



Officer Report

Application Number:	HGY/2023/3259
Application Type:	Prior approval Part 3 Class MA: Commercial, business and service uses to dwellinghouses
Address:	Unit 13, Gateway Mews, Wood Green, London, N11 2UT
Proposal:	Application to determine if prior approval is required for a proposed: Change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class MA
Case Officer:	Mark Chan
Valid Date:	06/12/2023
Applicant:	Mr E Kontis, Goldenkey Properties Ltd
Agent:	Mr Chris Georgiou, CG Architects

1. DESCRIPTION OF APPLICATION

This is an application to determine if prior approval is required for a proposed change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) under Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class MA. The application property was constructed as part of the redevelopment of the former Middlesex University campus which was approved under application HGY/2004/1465.

2. APPROVED DEVELOPMENT

HGY/2004/1465 – Redevelopment of former Middlesex University campus comprising two sites: SITE A (i) - Erection of 5 x 4/5 storey blocks comprising 260 flats (50% affordable) with 258 car spaces at ground /basement level, 1x retail (A1) unit of 102 sq metres, community/meeting room and associated landscaping and, (ii) 15 x B1/B8

units ranging between 103 - 323 sq. metres (gross internal) and 17 car parking spaces. SITE B - Erection of 4 x B1/B8 units ranging between 279 - 472 sq. metres with 2 parking spaces and new boundary fence and gates. Approved 18/03/2005.

3. DESCRIPTION OF APPLICATION

The application site is a two-storey mid-terraced commercial unit on the southern side of Gateway Mews. The property is 1 of the 15 commercial units that were constructed as part of the redevelopment of the former Middlesex University campus which was approved under application HGY/2004/1465. The site is close to the boundary with the LB Barnet in the northwest corner of the borough. It is not within a conservation area and is not within the vicinity of a listed building.

The applicant has stated that the property been vacant for a continuous period of at least 3 months immediately prior to the date of this application but no evidence has been provided.

4. CONSULTATION RESPONSES

The following internal consultation responses were received:

- LBH Transport: Raised no objection.
- LBH Public Health: Raised objection regarding the limited pavement access on the street with cars dominating the area and lack of green space/greenery. Access to amenities and green spaces is important for people's wellbeing.

In accordance with the procedure for applications for prior approval under Part 3 Paragraph W, adjoining owners/occupiers of neighbouring properties were consulted. No representations were received.

5. ANALYSIS/ASSESSMENT

Relevant Legislation

Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') for changes of use from Commercial, Business and Leisure (Class E - except offices in relation to certain parts of the Borough) to a dwellinghouse (Class C3).

This application seeks prior approval for change of use of an office space (which was approved as B1/B8 but would now fall under Class E) into 2no. self-contained flats (Class C3).

Prior approval is an application to discharge the conditions pertaining to the permitted development right (PDR) so the scope of the issues which are material to the prior approval application are fixed and fixed exclusively by the terms of the order. Therefore, no consideration can be given to the statutory development plan or the National Planning Policy Framework (NPPF) unless the GPDO specifically provides for this. The relevant limitations and conditions are assessed as set out below.

Limitations

(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;

Officer comment: Complies. Whilst no evidence has been provided, the applicant has stated that the property been vacant for a continuous period of at least 3 months immediately prior to the date of this application.

(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.

Officer comment: Complies.

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

Officer comment: 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;

Officer comment: Complies. The site is not a part of a listed building or within its curtilage.

(e) if the building is within an area of outstanding natural beauty/ National Park

Officer comment: N/A

(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.

Officer comment: The site does not fall within an area covered by an Article 4 direction restricting conversions under Class O of the GPDO.

Other Limitations

In assessing this application consideration also needs to be given as to whether the application site/ building/ the part of the building is subject to a condition of planning consent limiting/ restricting its use.

Officer comment: The LPA have reviewed the decision notice granting consent for this development as approved under reference HGY/2004/1465. Condition 17 of the decision notice states 'That the commercial units hereby approved shall be used for purposes within the B1 and B8 Use Classes of the Use Classes Order 1988 and for no other purpose without the prior written permission of the Local Planning Authority.'

Furthermore, Section 2, Schedule 3 of the signed S.106 agreement specifically states that not to use the 15 commercial units other than use falling within Use Class B1 or B8 ranging between 151 – 430 sqm (gross internal).

In *Carpet Décor (Guildford) Limited v Secretary of State for the Environment and Another* [1981] 261 EG 56, the High Court concluded that if the local planning authority can exclude the operation of the UCO 19875 or the GPDO if was stated in unequivocal terms. The Court of Appeal concluded in *Dunoon Developments Ltd v SSE* [1992] JPL 936 that permitted development under the GPDO can be excluded by a condition that does not refer specifically to that Order. The High Court decision in *Dunnett Investments Limited v SSCLG* [2016] EWHC 534 (Admin) suggested that implicit exclusion of PD rights can have effect and the words 'for no other purpose' prohibit any other purpose including any other purpose otherwise permitted by the GPDO.

Conclusion

The proposed change of use is considered unacceptable in relation to the conditions and limitations detailed and discussed above, specifically in relation to Condition 17 and Section 2, Schedule 3 of the S.106 agreement attached to planning permission: HGY/2004/1465 and recent legal rulings which precludes the effect of either or both of section 55(2)(f) [and Article 3(1) of the UCO] or the GPDO and would be effective in restricting the use of the property that would otherwise be permitted.

6. CIL LIABILITY

No new floorspace is being created and the building has been occupied for a lawful use for at least six months continuously in the last three years, as such the proposal is not liable for CIL.

7. RECOMMENDATION –

REFUSE PRIOR APPROVAL for the following reason:

The works described above and in the details of the application fall outside the scope of Schedule 2, Part 3 (Class O) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended from time to time). As such, an application for full planning permission is required for the following reason(s):

The building here does not benefit from permitted development rights afforded under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The application building is subject to a restriction as imposed via Condition 17 of planning permission HGY/2004/1465 granting consent for this site, which restricts the use of the building to one solely falling within Class B1/B8 (Business and Storage or distribution) as defined in the UCO 1987 and expressly says 'for no other purposes' which precludes the effect of either or both of section 55(2)(f) [and Article 3(1) of the UCO] or the GPDO, as such being effective in restricting the use of the property/part of the building.