

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/01255/PRA56	Hamish Rigg	08 January 2024

Address: Unit 3, Ann Street, Rochdale, OL11 1ER

Proposal: Prior approval for change of use of first floor from vacant commercial premises (Class E) to one flat (Class C3)

PUBLICITY	Weekly list expired?	yes	Site notice expired?	n/a
	Neighbour letters expired?	yes	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?	No
	Neighbour comments received?	No

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	REFUSE
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CHECKED AND SIGNED OFF BY: RK

DATE: 12/01/2024

SITE

The application relates to the first floor of Unit 3 Ann Street, a semi-detached property in central Rochdale. The property is currently vacant but has had a number of historic uses, including beauty salon, professional services, a plumbing merchants and ancillary uses in relation to a car garage (use class (B1)).

PROPOSAL

The application seeks prior approval under Class MA, Part 3 of Schedule 2 of the General Permitted Development Order for the change of use of the first floor from a commercial premises (use class E) to one residential flat (use class C3). Plans indicate 1 bedroom, 1 living room, 1 bathroom, and a home office space.

The application form includes works for operational development relating to the partial bricking up of an existing window to the Ann Street elevation, in addition to the installation of a new door to the south facing gable end elevation. Such works are not permitted under Class MA and are therefore excluded from the description of development and a separate planning permission would be required to be issued before such works are able to be carried out. The assessment below is undertaken on the basis that no operational development is to be carried out.

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

80/D D11158 - Alterations To Levels Of Land Erection Of Perimeter Fence And Use Of Site For The Sale Of Motor Vehicles – Granted STC

CONSULTATION RESPONSES

Environmental health- noise/ odour 21/12/2023:

Given the close proximity to the existing night and late night economy this section cannot support the application in its current form, to allow full consideration we would require a noise impact assessment to be undertaken to inform eh design of the flat to ensure the following internal noise levels can be 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.
- Noise in external amenity areas shall not exceed 55 dB(A).

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

Highways 06/12/2023:

Whilst the proposed change of use would have little impact in terms of traffic generation we do have some concerns regarding bin storage and management within the site for its different uses.

It is evident that the bins for the existing use of the site are being stored on the highway causing obstruction to the footway and carriageway of Ann Street. The submitted plans identify a bin storage area which is remote from the building to be converted and exceeds the distance residents would be expected to take waste for collection. Taking into account the remote location of the bin storage, it is likely that the current practice of bin storage on the highway would continue which we cannot endorse.

Highways cannot support this application because of the potential impact on road safety, residential amenity and the impact on the free flow of highway movements.

REPRESENTATIONS

Neighbour letters were sent to neighbouring properties 07/12/2023. No comments were received.

For the avoidance of doubt, neighbour letters were issued with a description which included the operational development works set out in the application. Whilst it is noted that such works are not eligible under an application for Class MA, it is not considered that this would prejudice members of the public who wish to make representation.

ANALYSIS

The application is submitted is for determination as to whether prior approval is required for the change of use of the site from commercial premises (Class E) to dwellinghouse (Class C3) as permitted under Schedule 2, Part 3 Class MA of the Town and County Planning (General Permitted Development) (England) Order 2015) as amended.

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.

The application form confirms that the building has been vacant for a continuous period of at least 3 months. Whilst Street View does show various paraphernalia on windowsills in March 2023, it appears that all ground floor uses are vacant at this

point and on the balance of probabilities it is accepted that the first floor of the building to which this application relates is likely vacant also.

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 application form states that the property has been in use within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years to the date of the application. The application states the present use of the property is commercial premises, which following the Use Class Amendment Regulations of 2021 includes all uses within Class E of the Use Classes Order.

However, the only planning history available for the site relates to application ref. 80/D11158 - Alterations To Levels Of Land Erection Of Perimeter Fence And Use Of Site For The Sale Of Motor Vehicles, which was granted in October 1980. It is clear that the use of the site as a car sales venue has ceased, with part of the land included within the red edge for this application now forming the car park of the adjacent Cash & Carry/flats.

Part 171B of the Town and Country Planning Act states that where there is a breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. As such, lawful use can only be established by demonstrating a 10 year continuous use within the same use class. Digital imagery available to the council indicates that the property's use has changed multiple times since 2009, including (but not exclusively):

- 2009 Car garage
- 2012, chartered accountants, Use Class E (use class A2 prior to 2020)
- 2014-2015, beauty parlour, Use Class Sui Generis
- 2018-2020, trade and D.I.Y supplies, Use Class E (use class A1 prior to 2020)
- 2023, retail (use class E)

In light of the above, there is no clear evidence to suggest a continuous lawful use for 10 years prior to this application being made. National Planning Policy Guidance states that there is reason to refuse the application if the applicant's evidence is not sufficiently precise and/or ambiguous to justify the grant of a certificate on the balance of probability. As such, it is not considered that the evidence provided and the evidence available to the Council, is able to demonstrate that, on the balance of probabilities, 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.

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

The cumulative floor space of the existing building does not exceed 1,500m².

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.

Summary

The proposal would not be considered Permitted Development under Class M.A. of Part 3 of Schedule 2 of the General Permitted Development Order (as amended) as it would not comply with the criteria set out. Notwithstanding, whilst it is noted that the development would not be considered permitted development, an assessment of all relevant matter within class MA is provided below for the avoidance of doubt.

Conditions

MA.2.—

(1) Development under Class MA is permitted subject to the following conditions.

(2) Before beginning development under Class MA, 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; and
- (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 200656, 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 108 and 109 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 flat, the impact in terms of traffic generation and street parking is considered to be minimal. Regarding parking, whilst no off-street parking spaces are identified in the proposed plans, they are not deemed necessary due to the sustainable location of the site which has good access to numerous public transport networks including the Metrolink, buses, and train station. In corroboration, the Highways Officer raised no objection relating to traffic generation or parking arrangements.

However, concern was raised regarding bin storage and management within the site. Evidence suggests that large bins are being stored on the pavement of Ann Street, causing obstruction to the footway and carriageway. The submitted plans indicate a bin storage area which is separate from the building containing the proposed flat, and exceeds the distance residents are expected to take waste for collection. Due to the remote location of the bin storage, it is probable that the current practice of bin

storage on the highway would continue. On-street bin storage is a safety concern from a highways perspective as they would reduce visibility at the junction with Henry Street, and would force pedestrians into the road. Due to the potential impact on road safety and residential amenity, the Highways Officer was unable to support the application. In addition, the current plans fail to comply with Paragraphs 108 and 109 of the NPPF, thus prior approval would be required and refused.

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. The proposal would utilise the existing building and accesses to the building. It is not proposed to carry out any extensions to the existing building, although alterations to fenestration, and an additional door on the gable elevation are proposed. The site and building has been used for multiple commercial purposes in recent years, and is therefore considered to be suitable as residential accommodation in term 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.

The application relates to a first floor change of use and requires no additional hardstanding. Notwithstanding, the Council's Drainage Officer was consulted and did not recommend any further conditions. 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. NPPF Paragraph 180 e) also seeks (*inter alia*) to prevent putting new development from being put at unacceptable risk from, or being unacceptable levels of noise pollution. Paragraph 191 a) also seeks to mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

The Council's Environmental Health Officer was therefore consulted to assess the potential impact of noise from adjacent premises. Concern was raised given the close proximity of the existing night and late night economy to the site. Ann Street lies adjacent to Milkstone Road, and connects with Drake Street, both of which are busy thoroughfares with numerous late night takeaways.

In addition, the site sits opposite St John's RC Primary School which has the potential to generate high levels of noise, particularly given the impact of school traffic and parking. Further sources of noise include nearby transport networks such as the Metrolink, Rochdale Train Station, and busy main roads, all with the potential to produce considerable noise levels.

In the absence of a noise impact assessment, it is not possible to assess whether the internal conditions would be suitable, or the necessary extent of any potential mitigation measures.

In light of the above, The Environmental Health Officer was unable to support the application in its current form. In corroboration, it is considered that the development does not demonstrate compliance with Paragraphs 180 and 191 of the NPPF which states that planning decisions should ensure that new development is appropriate for its location, taking into account living conditions, including reducing to a minimum the potential adverse impacts resulting from noise on health and the quality of life.

The Environmental Health Officer concluded that given the existing noise sources in the immediate area, a noise impact assessment will need to be undertaken to ensure the relevant noise levels can be achieved: This would need to be submitted prior to determination of the application. Therefore in this regard prior approval is required and is refused.

Impact on Conservation Areas

The application site is not located in a conservation area, and therefore does not require prior approval.

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 plans indicate the retention of windows along the eastern elevation, thus serving all rooms including habitable rooms such as the living room and bedroom. As such, it is considered that the proposed dwelling and its habitable rooms will receive an adequate amount of natural light, and therefore prior approval is not required.

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

Section 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 set over one floor. The plans indicate that an internal gross floor area of 56.2 sqm. As such the proposed flat meets the minimum standards set out under Section 3 (9A), and the NDSS for 1 bedroom single storey dwellings. Prior approval is therefore not required.

RECOMMENDATION

Prior Approval required and refused

1. The application is not supported by evidence with sufficient clarity and precision to determine that, on the balance of probabilities, the building fell within Use Class E for a continuous period of at least 2 years prior to the date of the application for prior approval. As such, the application would not therefore comprise development which would be permitted under Class MA of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
2. In the event that prior approval would be required, insufficient information has been provided to enable the Local Planning Authority to assess the impacts of noise from commercial premises on the intended occupiers of the proposed development. In addition, the proposed plans indicate an insufficient waste storage and management strategy, resulting in the likely continuation of storing bins on the public highway. Therefore, the proposed development would create a potentially harmful impact on road safety and residential amenity. As such the proposed development does not satisfy the requirements of section 2(d) of Paragraph MA.2 and the proposed development is therefore not permitted under Class MA of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Notes for Applicant:

For the avoidance of doubt, this decision relates to the following list of plans:

- Proposed first floor plans: A323-03
- Proposed elevations: 231106-04
- Proposed site plan: A323-05
- Proposed block plan: A323-08
- Location plan: A323-06
- Proposed ground floor plans: A323-02

Report Author Hamish Rigg