

<b>Delegated Report</b> Prior Approval GPDO Part 3, Class MA		<b>Analysis sheet</b>		<b>Expiry Date:</b>		07/10/2024			
		N/A		<b>Consultation Expiry Date:</b>		15/09/2024			
<b>Officer</b>				<b>Application Number(s)</b>					
Matthew Kitchener				2024/3366/P					
<b>Application Address</b>				<b>Drawing Numbers</b>					
115 King's Cross Road London WC1X 9NH				See draft decision notice					
<b>PO 3/4</b>		<b>Area Team Signature</b>		<b>C&amp;UD</b>		<b>Authorised Officer Signature</b>			
<b>Proposal(s)</b>									
Change of use of the ground and lower ground floors to residential under the General Permitted Development Order (GDPO, 2015) Schedule 2, Part 3, Class MA - commercial, business and service uses to dwellinghouses, to create a two-bedroom dwelling.									
<b>Recommendation(s):</b>		Refuse prior approval							
<b>Application Type:</b>		GPDO Prior Approval Class MA Commercial, business and service uses to dwellinghouses							
<b>Informatives:</b>									
<b>Consultations</b>									
<b>Adjoining Occupiers:</b>		No. of responses		00		No. of objections		00	
<b>Summary of consultation responses:</b>		A site notice was displayed 14/08/2024 which expired 07/09/2024. A press notice was published 22/08/2024 which expired 15/09/2024.  No responses were received from neighbouring occupiers.							
		Bloomsbury CAAC were consulted and objected due to lack of clarity with the proposal and the submitted details.							

## Site Description

The application site is a mid-terrace four storey building, including basement. The building is not listed but is located within the Bloomsbury Conservation Area.

## Relevant History

**2024/3394/P** - Details to discharge Condition 4 (Detailed Drawings) of planning permission 2021/4444/P dated 10/01/2024 for the 'Erection of a mansard style roof extension to facilitate the formation of a 2nd and 3rd floor 2 bedroom 4 person flat. Erection of a first floor rear extension and formation of first and second floor rear terraces (1st floor to be used as a 1 bed 2 person flat). Replacement timber sash windows on front and rear elevations' – **Granted 23/09/2024**

**2021/4444/P** - Erection of a mansard style roof extension to facilitate the formation of a 2nd and 3rd floor 2 bedroom 4 person flat. Erection of a first floor rear extension and formation of first and second floor rear terraces (1st floor to be used as a 1 bed 2 person flat). Replacement timber sash windows on front and rear elevations – **Granted 10/01/2024**

## Relevant policies

**National Planning Policy Framework 2021**

**The London Plan 2021**

**Camden Local Plan 2017**

Supplementary guidance

Bloomsbury Conservation Area Appraisal and Management Strategy (2011)

## Assessment

### 1.0. Proposal

1.1 Prior approval is sought for the change of use of the ground and lower ground floors to residential under the General Permitted Development Order (GDPO, 2015) Schedule 2, Part 3, Class MA - commercial, business and service uses (Class E) to dwellinghouses (Class C3), to create a two-bedroom dwelling. The premises is a ground and lower ground floor unit which appears to have been operated as a hot food takeaway (Sui Generis) for an unspecified amount of time.

### 2.0 GPDO acceptability

2.1 The Town and Country Planning (General Permitted Development) (Amendment) (England) Order (GPDO) 2015, Schedule 2, Part 3, Class MA, allows for the change of use of a building from a use falling within Class E, to a use falling within Class C3 (dwellings) of that Schedule, subject to a prior approval process as well as conditions. Class M(b) also allows for buildings operations reasonably necessary to convert the building.

2.2 Development that accords to sub-paragraph MA.1(a)-(g) are permitted by this class, subject to a number of conditions listed within sub-paragraph MA.2 (1)-(6). Prior approval procedure requires the developer to apply to the LPA for a determination as to whether prior approval of the authority would be required as to:

(a) transport and highways impacts of the development,

(b) contamination risks in relation to the building,

(c) flooding risks in relation to the building,

(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use—

(i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or

(ii) where the building is located in a key shopping area, on the sustainability of that shopping area, and

(e) the design or external appearance of the building,

2.3 Paragraph W sets out the procedure for applications for prior approval under Part 3. This application seeks to ascertain whether the proposed change of use would constitute permitted development and whether prior approval is required. Part W (13) of the legislation notes that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

### **3. Assessment under Part 3, Class MA of the GPDO Compliance with paragraph MA.1**

Development is not permitted by class MA...

3.1 (a) Unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;

Proposal complies: During the site visit the property was seen to be boarded up. The applicant claims it has been vacant for 3 months and the Council has no reason to dispute this..

3.2 (b) unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

Proposal does not comply: The site was last in use as a hot food takeaway (Sui Generis / Class A5 pre-2020) which appears to have been the use since at least 2017. As such, the proposed change of use is not permitted by Class MA.

3.3 (c) the cumulative floor space of the existing building changing use under Class M exceeds 1,500 square metres;

Proposal complies: The proposed floor space is 89m<sup>2</sup>.

3.4 (d) if land covered by, or within the curtilage of, the building

- I. is or forms part of a site of special scientific interest;
- II. is or forms part of a listed building or land within its curtilage;
- III. is or forms part of a scheduled monument or land within its curtilage;
- IV. is or forms part of a safety hazard area; or
- V. is or forms part of a military explosives storage area;

Proposal complies: The building is not within any of the specified areas.

3.5 (e) if the building is within

- I. an area of outstanding natural beauty;
- II. an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981(1);
- III. the Broads;
- IV. a National Park; or
- V. a World Heritage Site;

Proposal complies: The building is not within any of the specified areas.

3.6 (f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

Proposal complies: the site is not occupied under an agricultural tenancy.

3.7 (g) before 1 August 2022, if—

- I. the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
- II. the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

Proposal complies: The proposed development does not fall within Class O.

3.8 Considering the above, the proposal would not accord with criteria (g) of paragraph MA.1. It will not fall within the remit of development permitted subject to prior approval under paragraph MA.2. Nonetheless, the prior approval impacts have been considered below.

### **Compliance with paragraph MA.2**

4. Where development proposal follows paragraph MA.1, development is permitted subject to the conditions that before beginning the development, the developer must apply to the local planning authority for a determination as to whether prior approval of the authority will be required. Each criterion will be discussed in turn as follows:

4.1 (a) transport and highways impacts of the development,

The proposal does not comply: The application site is located within an excellent level of accessibility by public transport, with a PTAL level 6b. Given the modest level of building operations proposed, in this instance the operational development aspect of the proposed development would not be considered likely to result in detrimental impacts upon the highways

network. However, to ensure that the development promotes sustainable modes of transport and mitigated against a potential worsening of local traffic, parking and air quality conditions. The development would be expected to be 'car-free' with rights to on-street parking permits removed and would be required to provide adequate storage for cycles. The proposed unit would be required to be secured as a 'car-free' dwelling via a section 106 legal agreement. This would prevent new residents from accessing parking permits to promote more sustainable modes of transport and prevent increases in poor air quality and congestion. The failure of the applicant to enter into a S106 agreement for car-free development constitutes a reason for refusal. Were the development otherwise considered acceptable this could have been overcome via a legal agreement.

4.2 (b) contamination risks in relation to the building,

The proposal does not comply: The applicants supporting statement stated that they were unaware of any contamination risks, but no contamination assessment has been supplied. Given the change of use to a more sensitive end use (residential with private garden area), and the introduction of potential pathway for contaminants of concern (residential garden), there is a potential unacceptable risk to end users. Elevated background concentrations of heavy metals are known to be present across Camden. Were the development otherwise considered acceptable, this could have been dealt with via planning condition.

4.3 (c) flooding risks in relation to the building,

The proposal does not comply: Although the building is located with Flood Zone 1 and has a low risk of river flooding it is also located within an identified local flood risk area subject to surface water flooding. The building is therefore at risk of flooding and therefore this application should be refused.

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

The proposal does comply: The applicant has not provided an internal noise survey to assess the impact of the new residential property on future occupiers. The new residential unit faces the street where noise nuisances can arise, and is situated between an estate agent and an office unit. It is not considered that these uses, or this location would cause rise to detrimental noise nuisance to any future occupiers.

4.5 (e) Where:

- I. The building is located in a conservation area, and
- II. The development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;

The proposal complies. Whilst there is a continuous frontage of commercial frontages, these are not considered intrinsic to the character of the Conservation Area in this location. It is noted that no physical changes are proposed externally and therefore the change of use would not impact on the appearance or character of the conservation area.

4.6 (f) The provision of adequate natural light in all habitable rooms of the dwellinghouse

The proposal does not comply:

The Building Research Establishment publishes the leading industry guidelines on daylight and sunlight in BR209 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' (third edition, 2022) (BRE). BRE suggests Spatial Daylight Autonomy (sDA) and sunlight exposure targets. For daylight rooms have been tested against the sDA targets set out within the UK National Annex (UKNA) on BS EN 17037:2018. sDA is a climate-based metric which represents the portion of a space achieving a certain illuminance target (measured in lux) for more than half of the daylight hours in the year. The recommendation within BR 209 and EN 17037 is for at least 50% of the spaces to achieve a given illuminance target based on the room use.

The two bedrooms to the ground floor would each have a glazed door opening out onto a flat roof at the rear and the kitchen and living room at lower ground floor would have a door and a window to provide daylight. The directly adjacent building to the south side of the property has four storeys above ground and it is considered that this buildings location, height and proximity may result in a lack of sufficient natural light to the property. In the absence of a Daylight/Sunlight assessment demonstrating otherwise, it is considered that habitable rooms in the development would fail to receive sufficient natural light. The proposal would therefore not comply with MA.2. condition (f).

- 4.7 (g) The impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for generally heavy industry, waste management, storage and distribution, or a mix of such uses;

The proposal complies: The area where the application site lies is not characterised by general heavy industry, waste management, storage and distribution, or a mix of such uses. Future occupants would not be impacted by such uses and therefore the proposal complies in this regard.

- 4.8 (h) Where the development involves loss of services provided by (i) A registered nursery, or (ii) A health centre maintained under section 2 or 3 of the National Health Service Act 2006, The impact on the local provision of the type of the service lost.

The proposal complies: The proposed development would not involve loss of a registered nursery or a health centre maintained under section 2 or 3 of the National Health Service Act 2006.

- 4.9 (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building (as interpreted under Paragraph MA.3).

Paragraph MA.3 - Development meets the fire risk condition referred to in paragraph MA.2(2)(i) if the development relates to a building which will—

a) contain two or more dwellinghouses; and  
b) satisfy the height condition in paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015:

9A – (3) The height condition is that—

a) the building is 18 metres or more in height; or  
b) the building contains 7 or more storeys.

The proposal complies: The proposed development would not contain two or more dwellinghouses, nor would it be 18 storeys in height or contain 7 or more storeys. As such, the fire safety impacts on the intended occupants of the building are not required to be determined as part of this application.

**5. Conclusion and Recommendation:**

- 5.1 The proposal does not comply with the criteria (a) and (b) of MA.1 of Schedule 2, Part 3, Class MA of the GPDO (2015 as amended) so it cannot be considered for a change of use from Class E to residential. It has not been demonstrated that the building was in use for a purpose specified in sub-paragraph (2) of Class MA of the GPDO (2015 as amended) for a continuous period of at least 2 years prior to the date of the application (b).
- 5.2 Finally, the proposal does not comply with conditions (a) (transport), (b) contamination, (c) flood risk, and (f) natural light of MA.2 of Schedule 2, Part 3, Class MA of the GPDO (2015 as amended). It is noted that condition a.) transport could be overcome by entering into a S106 legal agreement.

**Prior Approval is refused for the following reasons:**

1. The proposal does not comply with the criteria (a) and (b) of MA.1 of Schedule 2, Part 3, Class MA of the GPDO (2015 as amended) so it cannot be considered for a change of use from Class E to residential. It has not been demonstrated that the building was in use for a purpose specified in sub-paragraph (2) of Class MA of the GPDO (2015 as amended) for a continuous period of at least 2 years prior to the date of the application (b).
2. In the absence of any contamination assessment for the site to demonstrate otherwise, it is likely that the future occupiers would be impacted by potential contamination from the use of the rear amenity space to the detriment of their amenities. It would therefore not comply with criteria MA.2 (b) of Class MA, Schedule 2, Part 3 of the GPDO.
3. The proposed development, by nature of its location and the provision of habitable accommodation at basement level within a local flood risk area is contrary to MA.2 (c) of Class MA, Schedule 2, Part 3 of the GPDO.
4. The proposed development, in the absence of a Section 106 legal agreement to secure the residential units as car-free, would contribute unacceptably to parking stress and traffic congestion in the surrounding area and the failure to provide cycle parking would not promote the use of sustainable transport. It is therefore contrary to MA.2 (a) of Class MA, Schedule 2, Part 3 of the GPDO.
5. In the absence of a Daylight/Sunlight Assessment to demonstrate that all habitable rooms would receive adequate natural light, it is considered that the proposal has failed to demonstrate that it would provide an acceptable level of natural light contrary to MA.2 (f) of Class MA, Schedule 2, Part 3 of the GPDO.