DELEGATED APPLICATIONS ASSESSMENT SHEET

APPLICATION NO./ADDRESS: 19-23 Broadwater Street West WB/10/0745/CLP

DATE OF SITE VISIT: 7.10.2010

NEIGHBOURS CHECKED:

ADDITIONAL NEIGHBOUR NOTIFICATIONS:

PROPOSAL, SITE AND SURROUNDINGS:

The application property comprises a two-storey, mid-terrace building located on the west side of Broadwater Street West within the core area of Broadwater District Shopping Centre, dating from the mid-1950s. The building was formerly a Woolworths shop comprising a sales area on the ground-floor with ancillary staff facilities and stores on the first-floor. The first-floor was accessed by one of two internal staircases, one positioned towards the front of the shop and the other at the rear. There is a rear yard accessed from the car park (from Rectory Gardens). Following a period of vacancy, the ground-floor has recently been occupied by a hardware store, Hanwells. The majority of the floor area comprises the sales area, with only a small storage area at the rear. The rear yard is used for deliveries. The internal staircase at the front of the building has been blocked off.

A Certificate of Lawfulness is sought to establish that the proposal to convert the first-floor into a self-contained flat is lawful in planning terms, without the need for planning permission. The proposed works will result in the creation of a 4 bedroom flat with access from the rear staircase via a lobby (shared with the ground-floor shop). The development involves the installation of internal partitions, but no works to the exterior of the building.

RELEVANT PLANNING HISTORY:

None relevant.

RELEVANT SAVED PLANNING POLICIES: Not Applicable.

REPRESENTATIONS AND RELEVANT CONSULTATION RESPONSES:

None.

PLANNING ASSESSMENT:

In this instance the relevant consideration is a matter of fact and law, rather than the planning merits of the proposal.

The main consideration being whether the proposal constitutes 'permitted development' under the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (As Amended).

Class F states:-

Development consisting of a change of the use of a building-

(a) to a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as a single flat, from a use for any purpose within Class A1 of that Schedule;

Development permitted by Class f is subject to the following conditions:-

(a) some or all of the parts of the building used for any purposes within Class A1 or Class A2, as the case might be, of the Schedule to the Use Classes Order shall be situated on a floor below the part of the building used as a single flat;

(b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor shall not be used in whole or in part as the single flat;

(c) the single flat shall not be used otherwise than as a dwelling (whether or not as a sole or main residence) –

(i) by a single person or by people living together as a family, or

(ii) by not more than six residents living together as a single household (including a household where care is provided for residents).

Consideration has been given to whether a use as a self-contained flat can be a 'mixed use' as required, or whether this must involve the creation of a self-contained flat. This is not straightforward since case law would indicate that the creation of a self-contained unit creates a separate planning unit (as in Burdle V S o S for the Environment [1972]). Further advice contained in Circular 9/95 (which accompanied the change to the GPDO) makes clear:-

"Class F of Part 3 permits a change of use of premises used either as shops or for financial and professional services (within Classes A1 or A2 of the UCO) to a mixed use as a single flat and Class A1 or A2 uses within the same planning unit."

Discussion of this issue points to the view that any new flat created over a shop or A2 unit cannot be self-contained if it is to be Class F permitted development, and a substantial amount of communality between the two uses in terms of access, uses of services and ownership would be expected. In this case, a degree of communality would exist in that the flat would be accessed through the rear yard and from the same external door used for deliveries to the ground-floor shop. Although the flat would have a self-contained entrance from the first-floor landing, the stairs (leading to the roof) would remain in the landlord's control. However, there is no apparent case law which turns on this point and the advice of the Council's Solicitor is as follows:-

"*Any decision to refuse a certificate would be based on the view that the proposed flat is physically separate and as such represents a separate planning unit. However, this fails to take into account that the wording of the GDPO seems to deal with the application before us fairly and squarely. There*

is no requirement under PD rights for the residential premises to be ancillary to the shop and practically therefore there is always lightly to be a physical separation between the two units. To determine otherwise would seem to go against the intention of the GDPO.

RECOMMENDATION: ISSUE CERTIFICATE

REASONS FOR RECOMMENDATION:

The proposed development constitutes 'permitted development' under the provisions of Classes F of Part 3, Schedule 2 of the Town & Country Planning (General Permitted Development) Order 1995 (As Amended).

DELEGATED

Case Officer [redacted]
Sign..... Date 16.11.2010

Authorising Offi[redacted]
Sign..... Date 23/11/10