

<b>Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>		08/11/2024	
Prior Approval GPDO Part 3, Class MA		N/A / attached		<b>Consultation Expiry Date:</b>		13/10/2024	
<b>Officer</b>				<b>Application Number(s)</b>			
Miriam Baptist				2024/3751/P			
<b>Application Address</b>				<b>Drawing Numbers</b>			
159 Broadhurst Gardens London NW6 3AU				See 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 rear section of the property from Class E to C3 (one maisonette flat) via Schedule 2 Part 3 Class MA of the GDPO. The retail/commercial space to the front of the property would remain.							
<b>Recommendation(s):</b>		Refuse Prior Approval					
<b>Application Type:</b>		GPDO Prior Approval Class MA Change of use of Class E to Class C3					
<b>Conditions or Reasons for Refusal:</b>		Refer to Draft Decision Notice					
<b>Informatives:</b>							
0	No. notified	0	No. of responses	0	No. of objections	0	
<b>Neighbour Consultation:</b>		A site notice was published on 18/09/2024 and expired on 12/10/2024. No responses were received from neighbouring occupiers.					
<b>CAAC/groups comments:</b>		No consultation responses from local groups were received.					
<b>Site Description</b>							
The application site is located on the south side of Broadhurst Gardens, between the junctions with West End Lane and West Hampstead Mews. It is within the South Hampstead Conservation Area. In relation to land use, the site is not subject to an Article 4 direction.							
The application property comprises a three-storey mid-terrace building. It was last in commercial use on the ground floor as a carpet cleaners, although has been vacant since 2017.							

## Relevant History

N/A

## Relevant policies

**The Camden Local Plan 2017**

**Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015**

**Technical Housing Standards - Nationally Described Space Standards 2015**

**The National Planning Policy Framework 2023**

## Assessment

### 1. Proposal

- 1.1. The application relates to the existing commercial property at 159 Broadhurst Gardens which is currently vacant but according to the applicant was last used as a carpet cleaners before 2017. Prior approval is sought for the change of use for the area to the rear at ground and upper ground floor level 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).
- 1.2. The proposal would provide one 2-bedroom dwelling unit while the front of the property would be retained as commercial space.

### 2. GDPO 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 several 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 impacts of the development, particularly to ensure safe site access;
  - b) contamination risks in relation to the building;
  - c) flooding risks in relation to the building;
  - d) impacts of noise from commercial premises on the intended occupiers of the development;
  - 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;
  - f) the provision of adequate natural light in all habitable rooms of the dwellinghouse;

- 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 general or heavy industry, waste management, storage and distribution, or a mix of uses; and
- h) where the development involves loss of services provided by -
  - (i) a registered nursery,
  - (ii) or 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 services lost.

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 GDPO the Compliance with paragraph MA.1**

#### **3.1. Development is not permitted by Class MA**

##### **3.1.1. (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;**

The proposal complies: Google Maps Streetview (investigated by the Council) suggests that the building has been vacant for more than three months. The Council has no reason to dispute the property's vacancy over the last three months.

##### **3.1.2. (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;**

The proposal complies: The applicant states that the site was previously occupied as a Carpet Cleaners before 2017 (Class E) which the Council have no reason to dispute. The Use Class Order confirms that buildings used "for the display or retail sale of goods, other than hot food, principally to visiting members of the public" fall within Class E of the Use Class Order. A carpet cleaning business is considered to fall within this definition.

##### **3.1.3. (c) If the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;**

Proposal complies: The existing gross internal area (GIA) floorspace proposed for the change of use is approximately 75.5 sqm.

##### **3.1.4. (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 application site does not form part of the above specified areas or designations.

##### **3.1.5. (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 application site does not form part of the above specified areas or designations.

**3.6.1. (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.

**3.1.6. (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.

Considering the above, the proposal would accord with criteria of paragraph MA.1.

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

3.2. Where the 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:

**3.2.1. (a) Transport and highways impacts of the development, particularly to ensure safe site access**

3.3. The application site has a reasonable level of accessibility by public transport, with a high PTAL level of 6a.

3.4. Given that the proposals relate to the change of use of the rear part of the building, with only internal modifications required and no external building works, it is considered that the development can proceed without recourse to a Construction Management Plan. It is similarly considered that a highways contribution would not be necessary.

3.5. The proposed unit if acceptable would need 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. Were the development considered acceptable this could have been overcome via a legal agreement. The failure to secure car-free development by way of S106 agreement constitutes a reason for refusal.

3.6. In line with Policy T1 of the Camden Local Plan, we expect cycle parking at developments to

be provided in accordance with the London Plan standards. No formal cycle parking is shown on the submitted plans and access to the rear courtyard, where it may be possible to provide covered cycle storage, from the flat is not shown. If cycle parking cannot be provided within the rear courtyard, then it would be appropriate to secure a S106 cycle parking contribution of (£4,320/6 x 2=) £1,440 towards the provision of 2 spaces in a 6 space bike hangar to be provided in the vicinity of the site.

- 3.7. The failure of the applicant to enter into a S106 legal agreement for car-free development, and to either provide cycle parking on-site or to enter into a S106 agreement for a contribution to cycle parking spaces, constitutes a reason for refusal.

### **(b) Contamination Risks in relation to the building**

- 3.8. Council records do not show any historic potentially contaminative land at the site. Given this, the site is considered to pose a low risk, noting ground disturbance is likely to be limited with the current building remaining on site with internal alterations.
- 3.9. It is understood the development includes a change of use from commercial to residential (with no garden area). Given the proposed development includes internal changes only, it is considered unlikely there will be ground disturbance as part of the development.
- 3.10. Noting the proposed internal alternations, should the prior approval be granted, the following condition is recommended in the event of asbestos being present/disturbed during the redevelopment:

#### **'Asbestos**

*The developer must either submit evidence that site buildings were built post 2000 or provide an intrusive pre-demolition and refurbishment asbestos survey in accordance with HSG264 supported by and appropriate mitigation scheme to control risks to occupiers. The scheme must be written by a suitably qualified person and submitted to the Local Planning Authority (LPA) for approval before commencement. The scheme as submitted shall demonstrably identify potential sources of asbestos contamination and detail removal or mitigation appropriate for the proposed end use. Detailed working methods are not required but the scheme of mitigation shall be independently verified to the satisfaction of the LPA prior to occupation.*

*Reason To protect occupiers of the development from the possible contamination arising in connection with the buildings on the site in accordance with policies A1 (Managing impact of development), C1 (Health) and CC5 (Waste) of the London Borough of Camden Local Plan 2017.'*

### **(c) Flooding risks in relation to the building**

- 3.11. The site is within flood zone 1, has a low probability of flooding from rivers and the sea, and is low risk in terms of surface water flooding, however it is near a historic watercourse (River Westbourne) and has a high number of reported sewer incidents, 60+.
- 3.12. No basement is proposed as part of this application. However, the development should still comply with Policy CC3 from the Local Plan which requires developments to:
- a) incorporate water efficiency measures;
  - b) avoid harm to the water environment and improve water quality;
  - c) consider the impact of development in areas at risk of flooding (including drainage);

d) utilise Sustainable Drainage Systems (SuDS) in line with the drainage hierarchy to achieve a greenfield run-off rate where feasible;

3.13. As the proposal is not considered to have a high risk of flooding, residential use would be acceptable in this regard.

3.14. **(d) Impacts of noise from commercial premises on the intended occupiers of the development**

3.15. The applicant has not provided an internal noise survey to assess the impact the new residential property. However the new residential unit would be at the rear and would not face the street where noise nuisances could arise. It is therefore not considered that a proposed dwelling in this location would be unduly at risk of noise impacts.

3.16. **(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;**

3.17. The application site lies within the South Hampstead Conservation Area, however because the proposal retains the Class E usage at the front of the property the change of use is not considered to impact the character or sustainability of the conservation area.

3.18. **(f) The provision of adequate natural light in all habitable rooms of the dwellinghouse.**

3.19. 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 representing 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.

3.20. The new CBDM methodology is based on the British Standard 'Daylight in Buildings' (BS EN17037). The CBDM methodology is based on target illuminances from daylight. The calculations are based on localised weather data. The British Standard contains advice and guidance on interior daylighting for all buildings across Europe but also has a UK National Annex which provides suggested targets for dwellings in the UK. The UK Annex gives illuminance recommendations of 100 Lux in bedrooms, 150 Lux in living rooms and 200 Lux in kitchens. These are median illuminances to be achieved over 50% of the assessment area for at least half of the daylight hours.

3.21. The Daylight/Sunlight assessment submitted shows that 0% of the kitchen, 7.5% of the GF living room, 16.6% of the UGF living room, 23% of the GF bedroom and 17.5% of UGF bedroom, meets the sDA illumination required. These are significantly low levels of natural illumination and subsequently the proposed dwelling is not considered to provide adequate living conditions. Similarly, the tests for Daylight Factor show very low levels of illumination.

3.22. The habitable rooms in the development would fail to receive sufficient natural light.

The proposal therefore does not comply with MA.2. condition (f).

3.23. **(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; and**

3.24. The area where the application site lies is not characterized 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.

3.25. **(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.**

3.26. 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.

3.27. **(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.**

3.28. 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.

#### **4. Conclusion**

4.1. Prior Approval is refused for the following reasons:

1. As demonstrated by the Daylight/Sunlight Assessment the dwelling would not receive adequate natural light, and therefore the proposal is contrary to MA.2 (f) of Class MA, Schedule 2, Part 3 of the GPDO.
2. The proposed development, in the absence of a Section 106 legal agreement to secure the residential units as car-free and in the absence of provision of cycle parking or a Section 106 legal agreement to secure a contribution towards cycle parking, would contribute unacceptably to parking stress and traffic congestion in the surrounding area. It is therefore contrary to MA.2 (a) of Class MA, Schedule 2, Part 3 of the GPDO.