

<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			2022/5386/P				
<b>Application Address</b>			<b>Drawing Numbers</b>				
159 Malden Road London NW5 4HT			Refer to decision notice				
<b>Proposal(s)</b>							
Change of use of ground floor from hot food takeaway (sui generis) to residential (Class C3) comprising 1 x 1 bed flat and associated alterations.							
<b>Recommendation(s):</b>		Grant subject to a Section 106 Legal Agreement					
<b>Application Type:</b>		GPDO Prior Approval (Class M) Change of Use from Sui Generis 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.					

<b>Site Description</b>
<p>The application site is a ground floor hot takeaway unit (Sui Generis Use Class) 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.</p> <p>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.</p>
<b>Relevant History</b>
No relevant planning history.
<b>Relevant policies</b>
<b>Part 2A of the Environmental Protection Act 1990</b>  <b>Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012</b>  <b>National Planning Policy Framework 2021</b>

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 M**

### **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 M of the GPDO 2015 (as amended) for a change of use of the ground floor level from a Sui Generis hot food takeaway to a Class C3 residential dwelling.
- 1.2 The proposed change of use would create a 2-person 53sqm flat with a 12sqm double bedroom. Proposed external alterations include the installation of a new glazed roof above the pre-existing rear extension, and the removal of the existing shopfront signage and roller shutter.

##### **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 M, allows for a change of use of a building from a launderette, betting office, pay day loan shop or hot food takeaway (Sui Generis Use), or a mixed use combining use as a dwellinghouse with a use falling within one of the aforementioned uses, to a use falling within Use Class C3 (residential dwelling) of that Schedule, together with building operations reasonably necessary to convert the building to a use falling within Use Class C3.
- 2.2 Development that accords with the criteria within M.1 (a)-(g) is permitted by this Class, subject to a number of conditions listed within sub-paragraph M.2 (1)-(3). 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, the design or external appearance of the building, and provision of adequate natural light.
- 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 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)

2.4 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.

2.5 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 M of the GPDO**

#### **Compliance with Paragraph M.1**

3.1 Development is not permitted by Class M if –

**(a) the building was not used for one of the uses referred to in Class M(a) –**

**(i) on 20<sup>th</sup> March 2013, or**

**(ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use**

3.2 Proposal complies: The Council's retail survey and archival imagery indicate that the premises has been in use as a hot food takeaway since at least 2008.

***(b) [deleted from GPDO legislation in 2021]***

**(c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres**

3.3 Proposal complies: The existing gross internal area (GIA) floor space proposed for the change of use is shown on the drawings as measuring approximately 53sqm.

**(d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M**

3.4 Proposal complies: No other part of the building has previously changed use under Class M and no other applications under Class M at the building are pending determination.

**(e) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point**

3.5 Proposal complies: The proposed development does not include any extensions to the existing building.

**(f) the development consists of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order)**

3.6 Proposal complies: The proposal does not include any demolition works.

**(g) the building is—**

**(i) on article 2(3) land;**

**(ii) in a site of special scientific interest;**

**(iii) in a safety hazard area;**

**(iv) in a military explosives storage area;**

**(v) a listed building; or**

**(vi) a scheduled monument.**

3.7 Proposal complies: The host building is not listed or a scheduled monument, and is not located within any of the areas listed above.

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

### **Compliance with Paragraph M.2**

3.9 Where development proposal is in compliance with paragraph M.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:

#### **(a) Transport and highways impacts of the development**

3.10 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.

3.11 The development is required to provide 1.5 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**

3.12 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**

3.13 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) Whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use –**

**(i) on adequate provision of services of the sort that may be provided by a building falling within article 3(6)(c) (launderette) of the Use Classes Order, but only where there is a reasonable prospect of the building being used to provide such services**

3.14 The existing use of the site is not a launderette and so this is not applicable.

**(e) The design or external appearance of the building**

3.15 The proposals include alterations to the shopfront to remove the existing fascia signage and roller shutter. These works are not considered to constitute development and the overall design and external appearance of the front of the building would remain unchanged. The proposed installation of a glazed roof to the pre-existing rear extension is considered to be building operations reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses).

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

3.16 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.

#### **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 53sqm which would exceed the Nationally Described Space Standards 2015 of 50sqm for a 2-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 M.1 and M.2 of Schedule 2, Part 3, Class M 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.