

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
24/00215/PRA56	Claire Ringwood	4 th July 2024

Address: 117 Yorkshire Street and 2 Whitehall Street, Rochdale, OL16 1DS

Proposal: Prior approval for the change of use from Commercial (Use Class E) to Dwellings (Use Class C3) (re-submission 23/01034/PRA56)

PUBLICITY	Weekly list expired?	Y	Site notice expired?	Y
	Neighbour letters expired?	Y	Press Notice expired?	N/A

DELEGATION	Significant departure from local plan?	N/A	Contrary to national policy?	N/A
	Applicant a Council Member or officer?	N/A	Contrary to previous decision?	N/A
	Major with 10 or more objections and recommending approval?	N/A	Called in or Planning Panel objection?	N/A

COMMENTS	Planning Panel comments received?	N
	Neighbour comments received?	N

EIA	Screening opinion completed and saved to Onbase?	N/A
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CONDITIONS	Pre-commencement conditions proposed?	N/A
	Pre-commencement conditions agreed (or notification period expired)?	N/A

RECOMMENDATION	PRIOR APPROVAL REQUIRED AND APPROVED subject to conditions
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CHECKED AND SIGNED OFF BY: RG

DATE: 4th July 2024

SITE

The application relates to 117 Yorkshire Street and the basement area below 2 Whitehall Street. The buildings are a pair of properties located at the end of a terrace. The ground floor of the buildings are in four different retail uses, namely, a hair removal centre, a barbers, clothing alterations and repairs and a vape store. The first floor and second floor of the building has recently been granted Prior Approval for the change of use to 3 apartments (application ref: 22/00456/PRA56).

The site falls within Rochdale Town Centre and a Defined Urban Area (Policies G/S/1, S/5 and G/D/1 of the saved Unitary Development Plan 2006).

PROPOSAL

Prior approval is sought under Class MA Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of the basement to a dwellinghouse (Use Class C3) to comprise a one bedroom flat.

The submitted plans refer to the basement as 'vacant former stores' and the unit above as 'vacant former mini-mart'. However, a Laser Centre was occupying the ground floor unit (previously the mini market) and the Barbers unit had been refurbished and was vacant when a visit to the site was carried out by officers on 1st May 2024.

The plans submitted show a bedroom, living room, kitchen and bathroom accessed from a side door on Whitehall Street. There are two existing barred windows at pavement level, one proposed to the bedroom and one to the living room.

The existing plans submitted show an existing door opening infilled however, following a site visit there was an existing side door in-situ. The submitted application form refers to 2 x 1m² windows are to be replaced with new UPVC windows with opening lights and guard rails to the basement windows.

INFORMATION SUBMITTED

Completed application form, including a written summary of the proposed development and the developer's contact details.

Drawings/ documents considered:

Drawing No: BM/1221/YORK/PL3 Rev A – Proposed Plans
Daylight Assessment of Living Room and Bedroom 117 Yorkshire Street by Watt Energy & Consulting Engineers, Date: 11 December 2023
Enforcement's Agent Locksmith invoice by RK9 Security dated 15/05/2023 for Ground Floor Shop 117 Yorkshire Street
RICS Small Business Retail Lease, dated 1st January 2022, Lease of Ground Floor Shop, 117 Yorkshire Street
Received 29th February 2024

Location Plan

Drawing No: BM/0923/YORK/PL9 – Existing Plans and Elevations
Drawing No: BM/0923/YORK/PL10 – Proposed Plans and Elevations
Received 22nd March 2024

The applicant submitted additional information on the 20th May 2024 which had not previously been available to officers:

Email from Rochdale Borough Council Legal Officer dated 2nd November 2022
Letter from Rochdale Borough Council Partnership Enforcement Team dated 12th December 2022
Email from Rochdale Borough Council Legal Officer dated 16th May 2023 *[this includes an email dated 15th May 2023 advising the property would be re-possessed shortly]*.

The applicant submitted updated the following information on 20th June 2024:

Drawing No: BM/0224/YORK/PL10 Rev A – Proposed Plans & Elevations
Daylight Assessment of Living Room and Bedroom 117 Yorkshire Street by Watt Energy & Consulting Engineers, Date: 20 June 2024

The applicant submitted updated the following information on 26th June 2024:

Drawing No: BM/0224/YORK/PL10 – Proposed Plans & Elevations
Daylight Assessment of Living Room and Bedroom 117 Yorkshire Street by Watt Energy & Consulting Engineers, Date: 26 June 2024

RELEVANT PLANNING POLICY

Paragraph W of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that when considering whether a development is permitted under Class MA of the above order, the LPA shall have regard to the National Planning Policy Framework as if it was a planning application, in so far as it relates to the relevant subject matters.

National Guidance

National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)

RELEVANT SITE HISTORY

23/01034/PRA56 - Conversion of basement from storage area to a one bedroom apartment (C3) including re-instatement of doorway and windows on Whitehall Street. Refused 20/12/2023.

The reason for refusal was:

1. The applicant has failed to demonstrate that the basement has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval and that the basement area was used for a specified use for 2 years prior to the date of the application for prior approval. As such, the proposal is not permitted under Class MA, Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

22/00456/PRA56 – Prior approval for change of use of first and second floors from commercial (Class E) to 3 no. apartments (Class C3). Prior Approval Not Required 31/05/2022.

21/01786/PRA56 - Prior approval for change of use of first and second floors from commercial (Class E) to 3 no. apartments (Class C3). Refused 11/02/2022.

Reason for refusal:

The building has not been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval. As such, the proposal is not permitted under Class MA, Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

89/D24464 - Change Of Use And Alterations From Cafe With Living Accommodation To Class A2 Offices. Decision: Approved

89/D24177 - Change Of Use And Conversion Of Premises To Form 2 Retail Units And Restaurant At Ground Floor With Offices Above. Decision: Approved.

CONSULTATION RESPONSES

Environmental Health - Noise/Odours

In terms of noise etc. we would recommend a condition requiring a noise report is carried out to ensure the following noise levels are achieved.

- 35 dB(A) Leq (16 hour) in the bedrooms with windows shut and other means of ventilation provided between 7 am and 11pm;
- 30dB(A) Leq 8 hour in the bedrooms with windows shut and other means of ventilation provided between 11pm and 7am;
- 35 dB(A) Leq (16 hour) in the living room/s with windows shut and other means of ventilation provided between 7 am and 11pm;
- 40dB(A) Leq (16 hour) in other habitable rooms with windows shut and other means of ventilation provided at all times.

Upon completion and prior to occupation validation testing is carried out.

Highways And Engineering

The proposed development is within Rochdale town centre with therefore it has good access to local amenities and public transport links which means we have no concerns regarding the lack of parking provision.

We understand the proposal is to make use of the existing bin storage area.

We have no objections to this proposal.

Conservation Officer

There are no heritage objections to the proposed residential use. However it is understood that external changes cannot be made as part of this prior approval application. A separate planning application will be required for any external works.

REPRESENTATIONS

Neighbour letters were sent to neighbouring properties and a site notice was displayed at the front of the site. No letters of representation has been received.

ANALYSIS

Amendments to the Order came into force on 5th March 2024 and the below assessment takes this into consideration.

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.

This has now been omitted from Schedule 2 Part 3.

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;

The use of the ground floor of the building falls under Use Class E (c) (iii) (commercial, business and service) and includes laser hair removal, vacant unit (previously a barbers), clothing alterations and repairs and vape store. However, question 4a. in the application form asks '*has the use of the building, for a continuous period of at least 2 years immediately prior to the date of this application, been any of the following*' [uses]. The application form states yes to this question.

The application was received on 29th February 2024 and the basement must have been in the required use on 29th February 2022 to comply with the requirements of b) above.

A Lease Agreement has been provided which is dated from 1st January 2022 to 31st December 2023. A Locksmiths invoice dated 15th May 2023 has also been submitted along with emails that confirm the ground floor mini-market was repossessed on 15th May 2023 due to illegal activity that was taking place from the premises.

Historic images show a vacant unit in August 2022 (called Wrapperz) and no evidence has been submitted to show how long the unit was vacant following the repossession in May 2023. The agent has advised however, that the tenant of Wrapperz undertook deliveries only for some of the time and subsequently sublet the building to a tenant that was later evicted. An officer site visit on 11th November 2023 showed a Laser Centre was occupying the ground floor premises but there is no evidence as to when this use began.

Based on the information available to Officers, there is no reason to believe that the use of the premises has changed outside of Class E use and therefore on the balance of probabilities, Officers are satisfied that the basement fell within a Class E use for a continuous period of at least 2 years prior to the date of the application for prior approval.

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

This has now been omitted from Schedule 2 Part 3.

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;**

The land covered by or within the curtilage of the building does not form any of the designations listed under paragraph d)

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;**
- (iii) the Broads;**
- (iv) a National Park; or**
- (v) a World Heritage Site;**

The building is not within any of the designations listed under paragraph e)

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

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.**

The development is not of a description falling within Class O and the site is not located with an area where an operation of a direction under article 4(1) would have applied.

Summary

The proposal does not fall under the above exclusions set out under Class MA of Part 3 of Schedule 2 of the General Permitted Development Order (as amended). Therefore consideration of the following matters is given.

Conditions

MA.2. Development under Class MA is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (a) transport impacts of the development, particularly to ensure safe site access;
- (b) contamination risks in relation to the building;
- (c) flooding risks in relation to the building;
- (d) impacts of noise from commercial premises on the intended occupiers of the development;
- (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;

- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (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 general or heavy industry, waste management, storage and distribution, or a mix of such uses;
- (h) where the development involves the 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 services lost; and
- (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

(3) An application for prior approval for development under Class MA may not be made before 1 August 2021.

(4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph

(5) Development must be completed within a period of 3 years starting with the prior approval date.

(6) Any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

Transport and highways

Paragraphs 115 and 116 of the NPPF require that safe and suitable access to a site can be achieved for all users and that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts of the road network would be severe. As such, The Council's Highways Officer was consulted to assess the potential impact on road safety due to the development.

Given the application is for a 1 bedroom basement flat in the town centre, the impact in terms of traffic generation and street parking is considered to be minimal. A residential use would result in less need for parking compared to a retail use, although in this case, the basement was previously associated with the ground floor use. The Council's Highways Officer has raised no objection relating to traffic generation or parking arrangements. In accordance with the policies of the NPPF, prior approval is therefore not required.

Contamination risks

Paragraph 180 of the National Planning Policy Framework states that the planning system should contribute to and enhance the natural and local environment by remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate. Paragraph 190 states that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

Paragraph 191 of indicates that planning policies and decisions should ensure that:

- a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as

well as potential impacts on the natural environment arising from that remediation);

- b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and
- c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

It is noted that the proposal comprises the conversion of the existing premises by virtue of only internal works (although as noted above, the windows and doors to the whole building have been replaced recently). The proposal would utilise the existing building and accesses to the building. The site and building has been used for commercial purposes in recent years, and is therefore considered to be suitable as residential accommodation in terms of satisfactory safeguarding against actual and potential risk of contamination. In accordance with the policies of the NPPF, prior approval is therefore not required.

Drainage and flood risk assessment

Paragraph 165 of the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

The Environment Agency Flood Map for Planning identifies the site as lying within Flood Zone 1, thus has a low probability of flooding from rivers and the sea. It does not fall within a Critical Drainage Area and due to the nature of development, and in accordance with the policies of the NPPF, prior approval is therefore not required.

Noise impact

Paragraph 135 of the National Planning Policy Framework requires planning policies and decisions to ensure that new developments create a high standard of amenity for existing and future users. The Council's Environmental Health Officer has reviewed the submitted information and advised that a Noise Report should be required by condition to ensure the following noise levels are achieved:

- 35 dB(A) Leq (16 hour) in the bedrooms with windows shut and other means of ventilation provided between 7 am and 11pm;
- 30dB(A) Leq 8 hour in the bedrooms with windows shut and other means of ventilation provided between 11pm and 7am;
- 35 dB(A) Leq (16 hour) in the living room/s with windows shut and other means of ventilation provided between 7 am and 11pm;
- 40dB(A) Leq (16 hour) in other habitable rooms with windows shut and other means of ventilation provided at all times.

Upon completion and prior to occupation validation testing is carried out.

Impact on Conservation Areas

The application site is located in the Town Head Conservation Area. The Council's Conservation Officer has advised that there are no heritage objections to the proposed residential use.

Provision of natural light to habitable rooms

Paragraph 135 of the National Planning Policy Framework requires planning policies and decisions to ensure that new developments create a high standard of amenity for existing and future users. A habitable room is identified as a room used or intended to be used for sleeping or living which is not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.

The proposed scheme shows an existing window to the proposed bedroom and living room with no windows to the bathroom and kitchen. A Daylight Assessment was submitted with the application and having reviewed this in detail, there appeared to be inaccuracies in the assessment which prevented officers from being able to accept its findings.

An amended Daylight Assessment and Drawing No: BM/0224/YORK/PL10 was submitted on 26th June 2024. The existing windows are now accurately shown and the amended assessment takes into consideration the correct size of the windows. Although the kitchen area will not receive 150lux daylight as required within BRE guidance, the living/dining room does meet the required standard as shown in the assessment. Although this situation is unfortunate, on balance, officers consider it more important for the living space to receive adequate light rather than an alternative layout which provides future occupants with a less desirable living arrangement with less functional space.

The impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses

The application site is not in an area that is considered to be important for general or heavy industry, waste management, storage or distribution, and therefore does not require prior approval.

The impact on the local provision of a registered nursery or health centre through the loss of either service

The proposal would not result in the loss of a registered nursery or health centre.

Where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building

The proposed development is less than 18m in height and is less than seven storeys, and therefore does not meet the fire risk condition. No fire safety impacts of the development is required.

Space standards

Article 3 (9A) of the GDPO states that 'Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse—

- (a) where the gross internal floor area is less than 37 square metres in size; or
- (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.

The Nationally Described Space Standards (NDSS) is a technical standards document produced to ensure internal space within new dwellings is suitable for application across all tenures. Table 1 sets out the minimum gross internal floor area

requirements for dwellings, and setting out the requirements for dwellings which include a variety of room numbers, bed spaces and storeys.

<u>Number of bedroom</u>	<u>Number of bed spaces (persons)</u>	<u>1 storey dwelling</u>	<u>Built-in storage</u>
1	1	39m2	1.0
1	2	50m2	1.5

The proposed dwelling would have one bedroom and be located at basement level. Officers have measured the submitted floor plan and an approximate floor area of 47sqm has been noted. As such the proposed basement flat meets the minimum standards set out under Section 3 (9A), and the NDSS for 1 bedroom / 1 person dwelling. Prior approval is therefore not required.

RECOMMENDATION

PRIOR APPROVAL REQUIRED AND APPROVED subject to conditions

1. The development must be completed within a period of 3 years starting with the prior approval date.

Reason: To comply with the requirements of Paragraph MA.2 of Part 5, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

2. This permission relates to the following plans:

Location Plan
Received 22nd March 2024

Drawing No: BM/0224/YORK/PL10 – Proposed Plans & Elevations
Daylight Assessment of Living Room and Bedroom 117 Yorkshire Street by Watt Energy & Consulting Engineers, Date: 26 June 2024
Received 26th June 2024

and the development shall be carried out in accordance with these drawings hereby approved.

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development in accordance with the policies contained within the saved Rochdale Unitary Development Plan, the adopted Rochdale Core Strategy and the National Planning Policy Framework.

3. Prior to first occupation of the dwelling, a Noise Report shall be submitted to, and approved in writing by, the Local Planning Authority. The Noise Report shall ensure the following noise levels are achieved:

- ☐ 35 dB(A) Leq (16 hour) in the bedrooms with windows shut and other means of ventilation provided between 7 am and 11pm;
- ☐ 30dB(A) Leq 8 hour in the bedrooms with windows shut and other means of ventilation provided between 11pm and 7am;
- ☐ 35 dB(A) Leq (16 hour) in the living room/s with windows shut and other means of ventilation provided between 7 am and 11pm;
- ☐ 40dB(A) Leq (16 hour) in other habitable rooms with windows shut and other means of ventilation provided at all times.

Upon completion and prior to occupation validation testing is carried out.

Reason: To safeguard the amenities of residents in order to comply with the requirements of Policies G9 and DM1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

Notes for Applicant:

The applicant is advised that external changes cannot be made as part of this prior approval application. A separate planning application will be required for any relevant external works.