

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	20/01/2023
		N/A	<b>Consultation Expiry Date:</b>	01/04/2023
<b>Officer</b>			<b>Application Number(s)</b>	
Christopher Smith			2022/5197/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
94 Mill Lane London NW6 1NH			See draft decision notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
Conversion of basement and part of ground retail unit (Class E) to residential flat; construction of lightwell and railings at front; new windows to side and rear elevations.				
<b>Recommendation(s):</b>	Refuse Planning Permission			
<b>Application Type:</b>	Full Planning Application			
<b>Informatives:</b>	See decision notice			

## Consultations

Adjoining Occupiers:	No. of responses	12	No. of objections	12
<b>Summary of consultation responses:</b>	<p>Site notices were displayed 06/03/2023 which expired 27/03/2023.</p> <p>Comments received can be summarised as below:</p> <ul style="list-style-type: none"><li>• Excessive loss of business floorspace</li><li>• Unacceptable impact on viability of business unit and vitality of local centre</li><li>• Loss of local services</li><li>• Inappropriate marketing of unit</li><li>• Poor quality housing provision</li><li>• Negative impact on character and appearance of area</li><li>• Increase in vehicle use</li><li>• Loss of pedestrian mobility and safety</li></ul> <p><u>Officer's response:</u></p> <ul style="list-style-type: none"><li>• <i>Loss of business floorspace and local services is a material planning consideration and is addressed in section 1 of the report</i></li><li>• <i>Design is a material planning consideration and is addressed in section 4 of the report</i></li><li>• <i>Amenity is a material planning consideration and is addressed in section 5 of the report</i></li><li>• <i>Housing quality is a material planning consideration and is addressed in section 6 of the report</i></li><li>• <i>Transport impact and pedestrian safety is a material planning consideration and is addressed in section 7 of the report</i></li></ul>			

## Site Description

The application site is a three-storey end-terrace property constructed with yellow brick. It is located at the junction with Broomsleigh Street. It is currently a Class E retail unit with residential flats above.

The site is not located within any conservation area and is not a listed building. It is located within the Mill Lane Neighbourhood Centre and the Fortune Green and West Hampstead Neighbourhood Plan area.

## Relevant History

### Application Site:

2022/5198/P. Conversion of basement and ground floor to residential flat; new windows to side and rear elevations. Pending consideration by the Council.

2022/2508/P. Erection of a mansard roof extension and first floor rear extension with roof terrace above, in connection with conversion of the upper floors to a studio flat and a 1 bedroom maisonette (Class C3). Pending consideration by the Council.

### 60-62 Mill Lane

2011/0296/P. Change of use from non-residential institution (Class D1) to 5 x self-contained flats (Class C3) with retail unit (Class A1) at ground floor level and associated erection of roof extension, two-storey and single storey rear extensions. Granted 13<sup>th</sup> May 2011.

### 66 Mill Lane

2012/4886/P. Erection of mansard roof extension and rear extensions at lower ground to first floor levels, creation of rear terraces at second and third floor level and installation of new front cellar lights at front lower ground floor level all in connection with change of use from retail (Class A1) at lower ground and part ground floor to 1 x 2 bedroom flat, 1 x 1 bedroom at first floor level and 1 x 2 bedroom maisonette on second and third floor levels (Class C3). Granted 21<sup>st</sup> February 2013.

## Relevant policies

### National Planning Policy Framework 2021

### The London Plan 2021

### Camden Local Plan 2017

- D1 – Design
- A1 – Managing the impact of development
- A4 – Noise and vibration
- A5 – Basements
- E1 – Economic development
- E2 – Employment premises and sites
- H1 – Maximising housing supply
- H4 – Maximising the supply of affordable housing
- H6 – Housing choice and mix
- TC1 – Quantity and location of retail development
- TC2 – Camden's centres and other shopping areas
- T1 – Prioritising walking, cycling and public transport
- T2 – Parking and car-free development
- DM1 – Delivery and monitoring

### Fortune Green and West Hampstead Neighbourhood Plan (2015)

- Policy 2 (Design & Character)
- Policy 7 (Sustainable Transport)
- Policy 9 (Pavements & Pedestrians)

### **Camden Planning Guidance**

CPG Design (2021)

CPG Basements (2021)

CPG Amenity (2021)

CPG Employment sites and business premises (2021)

CPG Housing (January 2021)

CPG Transport (January 2021)

CPG Developer Contribution (March 2019)

CPG Town Centres and Retail (2021)

## **Assessment**

### **1. Proposal**

1.1 Planning permission is sought for the conversion of the existing basement and part of the existing ground floor shop (Class E) to a residential flat, the construction of a lightwell and railings at the front of the property, and new windows to the side and rear elevations at basement level.

1.2 The material considerations for this application are as follows:

- Land Use
- Basement Development and Flood Risk
- Design
- Amenity
- Residential Quality
- Transport, Highways & Waste
- Drainage & Flood Risk
- S106/CIL

### **2. Land Use**

2.1. Policy TC1 of the Local Plan states that in Neighbourhood Centres (NC) retail and other town centre uses shall be promoted. Policy TC2 states that the Council shall seek to protect and enhance the role and unique character of each of Camden's centres, ensuring that new development is of an appropriate scale and character for the centre within which it is located. TC2 also seeks to protect Neighbourhood Centres including specialist shopping areas and local shops. The provision of housing above and below shops is supported in circumstances where this does not prejudice the town centre function and particularly the ability of the ground floor to be used for town centre uses.

2.2. Policy 14 of the Fortune Green and West Hampstead Neighbourhood Plan (FGWHNP) 2015 states that development shall preserve or enhance the character of the Neighbourhood Centre and promote a diverse range of shops, businesses and economic activity. To achieve this, the policy states, proposals to convert ground floor retail space into residential use will not be supported.

2.3. The existing retail unit includes a shop at ground floor level, plus ancillary facilities including storage space, a kitchen and a bathroom at basement level. The proposed development would replace all of the storage, kitchen and bathroom spaces, and a significant part of the existing

ground floor shop area, with a residential flat. 29.13sqm of shop area would be retained. Whilst the frontage of the shop and a small amount of retail space would be retained, the removal of significant amounts (58.82sqm) of commercial floor space, storage and other ancillary facilities would unacceptably impact on the functionality and viability of the ground floor retail unit.

- 2.4. The unit would no longer feature bathroom or storage facilities which are essential for most Class E businesses. The lack of a kitchen could prevent the unit being occupied by certain types of Class E uses that require back-of-house preparation space, such as food and drink businesses. It would also reduce the space available for staff welfare facilities. Furthermore, if this application was considered acceptable in all other respects, there would not be any scope for the shop unit to be extended to provide these ancillary commercial facilities at a later date due to the reliance of the proposed ground floor flat on the existing side return area in providing both daylight and sunlight into the proposed lounge/diner and rear bedroom, as well as external amenity space for the proposed residents.
- 2.5. No detailed marketing evidence has been provided. The applicant has instead confirmed via email that the property has been marketed since May 2022 and that there has been some interest in the premises during that time.
- 2.6. The reduction in floor area would therefore significantly limit the potential range of commercial uses that the premises could be used for under Class E, leading to a significant reduction in the flexibility and viability of the ground floor commercial premises. Lack of flexibility and viability of the retail unit on site would be harmful to the vitality and viability of the commercial parade to which it belongs and would harm the ongoing service function the parade provides to local residents.
- 2.7. It is acknowledged that the provision of new housing is a priority land use in Camden, as indicated by Policy H1 of the Local Plan, however the loss of commercial space in this location would outweigh the benefits of a single additional residential unit, due to the significant negative impacts this proposal would have on the commercial role, function and viability of the Mill Lane Neighbourhood Centre.
- 2.8. As such, it is considered that the proposed development is unacceptable as the loss of retail floor space in this location would fail to protect, preserve and enhance the commercial role and function of this part of the Mill Lane Neighbourhood Centre, and would have a detrimental impact on the vitality and viability of the Centre as a whole. As such, the proposed development is contrary to Policies TC1 and TC2 of the Local Plan, and Policy 14 of the FGWHNP.

### **3. Basement Development and Flood Risk**

- 3.1. Policy A5 of the Local Plan states that the Council will only permit basement development where it is demonstrated to the Council's satisfaction that the proposal would not cause harm to neighbouring properties; the structural, ground or water conditions of the area; character; local amenity; and heritage. The policy continues to state that lightwells should be discreet and should not harm the architectural character of the building, and that the relationship between the building and the street should not be harmed. The policy further states that, in determining proposals for basements and other underground development, the Council will require an assessment of the scheme's impact on drainage, flooding, groundwater conditions and structural stability in the form of a Basement Impact Assessment.

- 3.2. Policy CC3 of the Local Plan seeks to ensure development does not increase flood risk and reduces the risk of flooding where possible.
- 3.3. The Council's Basements CPG applies to all developments in Camden that propose a new basement or other underground development.
- 3.4. This development proposal includes underground development in the form of excavation to provide a lightwell. No existing section drawing has been submitted and therefore it is unclear whether it is proposed to excavate parts of the existing basement floor to create floor-to-ceiling heights at basement level that are appropriate for residential accommodation. No Basement Impact Assessment (BIA) has been provided in support of the application. Local streets around the site have historically been subject to flooding in 1975 and 2002, and it is also known that surface water flooding is a potential constraint to future underground development in this area. The Council's Sustainability Officer has reviewed the information. It has been confirmed that, as the site is within a Critical Drainage Area and is also close to a Local Flood Risk Zone (Sumatra Road), flood risk mitigation to the basement has not been fully considered and additional information is required. We would expect water infrastructure to be designed to cope with a 1 in 100 year 6-hour storm event plus 40% climate change in order to limit the flooding of, and damage to, the property. We will expect buildings, landscaping and features to be designed to cope with events exceeding this magnitude to satisfy Local Plan Policy CC3 points c & d. Thames Water have not objected to the application.
- 3.5. Without an existing section drawing, a supporting BIA and additional flood risk information the proposed underground development cannot be justified as failing to exacerbate existing surface water and other risks, including to human life from the siting of bedrooms below ground without suitable mitigation, from flooding and thus the development is unacceptable for this reason. The development proposal is therefore contrary to Policies A5 and CC3 of the Local Plan.

#### **4. Design**

- 4.1. Camden Local Plan policy D1 (Design) is aimed at achieving the highest standard of design in all developments. Policy D1 requires development to be of the highest architectural and urban design quality, which improves the function, appearance and character of the area. Policy D1 also requires development to improve pedestrian movement in the wider surrounding area.
- 4.2. Policy 2 of the FGWHNP states that all development shall be of a high quality design including enhancing the distinct local character and identity of Fortune Green and West Hampstead as well as providing high quality public realm.
- 4.3. Camden's Basements CPG states that front light wells should usually be secured by a grille rather than railings. Railings will usually be acceptable only where they are already part of an established street scene.
- 4.4. The proposed development would include new windows and doors at basement level, most of which would not be visible from public areas. There is one small additional window proposed on the western elevation of the building, that would be visible from public areas. There are no objections to these alterations to the existing building in design terms.

- 4.5. To facilitate the conversion of the basement into residential accommodation a lightwell is proposed at the front of the property, fronting onto Mill Lane. The lightwell would be in the form of a void area, protected by 1.1-metre-high railings on three sides.
- 4.6. There are a few examples of lightwells guarded by railings in the street scene within the Mill Lane NC. However, despite these examples railings are not a common feature of the street scene. Furthermore, there are no existing railings or lightwells in this part of the NC, i.e. east of Broomsleigh Street. Therefore, it is considered that railings do not form part of the established character of this part of the street and would detract from the character and appearance of the existing property.
- 4.7. As shown on the proposed plans, the lightwell and railings would be installed outside of the applicant's land ownership, on land which is understood to be public highway. The installation of an enclosed feature, in the form of railings, and the subsequent loss of paving in this part of the NC would adversely affect the character and appearance of this part of the NC, which is characterised by wide open paved areas and minimal street clutter.
- 4.8. Therefore, it is considered that the application is unacceptable in design terms as it would introduce an alien and incongruous feature, in the form of railings and a lightwell, into this part of the neighbourhood centre street frontage, would reduce the wide open areas of paving that are a key characteristic of this part of the centre, and would also lead to an unacceptable increase in street clutter in this area that unnecessarily restricts pedestrian movements (see para 7 below regarding transport concerns relating to this aspect of the proposal).

## **5. Amenity**

- 5.1. Policy A1 of the Local Plan seeks to ensure that the amenity of neighbouring properties is protected. It states that planning permission will not be granted for development that causes harm to the amenity of occupiers and neighbours in terms of loss of daylight, sunlight, outlook and privacy. Policy A4 seeks to ensure that no unacceptable levels of noise and vibration result from new development.
- 5.2. The development proposes no new floorspace, except for the lightwell at the front which by virtue of its location will not affect adjacent residential properties. No proposed external alterations, except for the lightwell, means that occupiers of adjacent residential properties would not be affected in terms of a loss of day/sunlight and outlook. The proposed new windows and doors at basement level would be located in similar positions to existing windows and doors in most cases. The proposed new rear-facing window at basement level would be a high-level clerestory window which would prevent an excessive degree of overlooking occurring towards the front bay window of the neighbouring property at 1 Broomsleigh Street. To minimise the potential for overlooking that window could be fitted with obscure glazing, and this would have been secured by condition had the application been considered acceptable in all other respects. The noise from a single additional dwelling, in an area where residential properties already exist (to the south, and on the floors above), would not be excessive enough to cause harm to nearby residential amenity.
- 5.3. As such, it is considered that the proposed development would lead to no detrimental impact to neighbouring occupiers in terms of a loss of day/sunlight, outlook and privacy, and no significant increase in noise, and therefore the application is acceptable for this reason.

## **6. Residential Quality**

- 6.1. Policy H6 of the Local Plan seeks to provide new housing that is high quality, functional, adaptable and accessible, and meets space standards.
- 6.2. The proposed GIA of the new flat would be 58.82sqm across the two storeys of the proposed new one-bedroom 2 person residential flat which meets the relevant Nationally Described Space Standards. The proposed bedroom would also meet the Nationally Described Space Standards for a double room as is required. Appropriately sized storage space is also provided. There is a courtyard space to the rear which provides an appropriately sized usable amenity space.
- 6.3. An internal daylight report has been submitted as part of the application. The report states that all assessed spaces within the proposed flat meet the BRE targets for daylight. The living/dining room would not be compatible with BRE sunlight targets but this is primarily a function of the building layout (there are no windows on the southern side of that room) and the room's location within a basement setting. The living/dining room would lead directly onto a kitchen and courtyard space which both provide a sunlit setting at certain times of the day. In this case, given the lack of options to provide further sunlight to the basement, it is considered that there is a reasonable degree of sunlight to the proposed flat overall. The provision of rear windows to the garden area would enable a reasonable degree of outlook.
- 6.4. Therefore, the proposal is acceptable in terms of its daylight and sunlight provision to the habitable rooms and its overall residential quality.

## **7. Transport, Highways & Waste**

### *Sustainable Transport*

- 7.1. Policy T1 of the Local Plan aims to promote sustainable transport by prioritising walking cycling and public transport. This is achieved by improving pedestrian friendly public realm, road safety and crossings, contributing to the cycle networks and facilities and finally improving links with public transport. All these measures are in place to ensure the Council achieves its carbon targets as described in the Local Plan (Policy CC1 in particular). The proposal does not include any cycle parking spaces on the submitted plans. There could be sufficient space internally to store 2 bikes and these could be secured through condition if the scheme was otherwise considered acceptable.
- 7.2. Policy T2 limits the availability of parking in the borough and requires all new developments in the borough to be car free. This will be done through not issuing parking permits, resisting development of boundary treatments and using legal agreements to secure these actions.
- 7.3. Policy 7 (Sustainable Transport) of the FGWHNP states that new development should be car free or car capped.
- 7.4. The new residential unit would be required to be car-free which would appropriately limit the availability of both off-street and on-street parking. This would have been secured by legal agreement if the development had otherwise been acceptable. However, in the absence of a legal agreement, the lack of a formalised method for securing car free development forms a reason for refusal in this instance.

### *Public Highway Impact and Safety*



- 7.5. Policy C5 of the Local Plan states that the Council will promote safer streets and public areas and promote the development of pedestrian friendly spaces. Policy 9 of the FGWHNP states that pedestrian access shall be improved by development that provides safe and wide pavements, providing the maximum possible space to pedestrians, improves access for disabled people and those with push chairs. To this effect the FGWHNP requires street clutter, which includes railings, to be minimised (para D15 of the FGWHNP, supporting text to Policy 9).
- 7.6. The Council's Transport Officer has confirmed that the area in front of this property has become a Public Right of Way and as such is currently public highway land. The pavement area at the front is also notably shown as being outside of the application site 'red line' as shown on the submitted documentation. The Transport Officer has stated that any works to provide a lightwell and railings in the location shown on the plans would require a Stopping Up Order, which is not likely to be agreed by the Council's Highways team. The lightwell/railings would also present an obstruction to pedestrians using the Public Right of Way, which is not supported in this location, in addition to adding to street clutter. Had the application been considered acceptable for all other reasons a highway works plan would be required as the lightwell/railings works are sited on public highway land.
- 7.7. It is noted that the recently added railings/lightwells within the Mill Lane frontage, specifically those at nos. 62 and 66 Mill Lane, were both granted permission prior to the adoption of the FGWHNP in September 2015. The FGWHNP includes Policy 9 which specifically requires improvements to local pavement and pedestrian areas, including the provision of wide pavements which provide the maximum possible space to pedestrians. Furthermore, the Local Plan, which includes Policy C5 referenced above, was adopted in 2017. As such, given the updated policy context since the railing/lightwell permissions at nos. 62 and 66, it is considered that these two examples would not set a precedent for such development under the current planning policy context.
- 7.8. Had the application been considered acceptable for all other reasons the underground construction works, by virtue of being within or adjacent to public highway, would have needed an approval in principle from the Council's Structures Team prior to the commencement of any relevant works to ensure the structural integrity of the public highway is maintained throughout the excavation and construction process. However, in the absence of a legal agreement securing this requirement as a head of term this forms a reason for refusal.

#### *Waste Collection Arrangements*

- 7.9. Policy CC5 of the Local Plan requires developments to include facilities for the storage and collection of waste and recycling. Details of waste collection arrangements have not been provided but could be secured by condition if the application had been considered acceptable for all other reasons.

#### **8. S106/CIL**

- 8.1. If the proposal had been considered acceptable for all other reasons, the following heads of terms would have needed to be secured by S106 Legal Agreement:

- Car-free development Approval in principle and associated assessment fee

8.2. The proposal would have been liable for the Mayor of London's Community Infrastructure Levy (CIL) and the Camden CIL as it involves the creation of new residential floorspace.

## 9. Recommendation

### Refuse planning permission for the following reasons:

- 9.1. The proposed loss of part of the commercial floor space in this location would lead to a significant reduction in the flexibility and viability of the ground floor commercial premises and thereby fail to protect, preserve and enhance the commercial role and function of this part of the Mill Lane Neighbourhood Centre, and would have a detrimental impact on the vitality and viability of the Centre as a whole. As such, the proposed development would be contrary to Policies TC1 (Quantity and location of retail development) and TC2 (Camden's centres and other shopping areas) of the Camden Local Plan 2017 and Policy 14 (Mill Lane Neighbourhood Centre) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.
- 9.2. In the absence of basement impact assessment, the applicant has failed to demonstrate that the proposed basement excavations would not have significant adverse impacts on local drainage, flooding, groundwater conditions and structural stability and is therefore considered likely to present an unacceptable risk to the amenity of future occupiers. As such, the scheme is contrary to policies A5 (Basements) and CC3 (Water and flooding) of the Camden Local Plan 2017.
- 9.3. In the absence of supporting information including evidence of flood risk mitigation measures, the applicant has failed to demonstrate that the proposed basement excavations would not have significant adverse impacts on the drainage and the local water environment and is considered likely to present an unacceptable risk of flooding to the detriment of the amenity of future occupiers. As such, the scheme is contrary to policies A1 (Managing the impact of development), A5 (Basements) and CC3 (Water and flooding) of the Camden Local Plan 2017.
- 9.4. The proposed front lightwell and associated railings, due to their design and location would create a discordant feature in the terrace of properties and would result in additional harmful street clutter which would be detrimental to the character of this part of the Mill Lane Neighbourhood Centre street frontage which is relatively unaltered by railings and front lightwells and would be contrary to Policy D1 (Design) of the Camden Local Plan and Policy 2 (Design and Character) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.
- 9.5. The proposed railings and lightwell would present an obstruction to pedestrians and other users of the public highway and would add unnecessarily to street clutter on this part of the street. As such, the proposed development would fail to provide pedestrian friendly public realm, would fail to maximise space for pedestrians and would fail to improve conditions for wheelchair and other non-ambulatory users of the public highway. As such, the proposed development is contrary to Policies T1 (Prioritising walking, cycling and public transport) and C5 (Safety and security) of the Camden Local Plan 2017 and Policy 9 (Pavements and pedestrians) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.
- 9.6. The proposed development, in the absence of a legal agreement for car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area contrary to policy T2 (Parking and car free development) of the Camden Local Plan 2017 and Policy 7 (Sustainable Transport) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

9.7. The proposed development, in the absence of a legal agreement securing approval in principle for basement works adjacent to the public highway, would be likely to contribute to an unsafe public highway environment and a loss of public amenity contrary to policy A1 (Managing the impact of development) of the Camden Local Plan 2017.