

<b>LDC (Proposed) Report</b>		<b>Application number</b>	2021/3772/P
<b>Officer</b>		<b>Expiry date</b>	
Elaine Quigley		29/09/2021	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
Lilian Baylis House 165 Broadhurst Gardens London NW6 3AX			
<b>Conservation Area</b>		<b>Article 4</b>	
<b>Proposal</b>			
Use of existing 3/4 storey building as a school for 300 pupils within Class F1 of the Use Classes Order, as amended.			
<b>Recommendation:</b>		Refuse Certificate of Lawfulness	

#### **SITE DESCRIPTION**

The application site is located in West Hampstead is currently owned by English National Opera. It is used to provide rehearsal rooms, recording studios, storage and office space.

The existing building fronts onto Broadhurst Gardens and comprises lower ground and two upper floors. The main entrance to the building is from Broadhurst Gardens. The rear of the building backs onto West Hampstead Mews which is to the south; it is part single, part two storey on this elevation, although it has quite generous floor to ceiling heights. The west elevation of the building fronts onto Exeter Mews and is one to three storeys in height. The site is located within the West Hampstead Town Centre. The building is Grade II listed and is located in the Swiss Cottage Conservation Area.

#### **PROPOSAL**

The application seeks to demonstrate that the existing use of the site falls within Class F1 and that the change of use from use by the English National Opera (for its rehearsal rooms, recording studio and office space) to an independent school fall within the same use class and would therefore not require planning permission.

#### **RRELEVANT POLICY**

Section 55(2)(f) of the Town and Country Planning Act 1990 (as amended)  
Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

#### **PLANNING HISTORY**

Planning permission was **granted** (ref 1860/4210) on **06/02/1950** for erection of a one-storey building, comprising two recording rooms and one store-room, at Exeter Mews, West Hampstead Mews, Hampstead, forming an extension to the recording studios

Planning permission was **granted** (ref 1860/7869) on **07/10/1952** for erection of a part two-

storey and part one-storey building, comprising additional recording rooms and stores, a garage and a resident engineer's flat, on the east side of Exeter Mews, Hampstead, forming an extension to the recording studios.

Planning permission was **granted** (ref 1860/21302) on **29/03/1954** for erection of an echo chamber at the rear of the ground floor of the recording studios

Planning permission was **granted** (ref TP1860/16040) on **04/01/1958** for alterations and additions in connection with the construction of two new recording rooms at the rear

A pre-application (ref 2007/3116/PRE) was submitted to the Council on 30/05/2007 for redevelopment of the site. A view was taken by officers at the time that the use appeared to be a composite one which encompassed elements of different uses.

## **CONSULTATION**

There is no requirement to consult on this type of application. However local groups and residents have submitted objections to the proposal which are detailed below.

### **Fortune Green and West Hampstead Neighbourhood Plan – objects**

The Fortune Green and West Hampstead Neighbourhood Plan states that any future use of the site should aim to retain a performance / cultural space for example a small cinema or gallery. Any development should also be in keeping with its location in the South Hampstead Conservation Area and see no reason why that should change.

### **West Hampstead Liberal Democrats - objects**

- Impact on traffic
  - (i) New car-free schools are not enforced – e.g. traffic wardens at Maygrove Road have been asked to give parents 10 minutes grace period to drop children at school.
  - (ii) Leads to parking violations (parking on single and double yellow lines)
- Specific traffic concerns
  - (i) Broadhurst Gardens is narrow road with parking on both sides. The school run traffic and parking will increase congestion
  - (ii) Broadhurst Gardens is route of C11 and rail replacement buses for the overground, jubilee line and metropolitan lines when they are not working. Even short delays caused by parents dropping off / collecting children would cause delays to the bus passengers
- If blocked road users may drive on the pavement to manoeuvre around parked or waiting cars putting children walking to school at risk
- Increased car traffic will lead to additional air pollution along West End Lane and Broadhurst Gardens
- Increased litter and noise with increased footfall by 300 young people in the area

### **CRASH – objects**

- Untrue that the building has not been used for performances open to the public. Members of the public were welcomed in to watch rehearsals, participate in workshops and its community choir and also attend concerts
- Location of the site and the narrow one-way road with narrow pavements and no outside

space for children to play or drop-off / pick up location nearby to take children to any sports facilities means it is unsuitable for a school

- Local transport system would struggle to cope with additional numbers using the routes at rush hours as would the narrow pavements on West End Lane and Broadhurst Gardens. The tube is not step free and there are no pull ins for transport that might be required for students with mobility impairments
- A cultural space as envisaged in the Neighbourhood Plan proposals would be preferable, more workable and more in line with the heritage of the building

### **Thames Water – no objection**

No objection to the proposal with regard to combined waste and water network infrastructure capacity based on the information provided subject to informatives.

### **Local residents**

6 letters of objections have been received from neighbouring occupiers (at 9a Hemstal Road, Flat 2, 4 Sherriff Road, 2 Gladys Road, 14 Gladys Road, Flat D, 11 Compayne Gardens), and a resident who did not provide a postal address, raising the following concerns:

- As a professional musician who is familiar with the nature of the work that was previously undertaken by ENO employees I disagree with the applicant that the space has been used as rehearsal and practice space as an educational training centre. The ENO are a renowned professional organisation of highly skilled professional opera singers and orchestra musicians with highly qualified and expert back-stage staff. They have long passed through education and training for their professional careers. They rehearse for professional operatic performances. To suggest that the work that these virtuoso performers were undertaking at the site can be compared to an educational training centre is quite ridiculous.
- Paid for performances of the opera and other musical events have been widely advertised in the local press so for the applicant to suggest that the property has never been used for performances open to the members of the public is not true
- High level of traffic generation as a result of the use. There are already significant traffic and parking problems on Broadhurst Gardens due to its narrowness and the fact that it is one-way and is a bus route for the C11 and this route is often used for rail replacement buses when the Jubilee Line is not working.
- Significant traffic flow, congestion and pollution difficulties in West Hampstead, particularly Broadhurst Gardens and adjacent and surrounding streets including West End Lane.
- With West Hampstead having to cope with 2,500 to 3,000 new residents in an area within less than a quarter of a mile the congestion and pollution and saturation of over development is making life difficult for existing residents.
- Enough schools within the locality of Ofsted excellent nature to adequately serve the existing community.
- Sufficient number of private school facilities in Fitzjohns Avenue which also cause major traffic problems together with the Jewish Free School in Finchley Road. A new private school is not needed. It only serves a low portion of the community and best serves

proprietors of North Bridge House.

- The building would provide no outdoor space for the children to use. If they do sporting activities elsewhere they would need to be bused to these locations. Any coach parked outside the school waiting to pick up pupils would clog the narrow road causing congestion in what is already a very congested area
- Due to number of local restaurants and bars that are located along Broadhurst Gardens the pavements can become congested and children would have to walk out onto the road when the bars are busy in the afternoon which is dangerous.
- A new school next to a pub (historic Railway Pub) is not appropriate.

1 comment has been received from a local resident stating that there is no objection to a new school but are concerned about increase in road traffic along West End Lane, especially with cars trying to turn onto one way Broadhurst Gardens.

## **ASSESSMENT**

Under Schedule 2, part B of The Town and Country Planning ((Amendment) (England) Regulations 2020, Class F1 includes categories within Learning and non-residential institutions and is defined in the regulations as:

Any use not including residential use—

- (a) for the provision of education,
- (b) for the display of works of art (otherwise than for sale or hire), ]
- (c) as a museum,
- (d) as a public library or public reading room,]
- (e) as a public hall or exhibition hall, [
- (f) for, or in connection with, public worship or religious instruction,
- (g) as a law court.

The building was listed on 11<sup>th</sup> August 2021 by Historic England. The listing description (a copy of which is attached to this report) details the uses carried out in the building under its “Details” section. These include:

Lower ground floor (418 sq. m): Studio 2, Studio 3, green room, storage areas (technical storage area, prop store, hall store, hangers store, crew room, rail store, cloth store, music store, kitchen store), fitting room, boiler room, kitchen, green room, ladies WC.

Upper ground floor (232.8 sq. m): Studio 1, lobby with reception area, store and stairs, WC, 2 fitting rooms, coaching room A, B, and C sample room, marketing / comms, finance director room, reception room, waiting room.

First floor (335 sq. m): Meeting room, equipment room, mini kitchen, costume workroom, fabric store, Head of Finance room, ladies toilet, finance room, hot desk area, cost buyer room, cost producer managers room, personnel, Head of Costume room, stage management, library store, sword store, development, hat store, hat room, gents toilet and showers, hat work room

Second floor (122.3 sq. m): Dye room, print room, spray room, drying room, print area, wash station, store, echo chamber, 2 plant rooms, fitting room, main office.

The applicant has submitted a legal statement in support of the certificate of lawfulness which contends that the current authorised planning use of the property is mainly used for rehearsals

and practice space by the English National Opera (ENO) as an educational training centre that falls within Learning and non-residential institutions (Class F1(a)). This assertion is based on the existing floor plan layouts that have also been submitted. The applicant contends that there is coaching of the opera singers which takes place which is considered as training and falls under learning within the educational use.

Officers visited the site on 17.11.21. It appeared from this site visit, floorplans and evidence given by local people that the ENO did not use this building as a school to train / teach opera singers but more as rehearsal space for the singers to practice for up and coming productions. Residents and a local group also referred to performances and concerts being given to the community. It has not been made clear from the information submitted how much of the building floorspace is used for this rehearsal activity therefore it is not possible to say that this is the primary use that takes place within the building. Although there may have been some training onsite, it is likely that this was only a minor ancillary element in the overall mix of uses.

The building is mainly vacant now and was used for a variety of operations including rehearsal rooms, recording studios, office and storage space. It appears from the uses identified in the existing floor plans provided by the applicant that the existing use of the building is made up of office and studio uses (Class E), storage uses (storage and distribution - Class B8), rehearsal rooms and recording studios (Class E), and other ancillary spaces (toilets, plant). Performance space (such as a concert hall), referred to by a local resident, would fall within the former Use Class D2, now Sui Generis.

In 2007 officers gave pre-application advice on a redevelopment scheme and took a view on the lawful use of the site at that time. It is considered that this opinion still remains valid now as the use of the site by ENO has not changed since then. The building was used for a variety of operations including rehearsal rooms, recording studios, office and storage space. It appeared that the existing use of the building could be described as a mixed use which ultimately is made up of a combination of D2 (Assembly and Leisure), B1 (Business) and B8 (Storage & Distribution) uses. Officers did not want to describe the site as Sui Generis 'a use of its own' since it appeared from the information provided that different parts of the building were clearly being put to different distinct uses which fall within classes identified in the Use Classes Order rather than the building being in a composite use which encompasses elements of all of three of these use classes intrinsically linked and forming a use of their own.

The information submitted by the applicant does not clearly identify what parts of the building are used for education and training purposes nor do they highlight what activities are carried out within the educational and training centre. The primary use of the building remains unclear and it appears to be more of a mix of uses falling within Classes D2, B1 and B8, which in the amended Use Classes Order now fall within Classes E, B8 and Sui Generis (SG). Alternatively the site could be classed as an entirely SG use. Nevertheless, from the information submitted to the Council, it is clear that the uses of the rooms within the existing building identified within the submitted existing floor plans do not fall within any of the uses listed under learning and non-residential institutions (Class F1).

Therefore it is recommended that the Certificate of Lawfulness should be refused.

## **RECOMMENDATION**

**Refuse Certificate of Lawfulness**