

Delegated Report		Analysis sheet		Expiry Date:		08/08/2013	
		N/A / attached		Consultation Expiry Date:		n/a	
Officer				Application Number(s)			
Jonathan Markwell				2013/4392/P			
Application Address				Drawing Numbers			
Carob Tree 15 Highgate Road London NW5 1QX				Please see decision notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
Non-material amendments to alter the internal layout of the residential units on the upper floors of the building and omit one window at first floor level on the east elevation, all to planning permission dated 30/03/2012 (Ref: 2011/3819/P) for the change of use of upper floors from ancillary restaurant accommodation (Class A3) to create three (2x2 and 1x3 bed) self-contained flats (Class C3) including rear (south) extensions at first and second floor level and roof extension to create new third floor level with external terrace areas and associated alterations including new entrance on Highgate Road (west) elevation.							
Recommendation(s):		Grant Approval					
Application Type:		Non Material Amendments					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	00	No. of responses	00	No. of objections	00
				No. electronic	00		
Summary of consultation responses:		None.					
CAAC/Local groups* comments: <small>*Please Specify</small>		None.					
Site Description							
The application site comprises the existing Carob Tree Restaurant, located on the junction of Highgate Road, Swain's Lane and Highgate West Hill. The building is predominantly three-storey and basement in height, although a section on the Swain's Lane (north) elevation is single storey with an existing balcony area above.							
The building is a former 1950s public house (replacing an earlier public house on the site) and has some detailing typical of a mid 20 th century modern approach, such as timber framed casement							

windows, heavily rendered reveals and projecting coping detail at roof level. Its brickwork has unfortunately been painted fairly recently which is considered in design terms to somewhat erode its relationship with the surrounding brick buildings. It is however considered to relate well stylistically to the slightly later 1950s residential blocks to the south (the three storey St Albans Villas on Highgate Road) which creates some architectural cohesion to the later development at this important nodal point.

Elsewhere on this junction is a single storey parade of shops to the north on Swain's Lane, a variety of mainly two-storey buildings (shops with residential accommodation above) to the east of the application site on the south side of Swain's Lane and the four storey No's 1-4 Highgate West Hill (again shop units with residential accommodation above). To the south and west of No's 1-4 Highgate West Hill is Hampstead Heath, while further to the north is the residential Brookfield Mansions.

The building is not listed but is located in the Dartmouth Park Conservation Area. Furthermore, it is situated in close proximity to the boundary with both Highgate Village Conservation Area (30 metres) and Holly Lodge Estate Conservation Area (35 metres away). It is also located within a designated neighbourhood shopping centre.

The application site has been subject to a number of planning applications in the recent past. Most notably a proposal for the conversion of the upper floors to 5 (1x1 bed and 4x2 bed) flats including front, side and rear extensions at first and second floor level and a roof extension to create a new third floor level was refused by the Council on 10/09/2010 and subsequently dismissed at appeal by the Planning Inspectorate (References 2010/2274/P and APP/X5210/A/10/2137283). Please see the relevant history for more details.

Relevant History

2009/5516/P - Change of use of upper floors from ancillary restaurant accommodation (Class A3) to create five self-contained flats (Class C3), including extensions at first and second floor level and a roof extension to create new third floor level; erection of single storey glazed enclosure to existing outdoor seating area on Highgate Road elevation for existing restaurant use at ground floor level (Class A3) and associated alterations. Withdrawn prior to a formal decision being made by the Council 02/02/2010.

2010/2274/P - Retention of restaurant (Class A3) at basement and ground floor level; Change of use of upper floors from ancillary restaurant accommodation (Class A3) to create five (1 x 1 bed and 4 x 2 bed) self-contained flats (Class C3), including front (north – Swain's Lane), side (east) and rear (south) extensions at first and second floor level and roof extension to create new third floor level with associated external terrace areas and associated alterations. Refused Planning Permission 10/09/2010 after consideration at the Development Control Committee on 02/09/2010.

Reasons for refusal of application 2010/2274/P:

1. The proposed extensions to the building, by reason of their scale, bulk, height and design would result in a dominant and overbearing form of development on this prominent corner site and would fail to respond positively to the surrounding context, harmful to the character, appearance and setting of the host building, the wider Dartmouth Park Conservation Area, and the adjacent Holly Lodge and Highgate Village Conservation Areas.
2. The proposed development, in the absence of a legal agreement for car-free housing, would be likely to result in increased parking stress and congestion in the surrounding area, to the detriment of highway and pedestrian safety.
3. The proposed development, in the absence of a legal agreement securing the provision of an EcoHomes assessment to ensure that the proposed development would achieve a minimum 'Very Good' rating and a post-construction review, would fail to be sustainable

in its use of resources and energy use.

4. The proposed development, in the absence of a legal agreement for securing contributions for public open space, would be likely to contribute to pressure and demand on the existing open space in this area.
5. The proposed development, in the absence of a legal agreement to secure educational contributions, would be likely to contribute unacceptably to pressure on the Borough's education provision.

An appeal was lodged against the Council's decision to refuse planning permission on 06/10/2010. The appeal (Reference: APP/X5210/A/10/2137283) was dismissed on 19/01/2011. The Inspector considered the main issues to be: "(i) the effect of the proposed extensions and alterations on the character and appearance of the existing building and the Dartmouth Park Conservation Area; and (ii) whether the proposal would make adequate provision for open space and education requirements, car-free housing and a sustainable form of development by way of a planning obligation" (paragraph 5).

On issue (i) it was concluded that the proposal *"would be harmful to the character and appearance of the area and although it would be unlikely to effect the setting of the nearby Holly Lodge Estate and Highgate Village Conservation Areas, it would neither preserve nor enhance the character or appearance of the Dartmouth Park Conservation Area. This would be contrary to the Council's LDF Policies CS14, DP24 and DP25 which seek to promote high standards of design that respects local context and character and which conserve Camden's heritage, including its conservation areas"* (paragraph 11).

On issue (ii) it was concluded that *"There is no evidence to conclude that the proposal would make inadequate provision for open space and education requirements, or that a car free development would worsen any existing parking stress or traffic congestion that may exist in the vicinity. I also conclude that the proposal would provide for an acceptable form of sustainable development"* (paragraph 17).

2011/1395/P - Change of use of upper floors from ancillary restaurant accommodation (Class A3) to create five (3x1 bed, 1x2 bed and 1x3 bed) self-contained flats (Class C3) including front (north - Swain's Lane), side (east) and rear (south) extensions at first and second floor level and roof extension to create new third floor level with external terrace areas and associated alterations. Withdrawn 17/05/2011 prior to a formal decision being made by the Council.

2011/3819/P - Change of use of upper floors from ancillary restaurant accommodation (Class A3) to create three (2x2 and 1x3 bed) self-contained flats (Class C3) including rear (south) extensions at first and second floor level and roof extension to create new third floor level with external terrace areas and associated alterations including new entrance on Highgate Road (west) elevation. Granted following completion of S106 Legal Agreement on 30/03/2012.

Relevant policies

The proposed amendments are assessed for materiality – not on the basis of their planning merits. Planning policies therefore do not apply.

Assessment

Introduction

Planning permission was granted on 30/03/2012 (Ref: 2011/3819/P) for:

Change of use of upper floors from ancillary restaurant accommodation (Class A3) to create three (2x2 and 1x3 bed) self-contained flats (Class C3) including rear (south) extensions at first and second floor level and roof extension to create new third floor level with external terrace areas and associated alterations including new entrance on Highgate Road (west) elevation

A non-material amendment application is now sought for various internal alterations to revise the internal layout of the residential units on the upper floors of the building. In comparison with the approved plans it is also shown that the proposals now seek to omit one window at first floor level on the east elevation of the building.

The applicant has outlined that the reasons behind the amendments sought are *“to allow for improved staircase arrangement and improved usability of living accommodation to recognise the structural limitations of the existing building fabric”*.

Assessment

Whilst there is no statutory definition of what constitutes a ‘non-material’ amendment, Section 96A, part 2 of the Town and Country Planning Act 1990 (as amended) states that, *“In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.”* In the context of the permitted scheme it is not considered that the amendments, either individually or cumulatively will have any material impact on the overall design idiom, neighbour amenities or conservation area character. This is primarily owing to the context of the overall approved scheme and the nature of the neighbouring buildings, with the proposed changes being of a relatively minor scale and nature in this context.

The omission of a window on the east elevation at first floor level would not result in any significant amenity or design alterations in comparison with the approved scheme. A plethora of internal alterations are also shown to be proposed, but given the building is not listed planning permission would not be required for such changes. Hence these changes are not considered to be material to the original permission. No window positions are changing (barring the omission detailed above) and the number of units (three) and mix of units (2x2 and 1x3-bed) remains unaltered.

An informative is recommended which states that this permission relates only to the changes highlighted on the plans. Furthermore it shall only be read in the context of the substantive planning permission granted on 30/03/2012 under reference number 2011/3819/P, and is bound by all the conditions and obligations attached to that permission.

Recommendation

Approve non-material amendments