

GROUND OFS OF APPEAL

PRIOR APPROVAL FOR CHANGE OF USE OF FLOORS 2 & 3 FROM OFFICE TO RESIDENTIAL

SITE AT MARLBOROUGH HOUSE 179-183 FINCHLEY ROAD NW3 6LB

1. Introduction

- 1.1. The appeal is brought against the LB of Camden to refuse a prior notification pursuant to Part J of the GPDO. The Borough has refused the application on ten grounds, none of which are relevant to the criteria of Part J.

2. The Application Site

- 2.1. The 4-storey plus basement building is located on the south west side of Finchley Road within the designated Town Centre. The ground floor forms part of the shopping parade, and includes a number of shop units. The top floor of the building provides 7 residential flats and the first floor of the building has been converted to 7 residential units (2010/4614/P). The site is not within a conservation area and the building is not listed

- 2.2. An application to convert the second and third floor along with an extension to the rear of the building received a resolution to grant from the Borough on May 3rd 2013. The draft Heads of Terms include:

- Car free
- Sustainability Plan - To achieve Level 3 for Code for Sustainable
- Homes
- Affordable housing contribution of £46,000, and mechanism to ensure a re-appraisal of the development economics at the time of commencement.
- Education contributions of £25,922
- Community Facilities contribution of £23,520
- Public open space contribution of £17,360
- Training and employment contribution of £29,128
- That the applicant recruit 1 construction apprentice per £3million of build costs, plus a £1,500 per apprentice placement fee and
- That, if the value of the scheme exceeds £1million, the applicant sign up to the Camden Local Procurement Code.

3. The Proposal

- 3.1. It is proposed to convert the existing floor space into the following mix:

- 6x1 person
- 6 x 2 bed
- 2 x 3 bed

- 3.2. Refuse and cycle store will be provided at ground floor level.

4. The Legislation

4.1. Following recent changes to permitted development categories introduced by the Town and Country Planning Act (General Permitted Development) (Amendment)(England) Order 2013 the development proposal comprise a 'Class J' development where conversion is proposed from existing past use as B1a office to class C3 residential dwellings.

4.2. The Town and Country Planning Act (General Permitted Development) (Amendment)(England) Order 2013 states:

Class J development is permitted subject to the condition that before beginning the development, the developer shall 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 and highways impacts of the development;

(b) contamination risks on the site; and

(c) flooding risks on the site,

and the provisions of paragraph N shall apply in relation to any such application.

4.3. The proposal is permitted development under Class J of The Town and Country Planning Act (General Permitted Development) (Amendment)(England) Order 2013. The proposal is permitted by Class J for the following reasons:

- The site is not on Article 1 (6A) land
- The building was last used as Class B1 (a) Offices
- The site does not form part of a safety hazard area
- The site does not form part of a military explosives storage area
- The building is not a listed building or scheduled monument

4.4. There is no doubt that the Borough determined the application more than 56 days after it had been received, but they claim that S62(3) of the 1990 Act is applicable. The Appellant cannot understand how, so must wait to rebut that. In the meantime, an appeal against the refusal is quicker than submitting for a Certificate and then having to appeal that.

5. Class J Criteria

5.1. There appears to be no issue between the Appellant and the Borough as to the accord of the scheme with the criteria provided within Class J, as considered below:

Flood

5.2. The site does not lie within Flood Zone 2 or Flood Zone 3, nor does it lie within an area in Flood Zone 1

which has critical drainage problems¹.

Map of NW3 6LB at scale 1:20,000

Data search  Text only version 



Contamination

- 5.3. The application was supported by a Landmark SiteCheck Assess Report dated October 2007, which demonstrates no known historic contamination issues for the site. In any instance, as the change of use will occur at second and third floor level, it is unlikely that any unknown contamination in the earth could be disturbed via the conversion.
- 5.4. It is further noted that no condition was imposed upon 2010/4614/P relating to contamination.

Highways and Transport Impacts

- 5.5. Where consideration of transport in our impacts are requested by local planning authority further clarification of the requirements to provided within Paragraph N 'Procedure for applications for prior approval under Part 3 of the Town and Country Planning Act (General Permitted Development) (Amendment)(England) Order 2013.

3) Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority shall consult—

(a) the Secretary of State for Transport, where the increase or change relates to traffic entering or

¹ <http://www.environment-agency.gov.uk/homeandleisure/37837.aspx>

leaving a trunk road;

(b) the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority; and

(c) the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway.

5.6. Whilst the application site lies adjacent to a classified road, no access is available nor parking provided on site. Nor is it directly related to or material impacts upon a level crossing, and therefore when these considerations are combined, it is not subject to (a) and (c) as set above and within The Town and Country Planning Act (General Permitted Development) (Amendment)(England) Order 2013.

5.7. With regard to N(3)(b) the scheme will convert 875 square metres of existing B1 office without parking facility to provide fourteen flats without parking facility, along a road that is already subject to parking restrictions. As no parking is to be provided as part of the conversion it is therefore reasonable to conclude that the proposal will not result in a material increase or material change in the character of traffic entering or leaving a classified road or proposed highway in the vicinity of the site and is therefore not subject to requirement N(3)(b) of The Town and Country Planning Act (General Permitted Development) (Amendment)(England) Order 2013.

5.8. The sustainable site location adjacent to the Camden town centre, with a PTAL rating of 6b, reflecting the excellent access to the public transport, pedestrian and cycle infrastructure therefore meets the first and second test of the NPPF (as set out in the bullet points above).

5.9. As with previous developments on the site, my Client is willing to restrict the rights of tenants of the building to obtain resident parking permits. The conditions on 2010/4614/P allow for the installation of additional cycle storage, and so the elements of the scheme shown on the ground floor are not development.

5.10. Given that the development proposals do not compromise the criteria for transport and highway impacts as detailed within the Town and Country Planning Act (General Permitted Development) (Amendment)(England) Order 2013, it would be reasonable to assume that prior approval is unnecessary.

5.11. As the assessment above demonstrates, there is no issue with regard to the scheme as assessed against the criteria of Class J.

5.12.Paragraph N(8)(b) requires Local Planning Authorities to have regard to the National Planning Policy Framework which was formally adopted in March 2012 in determining an application for 'Prior Approval'.

5.13.The NPPF provides focus on the need to achieve sustainable development while also encouraging economic growth to stimulate the economy through planning and construction of new schemes.

5.14.At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

Effective transport planning is an important aspect to consider when seeking optimal sustainability and the NPPF acknowledges this within a series of criteria which should be met by new development.

All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;*
- safe and suitable access to the site can be achieved for all people; and*
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*

5.15.The sustainable site location on Finchley Road reflecting the excellent access to the public transport, pedestrian and cycle infrastructure therefore meets the first and second test of the NPPF (as set out in the bullet points above). The Borough had previously determined that the space was no longer required for employment land purpose, and it would better serve the community as permanent residential.

5.16.Given that the proposals will not cause any increase in the number of vehicles accessing a classified road, it would reasonable to conclude the proposed residential development will not result in any severe impact to the adjacent infrastructure as defined within the NPPF and the proposal is therefore considered acceptable and policy compliant.

Camden's Approach

5.17.I begin this appeal by recalling the sage words of Lord Denning in Pyx Granite Company Limited v Ministry of Housing and Local Government (1958) 1 QB 554

The planning authorities are not at liberty to use their powers for an ulterior motive, however desirable that object may seem to them in the public interest."

5.18. Camden have adopted a parallel approach to prior approval, not one based on statute or policy, but simply because it appears to them the 'right thing to do'. They will be aware that the construction of statute is such that planning permission is deemed to have been granted by Order under the auspices of S60 of the TCPA 1990. Their *policy* is not referable to any document, and I believe it is not even codified beyond a staff briefing that they've adopted a five dwelling threshold where applications are then subject to contributions. The Appellant is relying on email advice and has not been referred to any document adopted on behalf of the Borough (email appended)

5.19. The Appellant reminded the Borough prior to the determination that planning obligations could only be sought on 'relevant determinations' made pursuant to S70 of the TCPA 1990. The law of the land did not appear to stop the Borough in its tracks. The ridiculousness of their determination is such that they have levied heads of terms against the scheme which they did not seek to apply when determining an application under S70 of the TCPA 1990. This cut and paste of bottom drawer policy has no place in the determination of these applications.

5.20. The Appellant would note the support of the Planning Minister, as their Statement to Parliament on 6 February 2014 states:

We are also aware that some local authorities may be unclear on the correct intention of the detail provisions of national legislation for office to home conversions. In some instances, authorities do not appear to have applied the correctly intended tests to determine applications for prior approval and have sought to levy developer contributions where they are not appropriate (on matters unrelated to the prior approval process). To ensure the permitted development rights are utilised fairly across England, my department will update our planning practice guidance to councils to provide greater clarity on these points. Unjustified state levies should not be applied in any attempt to frustrate the creation of new homes.

5.21. Notwithstanding their deliberate flouting of the CIL regulations, this statement cannot be of a surprise to the Borough as the same statement was made during the initial consultation to the Policy in 2011

Conclusion

5.22. In summary, the Development Proposal

- Seek conversion of the existing Second & Third Floors of 179-189 Finchley Road, London, NW3 6LB from B1(a) Office to C3 Permanent Residential.
- Are located within a sustainable High Street location with numerous public transport services, pedestrian-only and cycle opportunities
- Comply with the Criteria provided at both Class J and paragraph N

5.23. The proposal is therefore permitted development under Class J of The Town and Country Planning Act (General Permitted Development) (Amendment)(England) Order 2013 and the Client trust that the

Borough will agree.