Application No:	Consultees Name:	Received:	Comment:	Response:
2022/1280/P	David Evans	20/05/2022 18:55:45	OBJ	Dear Mr Wong, Your planning refs: 2022/1270/P and 2022/1280/P 81 Belsize Park Gardens, London NW3 4NJ We represent Mr and Mrs Rubinstein who live at 10 Lancaster Stables, Lambolle Place, London NW3 4PH, immediately adjacent to the application site. Our clients object to the above mentioned applications for the reasons detailed below. 1. As we have already made clear, we maintain that the previous proposal, bearing your ref 2021/4743/P, granted on 9 March 2022, should have been refused. That proposal was not permitted development. You declared that the Council received advice on this point. We are disappointed that despite repeated requests this advice has not been shared with our clients as yet. Could you please respond to this point as soon as possible please as it is highly pertinent to whether the planning application bearing your ref. no. 2022/1280/P, which relates to the change of use, should be allowed. 2. To be absolutely clear, the proposal does not benefit from rights under the amended Town and Country Planning (General Permitted Development) Order 2015 Part 3 Class MA to convert from a Use Class E use to a Use Class C3 use. The reason for this view is as follows: a) Condition MA.1(b) requires that any development seeking to utilise this route MUST have been in one of a number of specified use classes for a continuous period of at least two years prior to the date of the application. It is acknowledged that one of the specified uses includes the former Use Class D2(e) in which a gym or health club would normally fall. However, the Council is well aware the building has NOT been used for this purpose for a continuous period of at least 2 years prior to the date of the application. The Building was used for at least five months, up until at least May 2021, as a performance art space and evidence of this is attached. b) This use is not within any of the classes specified in sub-paragraphs found at MA1(2) of the revised order. Such use as a “performative art space” is either a sui-generis use, rather like a Concert Hall which was formerly in the D2(b) use class but is now a (defined) sui-generis use. Alternatively, such a use might be regarded as falling within Class F1(b) which is the Use Class for “the display of artwork (not for sale or hire). In any event it is certainly not a Class E or formerly a Class D2(e) use. c) The applicant claims this was merely a “temporary use” which did not amount to a material change of use. With respect whether the use was “temporary” – and there is no evidence to demonstrate that this was officially the case - or “non-material” is not strictly relevant to the qualifying criteria for conversion under Class MA. The criteria requires that the building must be used for a continuous period for one of the qualifying uses for a period of at least two years prior to the date of the application. d) The courts are clear that the legislation in this regard should be followed to the letter; see Rugby Football Union v Secretary of State for Transport, Local Government and the Regions [2002] EWCA Civ 1169 at para. 16. An example of this approach is found in the case of Scott v Secretary of State – case no: CO/3196/2019, a permission hearing a copy of which we attach. The case itself concerned agricultural conversions but the

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basic principles are the same, namely that intervening (and non-qualifying) uses have the effect of disapplying the provisions of the Order.

e) Paragraph MA1(b) sets out one of the limitations on the use Class MA to facilitate a change of use. It states: “unless the building fell within one or more of the classes specified in sub-paragraph (2) [which sets out the uses in Class E] for a continuous period of at least 2 years prior to the date of the application for prior approval”. This makes it clear that only those qualifying uses can take the benefit of the Order. This means that the Building cannot benefit from the provisions of the Order because the intervening use, be it temporary or perhaps not even amounting to a material change of use, disqualifies the Order from applying.

3. Notwithstanding this issue, our clients have a number of concerns about the nature of the development and certain details relating to it.

4. First of all, it is considered that the proposed number of units is too much. This proposal would result in an intense form of development ill-suited to the character of the area, which is characterised by large family sized units. It is considered the number of units should be reduced and there should be a wider mix of units which would create a form of development consistent with the area.

5. Secondly, our clients also have concerns about the associated application seeking approval for operational development alongside the change of use. Their principal concern relates to the proposed changes at roof level above unit no. 18. Three roof lights are proposed here, and these could have an adverse impact upon our clients’ amenities. We would ask that the design is amended to ensure that the roof lights are constructed so that they are angled away from our clients’ property. This means that they will retain their levels of privacy in their roof top garden and have no way of seeing – or being seen by – the future occupiers of this unit.

6. Thirdly, the following conditions should be imposed in the event that the permissions are granted:

a. A condition must be imposed relating to the use of the flat roof areas the effect of which is to prevent their use as amenity areas and restrict this use to emergency or maintenance access only.

b. All permitted development rights should be removed.

c. A condition should be imposed controlling the noise emissions from plant, such as heating or cooling units.

d. A separate condition should also be imposed relating to sound insulation.

e. A condition should be imposed to control the use of artificial lighting on the external fabric of the building.

f. A condition should be imposed so that TV, radio, phone and microwave antenna, and satellite dishes are not installed on the building’s exterior surfaces without the prior permission of the local planning authority.

7. Fourthly, the following matters should be controlled by way of a planning obligation:

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				a) A construction management plan should be secured by way of a planning obligation to ensure that the building operations necessary to carry out the conversion works are done so responsibly and with due regard to protecting the amenities of neighbours. Such a plan should control construction vehicle parking along with hours of works as well as matters like dust and noise emissions. The plan should also require an asbestos check to be undertaken so as to guard against potentially toxic waste. b) We would also ask that the Council imposes a strict requirement by way of a planning obligation that any exit into Lancaster Stables is restricted to emergency use only and no other purpose whatsoever. c) The planning obligation should also remove the right for future occupiers to obtains on-street car parking permits. In conclusion, our clients maintain that the developer does not have the ability to use Class MA to secure the change of use. In the event, and notwithstanding these concerns, that the applications are deemed to be generally acceptable they would like to see changes to the design of the roof levels and planning conditions and obligations imposed to protect their amenities as set out above. We would ask that these comments are taken into account when making the determination. We would also ask that you please confirm safe receipt. Yours sincerely, David Evans Consultant Solicitor Keystone Law
2022/1280/P	Philip Brainin	23/05/2022 17:50:46	PETITNOBJE	My property is directly adjacent to the subject property to the rear. The new proposal of 18 flats in this location must be rejected. The proposals include access to the flat roof at the rear which would result in a direct vantage point into our bedrooms. The noise and disruption, including all the proposed demolition will make our house unlivable for the next two years. The developer has clearly tried to play the system by applying for permitted development of the three units, which were bad enough but acceptable. 18 units in this location is not acceptable at all and there can be no access allowed on to the roof as this would render our bedrooms and balcony as public rather than private.