to the applicant and/or the occupiers of any affected properties. In particular, regard has been had to Article 8 of the ECHR (Right to respect for private and family life, home and correspondence); Article 1 of the First Protocol (Right to the use and enjoyment of property) and the requirement to ensure that any interference with the right in this Article is both in accordance with the law and proportionate. A balance needs to be drawn between the right to develop land in accordance with planning permission and the rights under Article 8 and also Article 1 of the First Protocol of adjacent occupiers. On assessing the issues raised by the application no particular matters, warrant any different action to that recommended.

RECOMMENDATION

That the proposal by reason of the building being in part use by the Job Centre, falling in Class A2) of The Town and Country Planning (Use Classes) Order 1987 as amended and therefore not in Class B1 a) use, fails to constitute permitted development under Class O Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended 2020

Ron Moss
Case Officer

Date: 17 June 2022

Appendix 4

NOISE REPORT

SHARPS REDMORE

ACOUSTIC CONSULTANTS ▪ Established 1990



Report

Environmental Noise Assessment

Cedar House, Spa Road,
Gloucester

Prepared by

Hannah Karban BSc (Hons) AMIOA

Date 31st August 2021

Project No 2120645

Head Office

Sharps Redmore

The White House, London Road,
Copdock, Ipswich, IP8 3JH

T 01473 730073

E contact@sharpsredmore.co.uk

W sharpsredmore.co.uk

Regional Locations

South England (Head Office),
South West England,
North England, Wales, Scotland

Sharps Redmore Partnership Limited

Registered in England No. 2593855

Directors

RD Sullivan BA(Hons), PhD, CEng, MIOA, MAAS, MASA;

KJ Metcalfe BSc(Hons), MIOA;

N Durup BSc(Hons), MSc, PhD, CEng, FIOA, MInstP, MASA, MAES;

GJ King MIOA, MCIEH

Company Consultant

TL Redmore BEng, MSc, PhD, MIOA



Contents

- 1.0 Introduction
- 2.0 Assessment Methodology and Criteria
- 3.0 Site Description
- 4.0 Noise Survey Details
- 5.0 Noise Assessment
- 6.0 Conclusions

Appendices

- A. Acoustic terminology

This report has been prepared with all reasonable skill, care and diligence commensurate with an acoustic consultancy practice under the terms and brief agreed with our client at that time. Sharps Redmore provides no duty or responsibility whatsoever to any third party who relies upon its content, recommendations or conclusions.

1.0 Introduction

1.1 Sharps Redmore (SR) has been instructed with respect to a change of use under part 3 class O of the Town and Country Planning (General Permitted Development Amendment) Order 2015 (as amended) [GPDO] at Cedar House, Spa Road, Gloucester to residential use. The site location is shown in Figure 1 below.

FIGURE 1: Site Location



1.2 The site is located in the centre of Gloucester and is set over multiple storeys. The site is currently office accommodation. The surrounding area is predominantly residential and office use. Further details of the surrounding area are discussed in section 3.0 of this report.

1.3 Prior approval is being sought for conversion of the existing building from office to residential. Comments have been received from Steve Williams, Senior Technical Officer in the Technical Services Department at Gloucester City Council requiring a noise assessment which considers the impact of commercial noise on the proposed residential use.

1.4 The report is set out in the following sections:

Section 2.0 – Noise policy and relevant assessment criteria;

Section 3.0 – Site Description;

Section 4.0 – Noise Survey Details

Section 5.0 – Noise Assessment; and

Section 6.0 – Conclusions

1.5 A guide to the acoustic terminology used in the report is included in Appendix A

2.0 Assessment Methodology and Criteria

2.1 The legislative context for this assessment is GPDO 2015 and subsequent 2016 amendment. These amendments included changes to prior approval requirements with respect to the change in use from offices to Class C3 as follows:

“O.2.—(1) 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 as to:

(a) transport and highways impacts of the development,

(b) contamination risks on the site,

(c) flooding risks on the site, and

(d) impacts of noise from commercial premises on the intended occupiers of the development,

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

*“Interpretation of Class O O.3. 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** (SR emphasis) under paragraph O.2(1), and includes any premises licensed under the Licensing Act 2003(a) or any other place of public entertainment.”.*

2.2 The GPDO was amended in 2016 to include noise from commercial premises principally as a result of campaigns on behalf of licenced premises and two specific documents: the ‘London Grassroots Music Venues Rescue Plan’ and the ‘Bristol Live Music Census Report’. Both reports and the campaigns cite that the permitted conversion of offices into residential properties (Class C3) have resulted in noise sensitive receptors (i.e. residents) being introduced into areas where there are long established music venues or other sources of noise. This, in turn, has given rise to noise complaints from the new residents and the LPA imposing additional constraints on the music venue or noise source.

2.3 It is therefore clear from the above that when considering applications for prior approval that the primary reason why noise is included is to prevent unreasonable restrictions on the existing commercial premises which may occur as a result of the permitted change of use.

2.4 Guidance is very limited at this stage as to the requirements for prior approval however the National Planning Practice Guidance (6th March 2014) provides the following advice with respect to the approach and level of details perhaps needed for prior approval:

“The statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications. This is deliberate, as prior approval is a light-touch process which applies where the principle of the development has already been established. Where no specific procedure is provided in the General Permitted Development Order, local planning authorities have discretion on what processes they put in place. 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.”

- 2.5 In the absence of specific guidance, it is considered that the principles of National Planning Policy and requirements within Local Planning Policies with respect to noise are relevant.

National Policy

- 2.6 Though the prior approval system is intended as a light touch process and not to replicate the planning system, the aims of national planning policy with respect to noise are relevant and therefore should be considered for new development.

- 2.7 In respect of noise, Paragraph 185 of the NPPF states the following:

“Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;*
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and*
- c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation”.*

- 2.8 The NPPF reinforces the March 2010 DEFRA publication, “Noise Policy Statement for England” (NPSE), which states three policy aims, as follows:

“Through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development:

- avoid significant adverse impacts on health and quality of life;
- mitigate and minimise adverse impacts on health and quality of life; and
- where possible, contribute to the improvement of health and quality of life.”

- 2.9 Together, the first two aims require that no significant adverse impact should occur and that, where a noise level which falls between a level which represents the lowest observable adverse effect and a level which represents a significant observed adverse effect, then according to the explanatory notes in statement:

“... all reasonable steps should be taken to mitigate and minimise adverse effects on health quality of life whilst also taking into consideration the guiding principles of sustainable development. This does not mean that such effects cannot occur.”

- 2.10 Further guidance on the impact of noise on existing businesses and community facilities is contained with Paragraph 187 which states the following:

“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.”

Design Guidance

- 2.11 The current nationally recommended internal noise levels for dwellings are given in BS 8233:2014 'Guidance on Sound Insulation & Noise Reduction for Buildings'. BS 8233 recommends the following internal noise standards:

TABLE 1: Guideline noise values

BS 8233:2014 Table 4 – Indoor ambient noise levels for dwellings			
Activity	Location	0700 to 2300	2300 to 0700
Resting	Living room	35 dB $L_{Aeq,16hour}$	-
Dining	Dining room/area	40 dB $L_{Aeq,16hour}$	-
Sleeping (daytime resting)	Bedroom	35 dB $L_{Aeq,16hour}$	30 dB $L_{Aeq,8hour}$

- 2.12 The previous version (1999) of BS 8233 contained two guidelines for internal criteria; good and reasonable. The difference between the good and reasonable criteria was 5 dB. Whilst the 5 dB relaxation in noise criteria is not specifically referred to in the table above, Note 7 advises that “where development is considered necessary or despite external noise levels above WHO guidelines, the internal target levels may be relaxed by up to 5 dB and reasonable internal conditions still achieved.”
- 2.13 There is no longer a L_{AMAX} standard for bedrooms in BS 8233. However, footnote 4 to Table 4 states that “Regular individual noise events (for example, scheduled aircraft or passing trains) can cause sleep disturbance. A guideline value may be set in terms of SEL or $L_{Amax,F}$ depending on the character and number of events per night. Sporadic noise events could require separate values.” In this case, it is proposed that the previous BS 8233 internal standard (also referenced in World Health Organisation Guidelines for Community Noise) is applied. This is 45 dB L_{AMAX} , inside bedrooms.

ProPG: Planning and Noise – New Residential Development

- 2.14 The ProPG professional practice guidance on planning and noise has been jointly produced by the Chartered Institute of Environmental Health (CIEH), Institute of Acoustic (IOA) and Association of Noise Consultants (ANC).
- 2.15 The ProPG recommends a 2-stage approach; an initial assessment which identifies the risk of noise from transportation sources on the proposed planning application, and where the results indicate that noise requires further consideration a full assessment in the form of an Acoustic Design Statement (ADS). The advice contained within ProPG is based on the policy objectives contained within the NPPF and the objective noise guidelines within BS 8233:2014. However, the ProPG does not constitute an official government code of practice and only is applicable to the assessment of noise from transportation sources and therefore is not relevant in this case.

BS 4142:2014+A1:2019

- 2.16 As outlined, this British Standard enables the significance of sound impact to be determined in relation to industrial and commercial sources. The significance of sound impact is to be determined according to the following summary process:
- i) Determine the background sound levels, in terms of the index L_{A90} , at the receptor locations of interest.

- ii) Determine the specific sound level of the source being assessed, in terms of its L_{AeqT} level (T = 1 hour for day or 15 minutes for night), at the receptor location of interest.
- iii) Apply a rating level acoustic feature correction if the source sound has tonal, impulsive, intermittent, or other characteristics which attract attention.
- iv) Compare the rating sound level with the background sound level; the greater the difference between the two, the higher the likelihood of adverse impact.
- v) A difference (rating – background) of around +10 dB is an indication of significant adverse impact, depending on the context; a difference of +5 dB is an indication of an adverse impact, depending on the context. Where the rating level does not exceed the background sound level, this is an indication of the specific sound source having a low impact, depending upon context.
- vi) The intent of the planning system is to ensure that a development does not result in “significant adverse impacts on health and quality of life.” BS 4142:2014 considers that the threshold of significant adverse impact is “a difference around +10 dB or more ... depending upon the context”. However the NPPF and NPPG state that where a noise level which falls between a level which represents the lowest observable adverse effect and a level which represents a significant observed adverse effect, then according to the explanatory notes in the statement “...all reasonable steps should be taken to mitigate and minimise adverse effects in health and quality of life while together taking into account the guiding principles of sustainable development. This does not mean that adverse effects cannot occur but that effort should be focused on minimising such effects”.

2.17 BS 4142:2014 introduces the concept of ‘context’ to the process of identifying noise impact. Section 11 of BS 4142:2014 explains “The significance of sound of an industrial and/or commercial nature depends upon both the margin by which the rating level of the specific sound source exceeds the background sound level and the context in which the sound occurs (our emphasis). An effective assessment cannot be conducted without an understanding of the reason(s) for the assessment and the context in which the sound occurs/will occur. When making assessments and arriving at decisions, therefore, it is essential to place the sound in context” (our emphasis).

2.18 There are many *context* points to consider when undertaking an assessment of sound impact including:

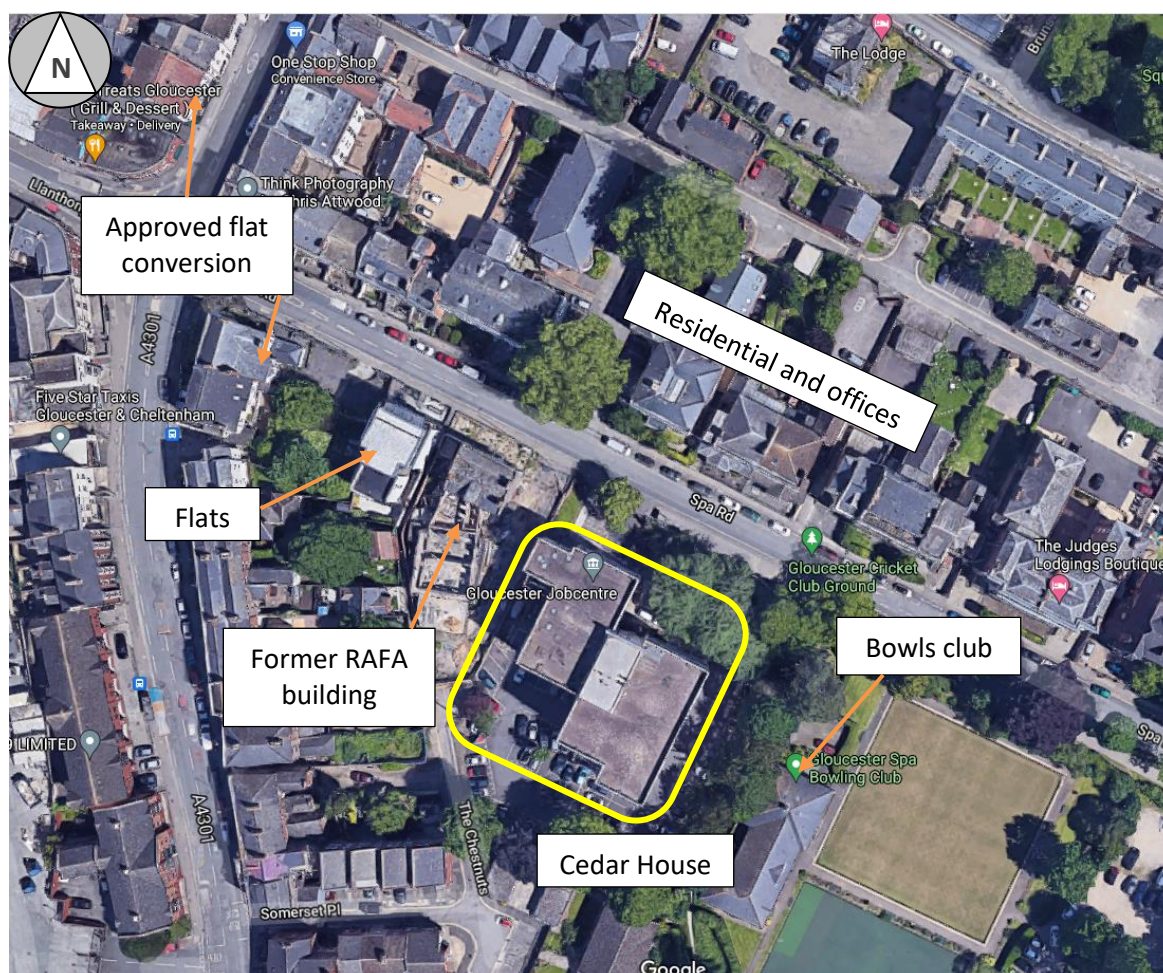
- The absolute level of sound;
- The character and level of the specific sound in the context of the existing noise climate; for example is the sound to occur in a location already characterised by similar activities as those proposed?
- The sensitivity of the receptors;
- The time and duration that the specific sound is to occur;
- The conclusions of assessments undertaken using alternative assessment methods, for example WHO guidelines noise values or change in noise level;

2.19 It is therefore entirely possible that whilst the numerical outcome of a BS 4142:2014 assessment is indicative of adverse or significant adverse impact, when the proposal is considered in *context* the significance of the impact is reduced to an acceptable level.

3.0 Site Description

- 3.1 A site visit was carried out on Thursday 26th August 2021 to identify possible commercial or industrial premises in the immediate area surrounding the site.
- 3.2 As shown in Figure 2, the buildings around Cedar House on both sides of Spa Road are offices and residential properties. To the east of Cedar House is a bowling club with a green open space further east. Further west is a former Royal Air Force Association building which is currently vacant with a recent expired/not proceeded with planning application for a flat conversion. The former dentist at the end of Spa Road has been granted permission to be converted into flats as well as the former Nelson Inn pub along Southgate Street, planning application references 20/01189/LBC and 20/00441/FUL respectively.
- 3.3 In terms of noise the surrounding premises are low key being predominantly office and residential use and the existing noise climate is dominated by localised and distant road traffic.

FIGURE 2: Surrounding premises



4.0 Noise Survey Details

4.1 A survey was carried out during the day and evening on Thursday 26th August 2021. Measurements were taken on Spa Road 12:30 and 13:00 hours and 22:00 to 22:20 hours. The measurement location is shown in Figure 3 below.

FIGURE 3: Measurement locations



4.2 Noise levels were recorded using a Norsonic 118 type 1 sound level meter which was calibrated before and after the survey with no drift in accuracy found. The weather was suitable for taking noise measurements.

4.3 Full details of the results are shown in Table 2 below.

TABLE 2: Noise measurement results – 26th August 2021

Start Time (hh:mm)	Noise Level dB (T = 10 minutes)			
	L _{Aeq,T}	L _{AFMax}	L _{A10,T}	L _{A90,T}
<i>Daytime</i>				
12:30	63	80	68	48
12:40	62	81	66	49
12:50	62	81	67	48
<i>Evening</i>				
22:00	59	75	65	42
22:10	59	79	63	42

- 4.4 Noise levels were dominated by road traffic. No commercial noise was audible during the site visit.

5.0 Noise Assessment

- 5.1 The GPDO, in terms of noise, is restricted to the assessment of impacts of noise from commercial premises on the attended occupiers of the noise development. As discussed in section 3.0 of the report the surrounding area is office or residential properties and no noise associated with commercial activity was noted during the site visit.
- 5.2 Of main consideration in terms of noise will be the potential noise from functions held at the Bowls Club which is located to the east of the site. There is no mention of private hire on their website and it is assumed that only bowls playing takes place.
- 5.3 As advised the main reason for considering noise in relation to the application is to determine whether the change of use to residential use will cause restrictions on the continued use of surrounding commercial premises. It is noted that there are existing residential properties, in Somerset Place, which are closer than those proposed.
- 5.4 The impact of noise from events at the Bowls Club on the proposed residential properties will be no greater than that on existing residential properties in Somerset Place. Therefore, the change from offices to residential will not cause any further restriction on events held at the Bowls Club, and in terms of the GPDO the site is acceptable for conversion.

6.0 Conclusions

- 6.1 Prior approval is being sought for change of use of Cedar House, Spa Road, Gloucester, from offices (Use Class E formerly use Class B1(a)) to create residential apartments (Use Class C3). In line with the guidance in the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 (GPDO) an assessment of the impact of noise from commercial premises has been undertaken.
- 6.2 Subjective and quantitative assessments have determined that traffic noise describes the existing sound climate around the site.
- 6.3 As stated in National Planning Practice Guidance, “prior approval is a light-touch process which applies where the principle of the development has already been established”. In this case, the following conclusions have been made.
 - Noise from commercial premises will not cause significant adverse impact to future residents of the proposed apartments in line with the policy aims of the NPPF para, 185.
 - Taking into the context of the area, and the location of existing noise sensitive properties the change of use to residential will not result in any further restrictions on the operation of existing commercial premises in the area, in line with para, 187 of the NPPF.
- 6.4 The development will not compromise the Governments’ noise policy vision, as stated in the Noise Policy Statement for England and National Planning Policy Framework.
- 6.5 Having regard to the requirements of the GPDO it is concluded that the site can be changed to residential without noise causing an impact to future residents or causing unreasonable restrictions to the continued use of commercial premises in the area.

APPENDIX A

ACOUSTIC TERMINOLOGY

Acoustic Terminology

A1 Noise, defined as unwanted sound, is measured in units of decibels, dB. The range of audible sounds is from 0 dB to 140 dB. Two equal sources of sound, if added together will result in an increase in level of 3 dB, i.e. 50 dB + 50 dB = 53 dB. Increases in continuous sound are perceived in the following manner:

1 dB increase - barely perceptible.

3 dB increase - just noticeable.

10 dB increase - perceived as twice as loud.

A2 Frequency (or pitch) of sound is measured in units of Hertz. 1 Hertz (Hz) = 1 cycle/second. The range of frequencies audible to the human ear is around 20Hz to 18000Hz (or 18kHz). The capability of a person to hear higher frequencies will reduce with age. The ear is more sensitive to medium frequency than high or low frequencies.

A3 To take account of the varying sensitivity of people to different frequencies a weighting scale has been universally adopted called "A-weighting". The measuring equipment has the ability automatically to weight (or filter) a sound to this A scale so that the sound level it measures best correlates to the subjective response of a person. The unit of measurement thus becomes dBA (decibel, A-weighted).

A4 The second important characteristic of sound is amplitude or level. Two units are used to express level, a) sound power level - L_w and b) sound pressure level - L_p . Sound power level is an inherent property of a source whilst sound pressure level is dependent on surroundings/distance/directivity, etc. The sound level that is measured on a meter is the sound pressure level, L_p .

A5 External sound levels are rarely steady but rise or fall in response to the activity in the area - cars, voices, planes, birdsong, etc. A person's subjective response to different noises has been found to vary dependent on the type and temporal distribution of a particular type of noise. A set of statistical indices have been developed for the subjective response to these different noise sources.

A6 The main noise indices in use in the UK are:

L_{A90} : The sound level (in dBA) exceeded for 90% of the time. This level gives an indication of the sound level during the quieter periods of time in any given sample. It is used to describe the "background sound level" of an area.

L_{Aeq} : The equivalent continuous sound level in dBA. This unit may be described as "the notional steady noise level that would provide, over a period, the same energy as the intermittent noise". In other words, the energy average level. This unit is now used to measure a wide variety of different types of noise of an industrial or commercial nature, as well as aircraft and trains.

L_{A10} : The sound level (in dBA) exceeded for 10% of the time. This level gives an indication of the sound level during the noisier periods of time in any given sample. It has been used over many years to measure and assess road traffic noise.

L_{AMAX} : The maximum level of sound measured in any given period. This unit is used to measure and assess transient noises, i.e. gun shots, individual vehicles, etc.

- A7 The sound energy of a transient event may be described by a term SEL - Sound Exposure Level. This is the L_{Aeq} level normalised to one second. That is the constant level in dBA which lasting for one second has the same amount of acoustic energy as a given A weighted noise event lasting for a period of time. The use of this unit allows the prediction of the L_{Aeq} level over any period and for any number of events using the equation;

$$L_{AeqT} = SEL + 10 \log n - 10 \log T \text{ dB.}$$

Where

n = Number of events in time period T.

T = Total sample period in seconds.

- A8 In the open, known as free field, sound attenuates at a rate of 6 dB per each doubling of distance. This is known as geometric spreading or sometimes referred to as the Inverse Square Law. As noise is measured on a Logarithmic scale, this attenuation in distance = $20 \log$ (ratio of distances), e.g. for a noise level of 60 dB at ten metres, the corresponding level at 160 metres is:

$$60 - 20 \log \frac{160}{10} = 60 - 24 = 36 \text{ dB.}$$

Appendix 5

LAND USE NOTE

GLOUCESTER - CEDAR HOUSE (LOCAL AUTHORITY REFERENCE: 21/00825/JPA)

Planning Note Relative to Land Use

26 October 2021

This note has been prepared by Rapleys LLP on behalf of AEW UK, the applicant, relative to an application for prior approval under Class O of the Town and Country Planning (General Permitted Development Order) 2021 (as amended) (ref: 21/00825/JPA), which allows change of use from Class B1(a) (offices) to Class C3 (dwelling) as permitted development.

The note is provided to provide further information relative to the established activities in the building, drawing on this to confirm what is considered, by the applicant, to be the lawful use of the building.

THE BUILDING

Cedar House is four storeys above ground, and was built in the early 1970s and fully refurbished around 1991. Each floor of the building extends to approximately 750sqm, with the exception of the ground floor, which extends to approximately 335sqm (due to the presence of undercroft car parking).

It is accepted that the majority of the ground floor (but not all, given that the ground floor also accommodates the lobby and lift area of the offices above) is used as a Job Centre Plus by the Department of Work and Pensions (DWP), and we are advised that part of this facility also occupies approximately 45% of the first floor. However, the rest of the building is used by DWP for its wider administrative functions, and this is the overall use of the building, taking up over 80% of the building (taking into account that part of the ground floor is taken up by dedicated access to the office space above).

LAND-USE

The Planning Portal Glossary defines ancillary use as:

“A subsidiary or secondary use or operation closely associated with the main use of a building or piece of land.”

In this case, the main use of the building is as offices (for the purposes of this prior approval application, Class B1(a), albeit otherwise now part of Class E), as over 80% of the floorspace of the building is used for DWP administrative functions, to which there is no public access.

In this context, the Job Centre Plus is clearly a subsidiary or secondary operation closely associated with the main use (as Class B1(a)), as it takes up less than 20% of the floor area of the building, and is used in association with the offices above (by the same Government department). Further, the Job Centre Plus is occupied under the same lease as the building as a whole.

On this basis, it is clear to the applicant that the overall land-use of Cedar House is as offices (Class B1(a), for the purposes of this application), and that the Job Centre Plus is an ancillary operation that occupies the site because of the presence of the DWP offices above, and not the other way around.

The above is confirmed by the following:

- The rating description, on all floors, is described as “offices” - see attached summary valuation, and
- The building has been accepted as B1 office space more generally - see attached marketing particulars that clearly refer to the building being in this land use, notwithstanding the presence of the Job Centre Plus.

SUMMARY

In the context of the above commentary, for the purposes of this application the building is clearly in Class B1(a) use overall, albeit with an ancillary element on part of the lower two floors, and as such there should be no barrier to the local authority granting Prior Approval to residential use under Class O.

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Cedar House, Spa Road, Gloucester, GL1 1UY

1 April 2017 - present

Your rateable value is £287,500.00

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[Valuation information](#)

Description	Offices and premises
Local authority	Gloucester
Local authority reference	16200000555339
Base rate	£70.00
Basis of measurement	NIA
Transitional relief certificate issued	No
Valuation scheme reference	345786
Special category code	203G
Effective date	1 April 2017

How the valuation was calculated

Parts of the property

Floor	Description	Area m ² /unit	Price per m ² /unit	Value
Ground	Office	335.6	£73.50	£24,667.00
First	Office	337.8	£73.50	£24,828.00
First	Office	412.2	£70.00	£28,854.00
Second	Office	744.5	£70.00	£52,115.00
Third	Office	750.9	£70.00	£52,563.00
Fourth	Office	757.1	£70.00	£52,997.00
Total		3,338.1		£236,024.00

Car parks

Spaces	Area	Value
103		£51,500.00
Total		£51,500.00
Total value		£287,524.00

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CEDAR HOUSE

Spa Road, Gloucester, GL1 1XL

SOUTH WEST OFFICE INVESTMENT WITH
ASSET MANAGEMENT OPPORTUNITIES



INVESTMENT SUMMARY

- An extensive office building in central Gloucester providing **38,427 sq ft (3,569.98 sq m)** of Office (B1) accommodation arranged over five floors.
- Freehold.
- Car parking for approximately **103 vehicles (part undercroft); a 1:373 sq ft ratio**.
- The property occupies a site of **0.92 Acres (0.37ha)** providing a **site cover of approximately 24%**.
- A mix of open plan office accommodation and storage on each of the upper floors with regular shaped floor plates over two wings. Ground and part first provide public access for Job Centre applicants.
- Constructed in the early 1970's the property was extensively refurbished in 1991/1992 with a recent upgrade in 2006.
- Let to the **Secretary of State for Communities and Local Government on a full repairing and insuring (FRI) lease expiring 31st March 2018**.
- Fully income producing at a passing rent of **£300,000 per annum reflecting £7.80 per sq ft**.
- Various asset management initiatives available to include **lease renewal negotiations, residential conversion or redevelopment of the entire site** (subject to necessary planning consents).
- We are seeking offers in excess of **£3,200,000 (Three Million, Two Hundred Thousand Pounds)**, subject to contract and exclusive of VAT.
- A purchase at this level reflects a **Net Initial Yield of 8.81%** and a **low capital value of £83.25 per sq ft NIA**, assuming purchaser's costs of 6.47%.



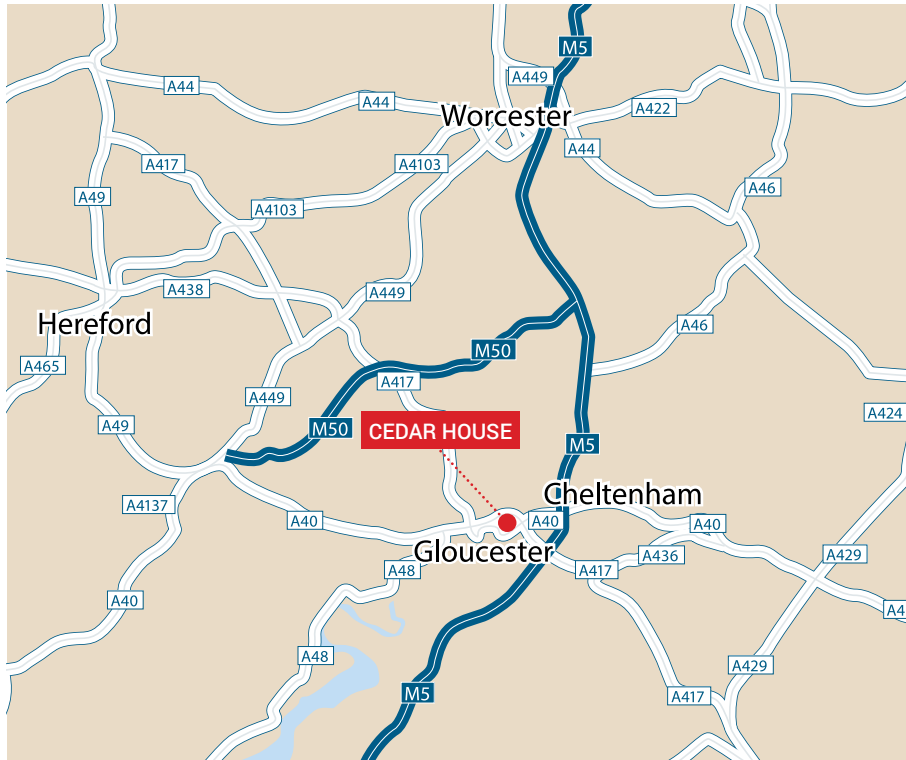
LOCATION

The historic Cathedral City of Gloucester is the administrative centre of Gloucestershire and considered one of the principal commercial centres of the south west of England. Gloucester is situated on the River Severn and lies close to the Welsh Border, approximately 32 miles (51 km) to the north east of Bristol, 45 miles (72 km) south west of Birmingham and 94 miles (150 km) west of London.

The town benefits from excellent road communications being located at the intersection of the A40 and A438, providing a direct link to the M5 at Junctions 11, 11A and 12. The M5 provides further links to the national motorway network including the M4, M50, M6 and M42.

Gloucester's railway station provides regular services to London (Paddington) with a fastest journey time of approximately 114 minutes. Direct services also operate to Bristol (54 minutes), Birmingham (55 minutes) and Cardiff (63 minutes).

Gloucester Airport is located within 9 miles (14 km) from the city centre, which offers services to Belfast, Jersey and the Isle of Man as well as private charters. Additionally, Bristol International Airport lies approximately 35 miles (63 km) south of Gloucester, and offers a wealth of domestic and international flights.



SITUATION

Cedar House is situated on Spa Road which lies 0.5 miles (800 metres) due south of the centre of the City and within 0.2 miles (350 metres) east of the popular historic attraction of Gloucester Docks.

To the west of Cedar House (some 300 yards away) is the Gloucester Quays designer outlet centre (opened in 2010) which has an outstanding mix of high street and designer shops as well as a plethora of restaurants, cafes and bars. Spa Road itself comprises a mix of residential accommodation, care homes, a bowling club, recreational park and office premises.

Gloucester is set to benefit from £190m worth of regeneration across a number of schemes including the Blackfriars scheme, a redevelopment of Gloucester's Waterside and at the Ladybellegate car park on which a large student accommodation scheme is to be erected.

The 4.13 acre site next to Gloucester Docks has undergone major ground works ready for the construction of new residential apartments as well as a 104-bedroom Premier Inn Hotel, Brewers Fayre restaurant and Costa Coffee.

The regeneration plan also allows for a new Civic Centre, Magistrates and Crown Courts, improved traffic flow around the city centre and pedestrian links from the Cathedral to the Quays along the waterfront.

Gloucester provides a primary catchment population of 357,000 persons and in the last ten years, total employment in Gloucester increased at a faster rate than the Retail PROMIS average. Over 75% of total employment in Gloucester is accounted for by the service sector. Within this sector, 'financial and business services' account for approximately 21% of total employment (Source: Promis).



DESCRIPTION

Cedar House currently provides B1 office accommodation of approximately 38,427 sq ft (3,569.98 sq m) arranged over ground and four upper floors. The ground and part first floors provide accommodation for a Job Centre Plus with administrative offices in the remainder of the building and plant rooms above the 4th floor.

Cedar House was built in the early 1970's and fully refurbished around 1991, a further small amount of renovation was undertaken in 2006 when the Job Centre was upgraded to a Job Centre Plus. Internally, the office accommodation is dated although there are two (8 person/ 630 kg maximum) central core lifts and an additional public lift serving the ground and first floors. The property provides car parking facilities for approximately 103 cars with a large proportion housed in an undercroft at ground floor level in the east portion of the building.

The property occupies a site area of 0.92 acres (0.37 ha) providing a site cover of approximately 24%.

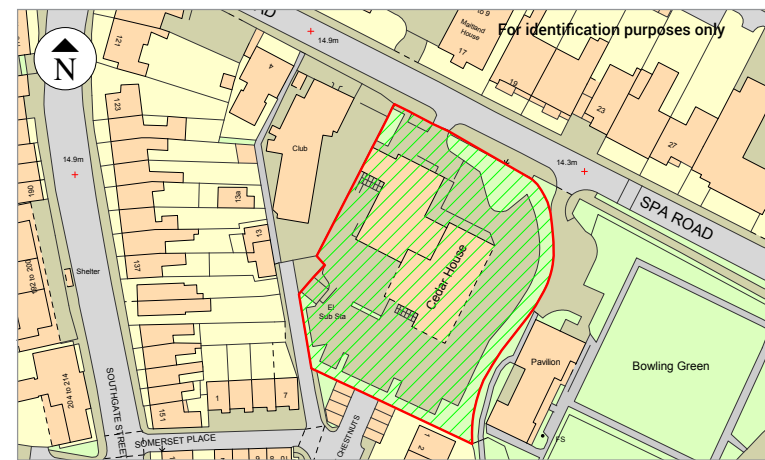
ACCOMMODATION

We have been provided with the total floor area, being 38,427 sq ft (3,569.98 sq m) which we understand has been measured in accordance with the RICS Code of Measuring Practice (6th Edition) on a net internal area (NIA) basis. In addition, we have sourced the following net internal floor areas from the Valuation Office Agency (www.voa.gov.uk) which gives a breakdown of the total on a floor by floor basis;

Floor	Sq m	Sq ft
Ground	335.60	3,612
First	750.00	8,072
Second	744.50	8,013
Third	750.90	8,082
Fourth	757.10	8,149
Total	3,338.1	35,928

TENURE

Freehold.



TENANCY


The property is let in its entirety to the Secretary of State for Communities and Local Government on a full repairing and insuring (FRI) lease expiring 31st March 2018. The lease is inside the security of tenure provisions of the Landlord and Tenant 1954 Act. Negotiations are at an advanced stage with the tenant in relation to a three year lease extension.

The current passing rent is £300,000 per annum. This reflects £7.80 per sq ft on an overall basis.

Cedar House currently accommodates a Job Centre Plus on the Ground and Part First floor with the remaining upper floors occupied by Job Centre Plus regional office.

The building is currently fully occupied by the tenant.

COVENANT

 Job Centre Plus was the name of a government executive agency, formed by the amalgamation of two agencies: the Employment Service, which operated Jobcentres, and the Benefits Agency, which ran social security offices. Job Centre Plus as an executive agency ceased to exist as of 4 October 2011. Services offered by Job Centre Plus are now offered directly by the Department for Work and Pensions. Although the Job Centre Plus corporate brand remains in place at the present time, it functions just as a public brand of the Department rather than a separate entity.



ASSET MANAGEMENT

The asset currently provides a number of opportunities.

- Agree to a new lease to The Secretary of State for Communities and Local Government.
- To carry out refurbishment works on the office accommodation and let on a floor by floor or entire basis.
- Convert the existing accommodation to residential under the current Permitted Development planning regulations (subject to planning consents).
- Redevelop the entire site with a new building for commercial or residential use (subject to planning consents).

EPC

An EPC assessment is available upon request.



VAT

The property has been elected for VAT purposes. It is the intention of the vendor to treat this transaction as a Transfer of a Going Concern (TOGC).

PROPOSAL

Offers are invited in excess of **£3,200,000 (Three Million, Two Hundred Thousand Pounds)**, subject to contract and exclusive of VAT. This reflects a **Net Initial Yield of 8.81%** and a **capital value of £83.25 per sq ft NIA**, after purchaser's costs of 6.47%.

FURTHER INFORMATION

Should you require further information or wish to view the property please contact either:-

STEVEN POLLACK

T: 020 7042 6002

M: 07530 424 019

E: steven@buchananbond.com

JONATHAN SKERRY

T: 020 7042 6004

M: 07736 300 594

E: jonathan@buchananbond.com

B BUCHANANBOND

3-5 Barrett Street
St Christopher's Place
London W1U 1AY

020 7042 6000

www.buchananbond.com

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Brochure: Adrian Gates Photography & Design. Tel: 07710 316 991

Appendix 6

E-MAIL FROM LOCAL AUTHORITY

From: [Ron Moss](#)
To: [Jason Lowes](#); [Jon Bishop](#)
Subject: RE: Gloucester - Cedar House - 21/00825/JPA
Date: 11 November 2021 13:10:00

Dear Jason ,

I have discussed this application with Jon and unfortunately have to say that we don't agree that the Job Centre Plus is simply an ancillary operation to the B1 a) office use on the above floors.

A Job Centre Plus operates as it's own clearly defined function providing an employment service to visiting members of the public ,as can be seen all around the country. There is no necessity for it to be accompanied by floors of offices above or necessity for the floors above to have a job centre attached to them , though I do accept that it may have been helpful for the DSS/DWP to have all these operations in one building.

Also whilst I didn't go onto the upper floors when visiting the site, I did get the impression that these floors appeared vacant.

I can confirm that we will look to make the decision tomorrow .

Regards ,

Ron

From: Jason Lowes <Jason.Lowes@rapleys.com>
Sent: Tuesday, October 26, 2021 11:35 AM
To: Ron Moss <Ron.Moss@gloucester.gov.uk>; Jon Bishop <Jon.Bishop@gloucester.gov.uk>
Subject: Gloucester - Cedar House - 21/00825/JPA

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Ron and Jon

Please find attached a short note on behalf of the applicant confirming our position that the overall land use of Cedar House is B1, notwithstanding the presence of Job Centre operations on part of the lower floors of the property.

I hope and trust that this provides you with the information you need to support the application for prior approval, but if you wish to discuss please let me know. I'm conscious that we have extended the deadline for decision to the end of the month - to provide you with adequate time to properly consider the information, I can confirm that I'm happy to extend the deadline until 12 November 2021.

Regards

Jason

Jason Lowes
BSc (Hons) DipTP MRTPI
Partner
Town Planning
07899 963524

RAPLEYS

RAPLEYS LLP

70 Pall Mall London SW1Y 5ES

0370 777 6292 | www.rapleys.com

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Ron Moss

Principal Planning Officer (Housing Delivery)

Place

Gloucester City Council, Shire Hall, Westgate Street, Gloucester, GL1 2TG

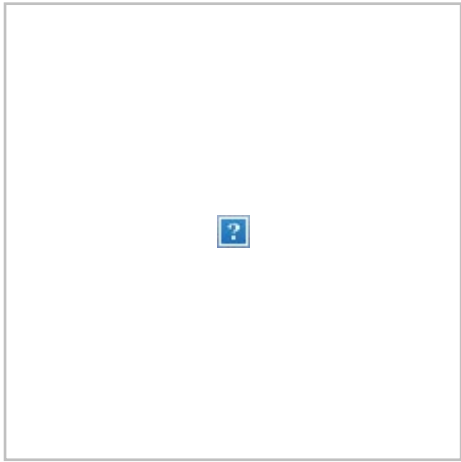
+441452396835

Ron.Moss@gloucester.gov.uk

www.gloucester.gov.uk

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Appendix 7

EMAIL FROM RAPLEYS

From: [Jason Lowes](#)
To: [Ron Moss](#)
Bcc: 8fe23540-b40d-4c45-87a9-a027ef34f47d.metaPublish@resolution.rapleys.com
Subject: Gloucester - Cedar House - 21/00825/JPA
Date: 08 December 2021 11:14:57
Attachments: [8fe23540-b40d-4c45-87a9-a027ef34f47d.png](#)

Ron

It was good to be able to speak to you this morning - as discussed I will liaise with my client on the outcome of our discussions - I note that there are two potential ways forward, as an alternative to the local authority determining the application now:

- Obtain a legal opinion on the land use of the building (as confirmed, we maintain that the entire building should be treated as being in former Class B1(a) use), or
- Remove the part of the building used directly in association with the Job Centre Plus from the application.

I will revert when I have spoken to my client, and confirm how we intend to respond. In the interim, I confirm our agreement that the determination period of the application can be extended to 31 January.

Thanks again for your time.

Regards

Jason

Jason Lowes
BSc (Hons) DipTP MRTPI
Partner
Town Planning
07899 963524



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Appendix 8

LEGAL OPINION

AEW UK INVESTMENT MANAGEMENT LLP

CEDAR HOUSE, SPA ROAD, GLOUCESTER, GL1 1XL

**APPLICATION FOR PRIOR APPROVAL REF: 21/00825/JPA
UNDER CLASS O PART 3 OF SCHEDULE 2 TO THE TOWN AND COUNTRY PLANNING
(GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015**

OPINION

Introduction

1. I am asked to advise AEW UK Investment UK LLP ("**AEW**") regarding an application for a prior approval (reference 21/00825/JPA) ("**the Application**") under Class O of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("**the GPDO**").
2. My advice is specifically sought regarding the present lawful use of Cedar House, Spa Road, Gloucester, GL1 1XL ("**Cedar House**").

Summary of Advice

3. In summary, I am of the opinion that:
 - a. Cedar House has a single lawful use as an office block (which for the purposes of the Application falls within Class B1(a) of the Town and Country Planning (Use Classes) Order 1987 ("**the UCO**") (as then in force)).
 - b. It would be wrong in principle to regard the presence of the Jobcentre Plus as resulting in a mixed use. Jobcentre Plus is not a distinct entity from the Secretary of State, who is the occupier of Cedar House, and the use of parts of Cedar House for that purpose is obviously incidental to the main use as offices. The use is ancillary.

Facts

4. The Cedar House is a four storey block, built in the early 1970s and fully refurbished in around 1991. It is a single entity, registered as a single freehold title.
5. Each floor of the building extends to approximately 750sqm, with the exception of the ground floor, which extends to approximately 335sqm (with undercroft parking beneath the remainder of the upper storeys).
6. Property particulars produced by Buchanan Bond indicate that for some time Cedar House has been let in its entirety to the Secretary of State on a repairing and insuring lease.
7. The upper floors have been used by the Secretary of State as administrative offices with a lobby on the ground floor as well as an area branded as a Jobcentre (prior to 2006) or Jobcentre Plus (after 2006), which also extends to part of the first floor.
8. It should be noted that Jobcentre Plus has not existed as an executive agency since 4 October 2011 and that, although Jobcentre Plus has been retained as a public brand by the Secretary of State, for more than 10 years it has simply been a function of the relevant Government department.
9. The total floor area of Cedar House is 38,427, less than 20% of which is 'Jobcentre Plus' branded.
10. The entirety of Cedar House, including the ground floor, is described as in 'Office' use by the Valuation Office Agency ("**VOA**") for the purpose of business rating.
11. The Buchanan Bond particulars describe it as "an extensive office building in central Gloucester providing 38,7427sq ft (3,569.98 sq m) of Office (B1) accommodation arranged over five floors" and elsewhere say that it "provides B1 office accommodation of approximately 38,427 sq ft (3,569.98 sq m)".

12. Those instructing have confirmed that there is no evidence planning permission has ever been granted to use Cedar House for anything but B1 office accommodation.

Law

13. Generally, development will not be lawful unless permitted by a grant of planning permission (section 57 of the Town and Country Planning Act 1990 (“the **1990 Act**”).

14. There are two main categories of development, operational development and material changes of use (section 55 of the 1990 Act). Whether or not a change of use is material is a matter of planning judgement. If a change of use is not material, that change will be lawful without planning permission, unless it would be in breach of condition (which is a distinct breach of planning control pursuant to section 171A of the 1990 Act).

15. Section 55(2) of the 1990 Act provides that certain operations or uses of land shall not be taken to involve development. In accordance with the power in section 55(2)(f) of the 1990 Act, Article 3 of the UCO makes clear that, “where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land”.

16. The Schedule to the UCO sets out a number of different classes of development. The effect of Article 3 is to deem changes of use within a given class immaterial. If a use falls outside any of those classes, it is commonly described as being *sui generis* (meaning of its own type). The UCO does not apply to *sui generis* uses. Similarly, the UCO has no application to mixed use sites (see *Fidler v First Secretary of State* [2004] EWCA Civ 1294 per Carnwath LJ (as he then was) at para. 28(iv)). Any mixed use is *sui generis*. For the avoidance of doubt the words “*sui generis*” do not connote a class of use; “*sui generis*” is a phrase which describes the absence of a use class.

17. Planning permission may be granted *inter alia* following an application, pursuant to section 70 of the 1990 Act, or by development order (see sections 59 - 61 of the 1990 Act).
18. Article 3 of the GPDO grants planning permission for the classes of development specified in Schedule 2 to it. There are some classes of permitted development which are subject to prior approval of certain matters being obtained from the local planning authority, or a determination by the authority as to whether such prior approval is required, before development may be begun.
19. One such class is Class O of Part 3 of Schedule 2 to the GPDO which, as in force at the time the Application was submitted, grants permission for development consisting of a change of use of a building from a use falling within Class B1(a) (offices) of the Schedule to the UCO (as then in force) to a use falling within Class C3 (dwellinghouses) of that Schedule, subject to the limitations in para. O.1 and subject to the condition in O.2 that the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to certain matters.
20. As the Court of Appeal made clear in *Keenan v Woking BC* [2018] PTSR 697, Article 3(1) read together with Class O grants permission for each development which falls within the ambit of the description in that class read together with the exclusions in para. O.1. Development which does not fall entirely within the ambit of that description falls outwith the GPDO and requires planning permission.
21. This necessitates consideration of the existing lawful use of the land at the time when the Application was submitted.
22. When considering the lawful use of land, an important concept is that of the 'planning unit'. This is a judge made concept. The relevant authorities were recently considered by the High Court in *R (KP JR Management Company Limited) v LB Richmond* [2018] JPL 838. From that analysis the following propositions emerge:

- a. The planning unit is quintessentially a matter of fact and degree on which the local planning authority or other primary decision maker must form a judgement (see para. 53);
 - b. It may be a useful working rule of thumb to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use “both physically and functionally” (emphasis added see *Burdle v Secretary of State for Environment* [1972] 1 WLR 1207 per Bridge J (as he then was) at 1213).
 - c. Whenever it is possible to recognise a single main purpose of the occupier’s use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered (see *G. Percy Trentham Ltd v Gloucestershire CC* [1966] 1 WLR 506 per Diplock LJ (as he then was) at p. 513).
 - d. If it is not possible to say that one is use incidental or ancillary to another, then there will be a “mixed” use.
 - e. If, within a single unit of occupation, two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes, each area used for a different main purpose ought to be considered a separate planning unit.
23. Importantly, any use ancillary to a primary use will be lawful. As the Planning Encyclopedia, and the cases it cites, make clear at P55.39, ancillary uses will frequently have a “quite different character” from the primary use. Thus, for example, a non-residents bar in a hotel is ancillary to hotel use, even when the vast majority of its customers are not hotel residents. By concentrating on the primary use, however, planning control permits fluctuation in the level of ancillary activity, the initiation of new ancillary uses and the abandonment of old without permission (see *Emma Hotels Ltd v Secretary of State for the Environment* [1981] J.P.L. 283).

24. Whether or not a given use is ancillary will be a matter of judgment. In exercising that judgment, however, it is critical to understand that ancillary use turns on functional relationship more than on extent (see Encyclopedia para. 55.42). The central question is, as Sedley LJ made clear in *Harrods Ltd v Secretary of State* [2002] JPL 1321, what activities legitimately form part of the main use? That is because planning law is focused on primary uses and permits fluctuation in the level of ancillary activity.

Analysis

25. Applying the above principles to the facts of this case, I am of the view that Cedar House is a single planning unit lawfully in use as offices, falling within Class B1(a) of the UCO for the purposes of the Application, but otherwise now falling within Class E. That is for the following reasons:

- a. *First*, it is indisputable that the relevant planning unit is Cedar House, which is a single physical entity owned as a single freehold entity and occupied by a single tenant for a single purpose.
- b. *Second*, it is clearly possible to discern a single main use of Cedar House; namely use as an office building. That is the obvious character of the use, with a lobby on the ground floor and significant office accommodation above.
- c. *Third*, the branding of part of the ground and first floors as a Jobcentre Plus does not change the fact that the entirety of the building is occupied by the Secretary of State. As already identified, for more than 10 years Jobcentre/ Jobscentre Plus has simply been a function of the relevant Government Department.
- d. *Fourth*, the presence of the Jobcentre Plus branded areas is entirely functionally dependent upon, and incidental to, the Secretary of State's occupation of Cedar House as an office building. It takes place on less than 20% of the site and is intrinsically linked to that use. It is, in short, a classic example of a use lawfully ancillary to the main office use.

- e. *Fifth*, I am fortified in that conclusion by the fact that:
- i. The VOA regards all floors as being in office use for the purposes of rating; and
 - ii. The Buchanan Bond particulars describe the whole of Cedar House as an office building, referring to all of the floorspace across all five floors as office accommodation.
- f. *Sixth*, any other approach does not sit comfortably with the legal principles I have outlined above. A conclusion to the contrary fails properly to focus on the main use of Cedar House, and to recognise that planning law permits fluctuating ancillary uses.

26. I note that this conclusion also accords with the view formed by Rapleys LLP as set out in a Note dated 26 October 2021. Rapleys are a highly respected firm of Planning Consultants, and the Note was produced by a Royal Town Planning Institute Chartered Town Planner. The coincidence between their view and mine further re-enforces my view that the correct conclusion is that Cedar House has a single lawful use as an office block falling (for the purposes of the Application) within Class B1(a) of the UCO (as then in force).

Conclusion

27. My conclusions are set out in the summary of advice above. If I can be of further assistance those instructing should not hesitate to contact me.

Charles Streeten
Francis Taylor Building

26 January 2022