

<b>Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>	<b>09/08/2022</b>
		N/A		<b>Consultation Expiry Date:</b>	N/A
<b>Officer</b>			<b>Application Number(s)</b>		
Fast Track SC			2022/2547/P		
<b>Application Address</b>			<b>Drawing Numbers</b>		
96-98 Shoot-up Hill London Camden NW2 3XJ			Refer to 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</b>					
To confirm that as of the 21/10/2021 the change of use of the existing day care centre (Class E(f)) to 9 residential flats (Class C3) as proposed under application ref. 2021/4154/P is lawful, subject to compliance with MA.2 (5) and (6) of Class MA of the General Permitted Development Order (GPDO).					
<b>Recommendation(s):</b>		Grant certificate of lawfulness			
<b>Application Type:</b>		Certificate of Lawfulness (Proposed)			
<b>Conditions or Reasons for Refusal:</b>		Refer to Draft Decision Notice			
<b>Informatives:</b>					

## Site Description

The application site relates to a pair of interconnecting large two storey Victorian houses which were last in use as a day care centre (Class E(f), but are now vacant. The properties are not located within a conservation area but they sit within the Fortune Green and West Hampstead Neighbourhood Plan area.

## Relevant History

**2021/4154/P** - Prior approval for the change of use of the existing day care centre (Class E(f)) to 9 residential flats (Class C3) under Class MA of the General Permitted Development Order (GPDO).

**2016/0697/P** - Change of use from day care centre (use class D1) to residential (use class C3) to provide 6 residential flats (2 x 1 bed, 2 x 2 bed and 2 x 3 bed) including the demolition and replacement of the existing ground floor porch and two storey rear extensions and the provision of 4 x roof lights and associated external works. **Withdrawn 23/07/2018.**

## Relevant legislation

**Town and Country Planning Act 1990**

**Town and Country Planning (Use Classes Order) 2015**

**The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020**

**Camden Local Plan 2017**

## Assessment

On 1 September 2020, the Town and Country Planning (Use Classes Order) 2015 was amended and introduced new use classes and the day care centre would fall within Class E(f) from former Class use D1.

Application for prior approval under planning reference number 2021/4154/P (Prior Approval Application) was made to the Council on 28 August 2021. The statutory determination deadline is 21 October 2021 and the extended deadline was 25 February 2022. Agreement to extend the 56 days was granted until 25 February 2022 confirmed by an email from the agent was received on 16 February 2022.

In June 2022, the applicant submitted an application for a Lawful Development Certificate for a Proposed Use or Development (LDC) under current planning application reference 2022/2547/P seeking confirmation that development pursuant to the Prior Approval Application would have been lawful, on the basis that *"The Council has not determined the planning application within 56 days and therefore prior approval should be granted by default."*

In order to assess the submission, the Council considers:

### 1. Determination of the Prior Approval Application

Article 7 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) specifies that the LPA must make its decision in relation to an application for prior approval or a determination as to whether prior approval is required:

- (a) within the period specified in the relevant provision of Schedule 2;
- (b) where no period is specified, within a period of eight weeks beginning with the day immediately following that on which the application is received by the LPA, or
- (c) within such longer period referred to in (a) or (b) as may be agreed by the applicant and the authority in writing.

Paragraph W(11) of Schedule 2, Part 3 of the GPDO further states that *“the development must not begin before the occurrence of one of the following—*

- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;*
- (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or*
- (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.”*

It follows that where the authority has not determined whether the prior approval is required and, if so, whether such approval should be granted or refused, the applicant can rely on the permitted development right and begin the development, provided that the development complies with the terms of the GPDO.

### **Compliance with paragraph MA.1**

Development is not permitted by Class MA:

- (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
- (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 complies
- (c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres; Proposal complies
- (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.

- (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.

- (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.

- (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

In light of the above, the proposal is considered to accord with paragraph MA.1. and would fall within the remit of development permitted subject to prior approval under paragraph MA.2.

The determination of the Prior Approval Application would have granted subject to additional

details to be secured by conditions in relation to the ground contamination at the application site to be supported by a Preliminary Risk Assessment (PRA) and scheme of investigation, details of cycle storage area for 14 cycles, and a compliance condition in relation to the maximum internal water use, as follows:

*1. No development shall commence until:*

- (a) a written Preliminary Risk Assessment (PRA) and scheme of investigation has been submitted to and approved by the local planning authority in writing; the PRA must take account of the historical and environmental context of the site and can be based on a desk study or the Enhanced Environmental Information Review detailed below; and*
- (b) following the approval detailed in paragraph (a), a written scheme of remediation measures has been submitted to and approved by the local planning authority in writing.*

*The remediation measures shall be implemented strictly in accordance with the approved scheme and a written report detailing the remediation shall be submitted to and approved by the local planning authority in writing prior to occupation.*

*Reason: To protect future occupiers of the development from the possible presence of ground contamination arising in connection with the previous industrial/storage use of the site in accordance with policies G1, D1, A1, and DM1 of the London Borough of Camden Local Plan 2017.*

- 2. Prior to occupation, details of secure and covered cycle storage area for 14 cycles shall be submitted to and approved by the local planning authority. The approved facility shall thereafter be provided in its entirety prior to the first occupation of any of the new units, and permanently retained thereafter.*

*Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the London Borough of Camden Local Plan 2017.*

- 3. The development hereby approved shall achieve a maximum internal water use of 110litres/person/day. The dwelling/s shall not be occupied until the Building Regulation optional requirement has been complied with.*

*Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with Policies CC1, CC2, CC3 of the London Borough of Camden Local Plan 2017.*

Following the Prior Approval Procedure, as both the statutory 56 days and extended deadlines have passed and therefore the applicant is able to proceed with the proposed development pursuant to the Prior Approval Application. The above conditions would be secured as an informative to the current LDC application.

To formalise the position, the applicant has also sought an LDC in respect of the proposed development pursuant to the non-determined Prior Approval Application.

## **2. Determination of the Lawful Development Certificate (LDC)**

The LDC application was made in June 2022, on the basis that the Prior Approval Application has not been determined within the required time limits. S192(2) further goes on to say that *"If, on an*

*application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”*

“Lawful” and “lawfulness” is defined in S191(2) of the TCPA: *“For the purposes of this Act uses and operations are lawful at any time if—*

*(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*

*(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.”*

Therefore, the assessment is whether the proposed use of land or development under the Prior Approval Application would have been lawful in June 2022, at the time of making the LDC application. Based on the information available at this time, it appears that it would have been lawful pursuant provisions of the GPDO (Paragraph W(11), Part 3, Schedule 2) and therefore no enforcement action could be taken in respect of such development.

In light of the above, the Council agrees that in this instance, the LDC should be granted under S192 of the TCPA.

**Recommendation: Grant Certificate of Lawful development.**