



A Multi-Disciplinary Planning  
& Development Consultancy

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24<sup>th</sup> October 2023

Dear Sir/Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)  
TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT ETC)  
(ENGLAND) (AMENDMENT) ORDER 2021, SI 2021/428  
APPLICATION FOR DETERMINATION AS TO WHETHER PRIOR APPROVAL IS  
REQUIRED: CLASS MA  
GROUND FLOOR REAR, 254-256 BLACKFEN ROAD, SIDCUP DA15 8PW**

0. We are instructed by the prospective landowner of this property, Apavi Group Holdings. to submit this application to change the use of the rear of the ground floor shop to this building to 1 x 2-bedroom flat and 3 x 1-bedroom flats.
1. This application is accompanied by plans and drawings and the following supporting or technical documents:
  - a. Daylight report
  - b. Noise Assessment
  - c. Groundsure Report (Ground Contamination)
  - d. Transport Assessment
  - e. Evidence of 3 months' vacancy
  - f. CIL Additional Information Form

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## Site description and principal constraints

2. The property is in a suburban area characterized by a mix of building types and styles and a mix of uses. The application relates to a workshop to the rear of the property, which is ancillary to the existing ground floor retail shop at this address. The west elevation of the main building looks onto the rear private access road and the west elevation looks on to the return elevation with Wellington Avenue.
3. The property is located within Blackfen Local Centre and is Flood Zone 1. Although the property is in a PTAL zone of 2, it is well-served by local bus routes with numerous stops on Blackfen Road, Westwood Lane and Wellington Avenue. The site is not in a conservation area and the property is not listed.
4. There are no Article 4 Directions restricting the use of permitted development rights in respect of this site.
5. This application for change of use does not propose any external changes.
6. The property is in CIL Zone 3 (£260/sqm – January 2023).

## Class MA Prior Approval

7. "Class MA" permitted development rights came into force on 1<sup>st</sup> August 2021 and states the following:

### ***Permitted development***

*MA. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.*

### ***Development not permitted***

*MA.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;

(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;

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

(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;

(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;

(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

(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.

(2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—

(a) the following classes of the Schedule as it had effect before 1st September 2020—

(i) Class A1 (shops);

(ii) Class A2 (financial and professional services);

(iii) Class A3 (food and drink);

(iv) Class B1 (business);

(v) Class D1(a) (non-residential institutions – medical or health services);

(vi) Class D1(b) (non-residential institutions – crèche, day nursery or day centre);

(vii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;

(b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2

## **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;*

*(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.*

8. Development under Class MA is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date, and the provisions of paragraph W (prior approval) apply in relation to that application, subject to amendment, including that development may begin after “*the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused*” (GPDO 2015, Schedule 2, Part 3, Class V, Paragraph W(11)(c)).

## Description of the Building

9. This application concerns the rear of the ground floor shop at this address. It comprises ground floor and first floor accommodation. The ground floor is currently accessed from the front of the shop via Blackfen Road. Planning permission has recently been granted for external changes to the rear that would enable direct access from the access road via Wellington Avenue.
10. An application for “Alterations to fenestration including new doors and windows to create access via Wellington Avenue” (LPA reference: 23/02101/FUL) was granted with conditions on 16<sup>th</sup> October 2023.
11. Therefore, the use of the floor area to be converted formerly comprised a part of the ground floor shop (Class E(a) Use).
12. There is no Article 4 direction affecting the site’s right to Prior Approval under Class MA.

## Planning and Use History

13. The following planning applications relate to this site:
  - a. Formation of canopy over storage area and yard – Granted 11.03.77 (77/00095/FUL)
  - b. Covered area at rear – Granted 11.07.80 (80/01135/FUL)
  - c. Covered storage area attached to rear of building – Application withdrawn 12.09.84 (82/00498/FUL)
  - d. Outline application for the erection of a 4 storey building to provide 9 residential units comprising 3 x 1 bed and 6 x 2 bed flats with parking and bin storage facilities on the ground floor – Refused 04.11.20 (20/00729/OUT)
  - e. New retail entrance door on front elevation – Granted 19.09.23 (23/01848/FUL)
  - f. Alterations to fenestration including new doors and windows to create access via Wellington Avenue – Granted 16.10.23 (23/0210/FUL)
14. The use of the whole of the property falls most recently in to shop use and ancillary floor space and has been so for at least 2 years.
15. A search of the Business Rates register indicates that the area in question is comprised in the same hereditament for rating purposes as the remainder of No.254-256 Blackfen Road (i.e. Use Class E).

## The Proposals

16. The proposals comprise the following:
  - Change of use of existing floor space formerly part of shop and premises to 4 x Class C3 dwelling units.
  - No car parking for the new flats.
  - Areas for refuse and servicing would be available and could be accessed to the front of the building via the access road as well as areas for new cycle parking for the new apartment.
  - No external alterations nor any works of extension or demolition proposed within this application.

17. The proposed units would comply with Nationally Described Space Standards and the plans submitted with this letter confirm the same.

18. The following are enclosed:

- Site location plan showing the application site in red outline
- Site Plan/block plan showing proposed access
- A full set of existing and proposed floor plans, elevations and sections
- Prior Approval Application Form
- Internal Daylight report
- Noise assessment and report
- Transport Assessment
- Groundsure report (Ground contamination)
- Proof of 3 months' vacancy
- CIL additional information form

#### **In accordance with Condition MA.1**

19. Our comments are set out below in respect of each condition.

20. Development is not permitted:

(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 part of the building has been vacant since 13<sup>th</sup> July 2023.*

(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;*

*Property has fallen within Class E(a) use class for at least 2 years prior to the date of the application (ancillary to Class A1 retail use).*

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

*The cumulative space of the whole building is below 1,500 sqm GIA.*

(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;*

*None of the above apply.*

(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;
- None of the above apply.

(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

*Not applicable.*

(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.

*Not applicable.*

## **In accordance with Condition MA.2**

21. We require confirmation from the Council that prior approval is not required for the proposed new unit in relation to the transport and highways impacts, noise impact of neighbouring commercial uses, contamination risks, flooding risks of the site and with regard to daylight and sunlight and the conservation area status of the site. Each of these elements is addressed in the following sections. The other matters listed under Class MA.2(2) do not apply to this application.

## **Paragraph W of the GPDO 2015 (as amended)**

22. The following is provided in accordance with the requirements of paragraph W:

- Written description of the proposed development  
Change of use of space ancillary to Class E(a) shop and premises to provide 4 self-contained flats over ground floor only.
- Plan indicating the site and showing the proposed development  
Appropriate plans are included with this application. Dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses all as shown on the enclosed plans.
- Statement indicating the net increase in the proposed number of dwellings  
Proposed net number of 4no new dwellings
- Developer's contact details  
Apavi Group Holdings,  
c/o David Kemp,  
DRK Planning Ltd,  
215 Alfred Court,  
53 Fortune Green Road,  
London, NW6 1DF
- Developer's email address  
All correspondence to be addressed to the following email address:  
david@drkplanning.co.uk

## Transport and Highways Impact

23. The Site is in a local shopping area and is accessible by public transport and is also within walking distance of local facilities and shops.
24. This proposal indicates the proposed location and capacity of the bin and cycle stores, but as operational development cannot be proposed in a Prior Approval application under Class MA, the future provision of the bin and cycle store structure can be sought separately through an application for full planning permission if the same should be required.
25. By promoting new homes in this local shopping area, this application helps to reduce the need to travel to local facilities in accordance with Policy DP24 of the Local Plan. Furthermore, this encourages the use of public transport and the provision of secure and covered cycle storage on site encourages the use of non-car modes of transport in accordance with Policy DP22 of the Local Plan.
26. A Transport Statement is enclosed with this application from TTP Consulting. In support of this application, it concludes as follows:

*“TTP Consulting is retained to provide highways and transport advice associated with the proposals for 254 – 256 Blackfen Road where it is proposed to convert the rear of the building from commercial to residential to create a total of 4 dwellings.*

*The Site is in an accessible location being within walking distance of nearby local amenities and public transport opportunities, which includes convenience stores, public houses and medical facilities along with a number of bus services.*

*The proposed residential units would result in no more than 2 to 3 person trips in any one hour, typically with fewer trips when compared to the existing commercial floorspace.*

*Parking is proposed for 6 bicycles in accordance with London Plan standards.*

*No car parking is proposed with residents required to park on-street subject to availability. It is anticipated that the dwellings would have a demand for no more than 2 cars, with overnight parking surveys demonstrating that it would not impact on the availability of parking.*

*Refuse would be collected as per existing, with residents placing sacks on the footway on collection days in the same manner as other dwellings in the local area.”*

27. The proposed site plan with this application indicates that there is space on the hardstanding opposite the entrances to the proposed dwellings for dedicated bin storage, which can be collected via the existing access road.
28. Therefore, this application is acceptable in transport and highways terms.

## Noise Impact

29. The property is located in an area where the immediate surrounding uses do not comprise any noisy commercial activities. The site is immediately adjacent other residential uses and ground floor retail, which are generally low impact in terms of potential noise disturbance.



30. Other uses, such as pubs and restaurants, are situated a significant distance from the premises and separated in any event from the premises by Blackfen Road (A210), which is particularly wide at this junction, due to the presence of a traffic island and pedestrian crossing. Therefore, noise from traffic on Blackfen Road is likely to be a dominant feature of the character of noise in this location, rather than noise from other commercial premises. Therefore, the proposed apartment is likely to enjoy a reasonable and acceptable standard of noise amenity.
31. A copy of a Noise Assessment report, undertaken by Hoare Lea Consultants, is included with this application. As noted in the Executive Summary to this report:

*“An environmental sound survey has been carried out to determine the noise levels to be used for the noise impact assessment.*

*Suitable internal noise levels that fall below BS 8233:2014/ProPG thresholds can be achieved with double glazing and trickle vents.*

*Partially open bedroom windows are considered to be feasible as a method for the relief of overheating at night.*

*The concrete party floor between the existing daytime commercial use and the proposed residential spaces is capable of achieving the required airborne sound insulation standards set out in E1 of the Building Regulations 2010 Part E Schedule 1.”*

32. Subject to the glazing specification and other mitigation as noted in this report to habitable room windows, the proposed windows would comply with relevant noise standards vis-a-vis any noise from other commercial premises. Accordingly, the proposal would meet an acceptable level of amenity with regard to noise for future residential occupiers of this development.

### **Flood risk assessment**

33. The site is in Flood Zone 1 and the building footprint sits on land with very low or no risk of surface water flooding. Given that there is no change proposed to the building footprint or the amount of hardstanding and that the site is not at risk of flooding, there are no flooding implications arising from the change of use. Therefore, no flood risk assessment would be required.

### **Contamination assessment**

34. The last known and historic use of the property was as a high street shop and premises and therefore there is no known contamination risk to the proposals.

### **Adequate Natural Light**

35. We have received a daylight report in respect of these proposals from T16 Design Limited, as the GPDO requires “adequate natural light” to the habitable rooms proposed. This report confirms that there would be adequate natural light to the new units, with regard to BRE Daylight Guidance.

36. We have sought an opinion from experienced planning Counsel and they have confirmed to us that prior approval for a change of use under Class MA can be granted subject to a planning condition requiring the completion of operational works granted under a separate and specific application for planning permission (e.g. prior to occupation of the development) in order to ensure that the new units deliver the adequate level of natural light that the new works will facilitate to the change of use.
37. By way of example, we obtained Prior Approval on a similar basis from the London Borough of Richmond upon Thames on 1<sup>st</sup> July 2022 for a conversion of the rear of a shop to one self-contained flat (Class MA permitted development) in respect of 408 Richmond Road, Twickenham TW1 2EB (LPA reference: 22/1512/GPD26) predicated on external changes sought under a separate planning application for new and revised window openings. This was granted subject to the following planning condition (reference U0131230):

*“The unit created under this application shall not be occupied until the works approved under 22/1374/VRC has been completed.*

*Reason: To protect the amenity of the future occupiers”*

38. A similar approach was endorsed by The Planning Inspectorate in respect of an appeal that was allowed on 20<sup>th</sup> December 2022 subject to planning conditions for “partial change of use of the basement and ground floor from retail (Use Class E) into 2x residential units (Use Class C3) at the rear with retained retail use at the front”; PINS reference APP/V5570/W/22/3292885 at 185 Caledonian Road, London N1 0SL. This appeal was allowed with conditions, one of which was the following:

*“The use hereby permitted shall not commence until the rooflights to the ground floor level and fenestration to the rear elevation of the ground floor and basement/lower ground floor levels of the building as shown on the plans submitted with the application and granted planning permission by the Local Planning Authority on 18 January 2022 as part of development with the application ref P2021/3133/FUL have been installed in accordance with the approved details. The rooflights and fenestration shall thereafter be retained.”*

39. In particular, the Inspector rightly opined in this case as follows at paragraphs 18 and 20:

*18. The findings of the DSA are based on external alterations to No 185 that would see fenestration provided to the rear of the building at lower ground floor level; and the enlargement and removal of bars from fenestration to the rear of the building and installation of rooflights to the ground floor. Although these alterations are shown on the submitted plans, I appreciate that the permitted development right at Class MA relates only to the change of use of a building and any land within its curtilage, and does not include provision for any associated building operations. However, since the Council determined the application, planning permission has been granted under application ref P2021/3133/FUL for development which includes the alterations to fenestration and installation of rooflights relied on within the DSA and shown on the submitted plans (‘the Permission’).*

*20. The Council has commented that it would not have powers to force and/or enforce the implementation of the planning permission including the Permission alterations. However, paragraph W(13) of the GPDO provides that prior approval may be granted subject to conditions reasonably related to the subject matter of the approval. I consider that an appropriately worded condition could in this case reasonably require the Permission alterations to fenestration and rooflights that are relied on by the DSA to be completed, in effect providing for adequate natural light before any prior approval took effect. I am satisfied that such a condition would be reasonably related to the subject matter of the prior approval. In addition, the Council's evidence does not explain the basis for its statement that using a condition would be contrary to the prior approval determination of assessing the current plans and condition of the application building, and I can see no firm reason that imposing such a condition would result in tension or conflict with the provisions of Class MA.*

40. Therefore, the proposed change of use would provide adequate levels of natural light to all habitable rooms.

## **Conclusions**

41. The existing building proposed to be subject to this application has a lawful Class E(a) retail use and, subject to appropriate mitigation to be secured by condition, the proposed change of use presents no transport and highways, contamination, noise, flood risk, or sunlight and daylight concerns.

42. Therefore, we ask that this application should be granted subject to such planning conditions as the Council considers appropriate.

Yours faithfully,

**David Kemp BSc(Hons) PGDL MRICS Barrister\***  
Director  
DRK Planning Ltd  
(\*non-practising member)