

<b>Delegated Report</b>	<b>Analysis sheet</b>		<b>Agreed Expiry Date:</b>		29/12/2022 but see Paragraphs 2.6 - 2.7 below		
	N/A / attached		<b>Consultation Expiry Date:</b>		09/01/2023		
<b>Officer</b>			<b>Application Number(s)</b>				
Charlotte Meynell			2022/5388/P				
<b>Application Address</b>			<b>Drawing Numbers</b>				
163 Malden Road London NW5 4HT			Refer to decision notice				
<b>Proposal(s)</b>							
Change of use of ground floor from retail unit (Class E) to residential (Class C3) comprising 1 x 1 bed flat.							
<b>Recommendation(s):</b>		Grant subject to a Section 106 Legal Agreement					
<b>Application Type:</b>		GPDO Prior Approval (Class MA) Change of Use from Class E to C3					
<b>Conditions or Reasons for Refusal:</b>		Refer to Decision Notice					
<b>Informatives:</b>							
<b>Consultations</b>							
<b>Adjoining Occupiers:</b>		No. notified	00	No. of responses	00	No. of objections	00
				No. electronic	00	No. of comments	00
<b>Summary of consultation responses:</b>		A site notice was displayed on 16/12/2022 and expired on 09/01/2023.  No comments were received.					

### Site Description

The application site is a ground floor retail unit (Use Class E) within a 3-storey mid-terrace building located within a parade of shops on the southern side of Malden Road. The upper floors of the building are in residential use.

The site is not located within a Town Centre or Neighbourhood Centre. The site is not listed and is not situated within a conservation area.

### Relevant History

No relevant planning history.

### Relevant policies

Part 2A of the Environmental Protection Act 1990

Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012

National Planning Policy Framework 2021

Chapter 2: Achieving sustainable development  
Chapter 4. Decision-making  
Chapter 5. Delivering a sufficient supply of homes  
Chapter 7. Ensuring the vitality of town centres  
Chapter 8. Promoting healthy and safe communities  
Chapter 9. Promoting sustainable transport  
Chapter 14. Meeting the challenge of climate change, flooding and coastal change  
Chapter 16. Conserving and enhancing the historic environment

## **The Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (as amended)- Schedule 2, Part 3, Class MA**

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

#### **London Borough of Camden Local Plan 2017**

Policy T1 Prioritise walking, cycling and public transport  
Policy T2 Parking and car-free development  
Policy A1 Managing the impact of development  
Policy A4 Noise and vibration  
Policy D1 Design  
Policy CC3 Water and flooding

### **Assessment**

#### **1. Proposal**

- 1.1 Prior Approval is sought under Schedule 2, Part 3, Class MA of the GPDO 2015 (as amended) for a change of use of the ground floor level from a Class E commercial unit (formerly categorised as Class A1) to a Class C3 residential dwelling. This new Class MA was introduced into the GPDO legislation on 1st August 2021.
- 1.2 The proposed change of use would create a 1-person 48sqm flat with an 11.5sqm single bedroom. Proposed external alterations including the removal of the existing shopfront signage and roller shutter and the reopening of a pre-existing ground floor window are not considered to constitute development.

#### **2. Prior approval procedure**

- 2.1 The Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 (as amended), Schedule 2, Part 3, Class MA, allows for a change of use of a building from a use falling within Use Class E (commercial, business and service) to a use falling within Use Class C3 (residential dwelling) of that Schedule, subject to a prior approval process and conditions being satisfied.
- 2.2 Development that accords with the criteria within MA.1 (a)-(g) is permitted by this Class, subject to a number of conditions listed within sub-paragraph MA.2 (1)-(6). As such, the prior approval procedure requires the developer to apply to the Local Planning Authority (LPA) for a determination as to whether prior approval of the authority would be required in regard to transport and highways impacts, contamination risks, flooding risks, impacts of noise from commercial premises, and provision of adequate natural light.
- 2.3 Where the building is located in a conservation area (and 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 must be assessed. In an area which the LPA considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses, the impact on intended occupiers of the development of the introduction of residential use must be considered.

2.4 Where the development involves loss of services provided by a registered nursery, 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 service lost must be determined. Finally, where the development meets the fire risk conditions criteria as specified within sub-paragraph MA.2, determination of the fire safety impacts on the intended occupants of the building is required.

2.5 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 LPA may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.

#### Extension of the statutory time period (56 days)

2.6 Paragraph W 11(c) requires that the LPA must notify the applicant as to whether prior approval is given or refused before the expiry of 56 days following the date on which the application was received. In this case, in which it is considered that the approval should be subject to the completion of a signed Section 106 legal agreement to secure the development as car-free, it is necessary to extend the statutory 56 day period in order to allow for such an agreement to be reached between the applicant and the LPA.

2.7 Paragraph W 12(c) allows for such a circumstance as this, and as such, the applicant has agreed in writing with the LPA to extend the statutory 56 day period until the S.106 agreement is finalised.

### **3. Assessment under Schedule 2, Part 3, Class MA of the GPDO**

#### **Compliance with Paragraph MA.1**

3.1 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;**

3.2 Proposal complies: Based on the information provided by the applicant, the premises has been vacant for more than 3 months prior to the date of the application. Archival imagery indicates that the premises has been vacant since at least July 2019.

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

3.3 Proposal complies: Council records indicate that the ground floor of the building that is the subject of this application has fallen within a Class A1 use since at least 2013 (and a re-categorised Class E use since 01/09/2020).

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

3.4 Proposal complies: The existing gross internal area (GIA) floor space proposed for the change of use is shown on the drawings as measuring approximately 48sqm.

**(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;**

3.5 Proposal complies: The application site does not fall within any of the areas indicated in points (d)(i) to (v) above;

**(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;**

3.6 Proposal complies: The application site does not fall within any of the areas indicated in points (e)(i) to (v) above;

**(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**

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

**(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.**

3.8 Proposal complies: The proposed development does not fall within Class O of this Part.

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

### **Compliance with Paragraph MA.2**

3.10 Where development proposal is in compliance with 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 criteria will be discussed in turn as follows:

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

3.11 The Council has considered the highways impacts of the change of use and whether to seek appropriate mitigation measures to mediate against any highways impacts. The site has good access to public transport. The development is likely to result in a material increase / material change in the character of traffic in the vicinity of the site if the future residents of the new residential unit can apply for residents parking permits. In order to ensure that the development promotes sustainable modes of transport and mitigates against any potential worsening of local traffic, parking and air quality conditions, the development would be expected to be 'car-free' and

to provide adequate storage for cycle(s). This would ensure that new residents could not apply for parking permits, and this would be secured by a Section 106 legal agreement.

3.12 The development is required to provide 1 long-stay cycle parking space which is secure, accessible and covered, in accordance with policy T1 of the Camden Local Plan. The proposed floorplans show that a secure covered cycle locker with space for 2 cycles would be provided within the rear garden, which is considered acceptable. This cycle parking would be secured by condition.

**(b) Contamination risks in relation to the building.**

3.13 A Contamination Risk Assessment has not been submitted with this proposal. The Council's Environmental Health Contaminated Land Officer notes that the historical land uses in the vicinity of the site include a former garage and printers, and it is therefore possible that elevated concentrations of contaminants of concern could be present on site, taking into account soils in Camden contain elevated levels of certain heavy metals. Given the potential for contaminants of concern at the site and the proposed residential use with a private rear garden, the submission of a preliminary land contamination risk assessment would be secured by condition.

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

3.14 The application site is located within the Maitland Park Local Flood Risk Zone and the area is at medium risk of surface water flooding according to the Environment Agency's Surface Water Flood Risk maps. Whilst a Flood Risk Assessment has not been submitted, flood risk mitigation measures are proposed within the Planning Statement. These are considered to be appropriate to reduce the risk of surface water flooding to future occupiers of the property.

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

3.15 The application site adjoins a Thai Spa and Massage Parlour and a minicab office on the ground floor of the neighbouring buildings to either side, with an existing residential unit above. It is not considered that noise from the neighbouring ground floor commercial premises would have a significant adverse impact on the proposed residential unit in terms of noise. There are existing residential units above the ground floor commercial units within this terrace on Malden Road, so commercial and residential uses within close proximity is typical for the area.

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 is not located within a conservation area.

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

3.18 A Daylight and Sunlight Assessment has been submitted, which confirms that all habitable rooms would receive in excess of the BRE figures for daylight in "hard to light" new dwellings in the UK, such as those formed through the conversion of an existing building. The proposed development would therefore benefit from adequate natural light levels in all habitable rooms and complies with this condition.

**(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**

3.19 The area where the application site lies is not considered by the LPA to be important for general heavy industry, waste management, storage and distribution, or a mix of such uses.

**(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.**

3.20 The proposed development would not involve loss of a registered nursery or a health centre maintained under section 2 or 3 of the above Act.

**(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.**

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

#### **4. Additional matters**

4.1 Paragraph W(10) of the GPDO requires that the local authority, when determining the application:

**(a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8);**

4.2 No consultation responses or representations have been received.

**(b) have regard to the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government, so far as relevant to the subject matter of the prior approval, as if the application were a planning application.**

4.3 Paragraph 17 of the National Planning Policy Framework (NPPF) 2021 states that, '*planning should always seek...a good standard of amenity for all existing and future occupants of land and buildings*'.

4.4 The NPPF falls short of providing specific standards for protecting the amenity of adjoining and nearby properties. Nevertheless, the proposal is not considered likely to result in any undue harm

to existing residential amenity for future occupiers of the development or existing neighbouring residential occupiers given the nature of the proposal.

4.5 Article 3 (9A) requires all new units to comply with the Nationally Described Space standards. The new unit would measure 48sqm which would exceed the Nationally Described Space Standards 2015 of 39sqm for a 1-person 1-bedroom unit.

## **5. Community Infrastructure Levy (CIL)**

5.1 As the proposal results in a new dwelling, it may be liable for the Mayor's and Camden's Community Infrastructure Levy (CIL). As such, a standard informative would be attached to any decision notice drawing CIL liability to the applicant's attention.

## **6. Conclusion**

6.1 The proposal complies with the criteria and conditions in MA.1 and MA.2 of Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and therefore is acceptable and can be granted Prior Approval.

## **7. Recommendation**

7.1 Grant Prior Approval subject to the completion of a Section 106 legal agreement securing the new residential unit as car-free.