

Delegated Report		Analysis sheet		Expiry Date:		07/08/2008	
		N/A		Consultation Expiry Date:		08/08/2008	
Officer				Application Number			
John Sheehy				2007/6000/P			
Application Address				Drawing Numbers			
1 Prince Of Wales Passage London NW1 3EE				Refer to draft decision notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal							
Retention of change of use of the first and second floor from offices to 4 self-contained flats, replacement of timber-framed windows on the front elevation with PVC windows, insertion of balcony railings to the double-doors at front first and second floors and erection of an enclosure at front ground floor level.							
Recommendation:		Refuse permission and enforce against the breach of planning control.					
Application Type:		Full Planning Permission					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	20	No. of responses	1	No. of objections	0
				No. electronic	0		
Summary of consultation responses:		<p>Site notice displayed.</p> <p>On response received, from Flat 1 Prince of Wales Passage. In summary, the following points were made:</p> <ul style="list-style-type: none"> • Does the age of the building allow for further structural conversion including work to the internal water system and water supply? • In the past the second floor office has been let quickly and easily; • What will happen to people employed in the offices at first floor level?; • Noise from nearby pub should be considered in assessing this application; and • Site fronts onto a narrow passageway which is used for parking cars. Will there be access for emergency services? <p><i>Officer response: please see the assessment section of the report.</i></p>					
Local groups comments:		No response received.					

Site Description

A 3-storey building located on the southern side of Prince of Wales Passage, a stopped-up street which runs in an east-west direction between Hampstead Road and Stanhope Street. Vehicular access to the front of the property is via a single-carriageway lane off Hampstead Road which passes underneath an arch and terminates in front of the site. The building has a history of B1 office use on all three floors.

In 2007 permission was granted, which has now been implemented, for the conversion of the entire ground floor to a self-contained residential unit. Following this, the upper floors of the building were converted to 4 residential flats without the benefit of planning permission.

The site is not located in a Conservation Area and the building on the site is not listed – it is noted that 119 Hampstead Road which adjoins the site to the east is a Grade II listed Victorian public house.

Relevant History

October 2007 Planning permission granted subject to Section 106 agreement (Signed 25/10/2007) for retention of ground floor self-contained flat converted from offices ref. 2007/2019/P (PERMISSION IMPLEMENTED AND WORKS COMPLETED).

Enforcement History

September 2007 Breach reported: Structure outside the flat, patio surrounded by fencing and trellis work (height approximately 88 inches), ref. EN07/0722 (under investigation and awaiting determination of this application).

October 2007 Breach reported: Refurbishment and decoration of the flat above, 3rd and 4th floors, split level (hammering, drilling and ripping removal of fixtures and fittings & structures seemed excessive), ref. EN06/0161. (Closed, related to 117 Hampstead Road).

January 2010 Breach reported: Rear elevation solid party wall - not in planning permission 2007/2019/P- have put window in and backs onto neighbour property, ref. EN09/0956 (under investigation and awaiting determination of this application).

January 2010 Breach reported: Flue protruding unto neighbours site, ref. EN09/1017. Findings: no breach found.

Relevant policies

Camden Development Plan 2006

SD1d Community Safety
SD6 Amenity for occupiers and neighbours
B1 General design principles
B3 Alterations and extensions
H1 New Housing
H7 Lifetime homes and wheelchair housing
H8 Housing Mix
T1 Sustainable Transport
T3 Pedestrians and Cycling
T8 Car free housing and car capped housing
T9 Impact of Parking
E2 Retention of existing business uses

Camden Planning Guidance 2006

As the draft LDF Core Strategy and Development Policies documents have now been published, they are material planning considerations. However, as a matter of law, limited weight should be attached to them at this stage.

CS1 - Distribution of growth
CS5 - Managing the impact of growth and development
CS6 - Providing quality homes

CS8 - Promoting a successful and inclusive Camden economy
CS11 - Promoting sustainable and efficient travel
CS14 - Promoting high quality places and conserving our heritage
CS15 - Protecting and improving our parks and open spaces and encouraging biodiversity
CS16 - Improving Camden's health and well-being
CS17 - Making Camden a safer place

DP2 - Making full use of Camden's capacity for housing
DP5 - Housing size mix
DP6 - Lifetime homes and wheelchair homes
DP13 - Employment sites and premises
DP17 - Walking, cycling and public transport
DP18 - Parking standards and the availability of car parking
DP19 - Managing the impact of parking
DP24 - Securing high quality design
DP26 - Managing the impact of development on occupiers and neighbours
DP29 - Improving access

Assessment

Proposal: retention of change of use of the first and second floor from offices to 4 self-contained flats, replacement of timber-framed windows on the front elevation with PVC windows, insertion of balcony railings to the double-doors at front first and second floors and erection of an enclosure at front ground floor level.

Assessment

The principal considerations material to the determination of this application are:

- Land Use/ Loss of Employment;
- Mix and quality of residential units;
- Impact on neighbour amenity; and
- Transport.

Land Use/ Loss of employment

Policy E2 of the UDP has a general presumption in favour of protecting employment uses and states that permission for development that involves loss of employment use will not be granted where there is potential for that use to continue. In particular, this policy seeks to protect floorspace that is capable of being used flexibly within Class B1c/B8 use. Paragraph 7.19 of the UDP states that "Where a non-business use is proposed, the applicant should ... demonstrate that the site no longer has potential for alternative business use. To show that there is no realistic prospect of demand to use the site for employment uses, the applicant would need to submit evidence of a thorough marketing exercise, sustained over at least 2 years, with the property marketed at realistic prices and including consideration of alternative business uses and layouts".

Officers carried out a site visit of the outside of the property and the upper floors (common areas). This property retains a hoist at first floor level and large upper-floor doors on the street side on both first and second floors – these doors have been fitted with Juliet balconies which, it would appear, could be readily removed to facilitate business use. It is recognised that the narrow access road underneath the arch is not ideal for business servicing. However, given the presence of large openings, hoists and a vehicular access points, it is considered that the property may be suitable for continued business use within the entire range of Class B1 uses and, to a limited extent, within Class B8 use.

In order to support the application for change of use from Class B1a office accommodation, information regarding the marketing period of the property has been provided. The information came from Christo and Co., the Estate Agents who marketed the property. The information provided with regard to the marketing period indicates that the property was marketed for Class B1 purposes, but was not marketed as a potential Class B8 use (though change to this use would not require planning

permission).

The property became vacant in May 2007 and was marketed in Class B1 use from June 2007. This planning application was received in November 2007 and registered on 11th of July 2008. The marketing information was submitted, following the registration of the application, in February 2009. The marketing information relates to 2007 (from June onwards) and the entirety of 2008.

The rent at which the property was marketed was £12,000 per floor per annum which equates to £123.71 per m² or £11.54 per ft². Typical Central London locations charge anything up to and above £40 per ft² for office premises, and, it suggests that the applicants in this case have not set the proposed rent at an artificially high level.

The covering letter regarding the marketing period states that 3 viewings were carried out for a prospective office/ B1 tenant but none of the inspections yielded a letting. Information has also been provided on the amount of visits to the Christo and Co web pages for the application site.

The marketing exercise was not successful, the estate agents failed to secure a Class B1 tenant and the premises were converted to residential use.

The evidence provided regarding the marketing period indicates that the applicant set the rent price at a reasonable rate and took measures that ensured that a large number of people were aware of the availability of the premises and the potential uses. The marketing period of 19 months, while less than the recommended period of 2 years, is nevertheless considered to be a reasonable length of time to enable interested parties to become aware of the availability of the property.

It is noted at this point that in October 2007 an enforcement breach relating to refurbishment and decoration of "3rd and 4th floors" was reported. This would indicate that the change of use of the upper floors (1st and 2nd floors) may have occurred at this point, thereby seriously undermining the evidence provided in relation to the marketing of the property. On the other hand, Council Tax Records indicate that Council Tax on the properties has been paid from January 2010.

In conclusion, while the Council has serious reservations about the possible implications of the reported breach of planning control dating from October 2007, the information provided regarding the marketing period does indicate that the premises may remain vacant for a long period of time. As a result, the loss of the Class B1a use is considered, on balance, acceptable.

Mix and quality of accommodation

The following accommodation has been provided:

<u>First Floor Flat (Flat 2)</u> (2 bedroom, 4 person unit) Bedroom 1: 17.6m ² Bedroom 2: 20.5m ² Total floorspace: 80.7m²	<u>First Floor Studio Flat (Flat 3)</u> (1 bedroom, 1 person unit) Total floorspace: 40.0m²
<u>Second Floor 2-bedroom Flat (Flat 4)</u> (2 bedroom, 4 person unit) Bedroom 1: 13.2m ² Bedroom 2: 10.5m ² Total floorspace: 60.3m²	<u>Second Floor 1-bedroom Flat (Flat 5)</u> (1 bedroom, 2 person unit) Bedroom: 14.4m ² Total floorspace: 58.8m²

Camden Planning Guidance states that new self-contained dwellings should satisfy the following minimum areas for overall floorspace (excluding communal lobbies and staircases):

Number of persons	1	2	3	4	5	6
Minimum floorspace (m ²)	32	48	61	75	84	93

Camden Planning Guidance also requires first and double bedrooms to measure a minimum of 11.0m² and other bedrooms to measure a minimum of 6.5m².

Flats 2, 3 and 5 are compliant with Camden Planning Guidance with regard to overall size of flats and the size of bedrooms. However, Flat 4 is substantially smaller than the minimum overall size of a 4-person unit.

Daylight/ sunlight to flats

Windows to habitable rooms should be of adequate size and of appropriate shape and position to allow for reasonable daylight penetration into habitable rooms. There should be sufficient natural light during daylight hours to enable normal domestic tasks to be carried out without eyestrain. Policy SD6 states that *'The Council will not grant planning permission for development that it considers causes harm to the amenity of occupiers and neighbours. The factors the Council will consider include (b) sunlight and daylight levels'*. This is supported by Camden Planning Guidance which states "Each dwelling within a development should have at least one habitable room with a window facing within 30 degrees of south" and "All habitable rooms, must have an external window of at least 1/10 of the floor area of the room" (para. 40.26 – 30).

Flat 3: this flat contains one habitable room which is served by one small window facing north. The room measures 31.72 m² and the window measures 1.56m², i.e. 4.92% of the floor area. The room has neither a window-orientation nor a proportion of fenestration in relation to its floor area which would comply with the Council's guidance on internal daylight levels.

Flat 5: this flat contains a living room/ kitchen which is served by one small window facing north. The room measures 26.0m² and the window measures 1.56m² - 6% of the floor area. The principal habitable room has neither a window-orientation nor a proportion of fenestration in relation to its floor area which would comply with the Council's guidance on internal daylight levels.

Flats 2 and 4 are considered to be acceptable in terms of internal daylight levels.

Outlook

Camden Planning Guidance does not expressly require new rooms to have adequate outlook, however, in the case of this development, the outlook from habitable rooms in particular from within flats 3 and 5 is considered to be a significant factor when considering the amenity offered to these rooms. The outlook from the main habitable room to flats 3 and 5 are restricted to views onto a courtyard which is open to the western side above ground level.

With regard to Flat 3 the window to the habitable room is small (1.56m²) and, other than a window to the bathroom (a non-habitable room) there are no other window-walls within the flat. As a result, the outlook offered to occupiers of the flat is considered to be very limited, and inadequate in this layout. The poor quality of outlook would be detrimental to the residential amenity of any future occupiers.

The window to the living room of Flat 5 measures 1.56m². Elsewhere in this flat, there is a window within the bathroom; a window within a circulation area inside the front door; and a small window within a bedroom facing the rear of the properties that front onto Netley Street which is not on the proposed plans (these show a window facing the rear of the properties fronting onto Hampstead Road). The outlook offered to occupiers of this flat is considered to be very restricted. This is considered to be seriously detrimental to the residential amenity of present or future occupiers. The cumulative impact of this, in addition to the poor outlook to the living room, is considered to be sufficiently harmful in internal amenity terms to justify refusal of the application.

Flats 2 and 4 are considered to be acceptable in terms of outlook.

Visual privacy within the development

The habitable room within flat 3 has just one window: this directly faces the window to the kitchen of flat 2 with a separation distance of 5.2m. Similarly, the living room within flat 5 has just one window and this directly faces the kitchen window of flat 4 with a separation distance of 5.2m. This separation distance would allow direct views deep into the facing rooms resulting in inadequate visual privacy between the units. The separation distance is well below the minimum of 18m recommended within Camden Planning Guidance. It is recognised that this loss of visual privacy may be attenuated by ensuring that the kitchen windows of flats 2 and 4 are fixed shut and obscure-glazed to a height of 1.70m internally. This would, however, significantly reduce the outlook from the kitchen windows of flats 2 and 4 (the only south-facing windows within these units), and would not therefore be an ideal solution. However, while the Council has serious reservations about the impact of obscure-glazing these windows on occupiers of the development, this, in itself, is not considered to be sufficiently harmful to constitute a reason for refusal of the application.

Lifetime homes and wheelchair housing

All new homes should comply with Lifetime Homes criteria as far as possible. The applicants have submitted a Lifetime Homes assessment which addresses some of the 16 points of the criteria. The constraints of the conversion scheme are such that not all of the criteria can be met, but the measures proposed are considered acceptable in this instance.

Refuse storage

The application drawings indicate the location of a refuse container outside the front of the property adjacent to the entrance door. This is outside the red line of the site, on land which is outside the applicant's control.

During a site visit, officers observed a large pile of rubbish bags at street level within Prince of Wales Passage outside the entrance to the property, adjacent to the windows of the ground floor flat.

Refuse/ recycling storage should be located within a development, with convenient access to a collection point. It should be covered, secure and adequate in terms of the overall space provided in relation to the use it serves. The refuse/ recycling storage arrangements have potential to result in serious and unacceptable loss of amenity to occupiers of the ground floor and to users of the area generally by reason of smells, fumes, dust and vermin. The arrangements are not considered to be acceptable and the application is refused on this basis.

Mix of units

The property has been divided into two 2 bedroom, 4 person units; one 1 bedroom 1 person unit; and one 1 bedroom, 2 person unit. In general the mix would be considered to be acceptable for a development in this location and with very limited access to external amenity space. The sub-division of the property into the proposed mix of units contributes to the poor quality of amenity in the units, however this issue is not considered to constitute a reason for refusal in this instance.

Mix and quality of accommodation - conclusions

In some cases it may be possible to recommend the grant of permission 'on balance' for an application where 1 or 2 rooms across a whole development narrowly fail to meet the Residential Development Standards in terms of floor area, or where the internal daylight, outlook or visual privacy are marginally below recommended levels. However, in this case, one of the four units falls considerably short in terms of overall size; two of the units (flats 3 and 5) fail to meet the recommended daylight levels by a significant degree; outlook from habitable rooms of flats 3 and 5 is of a poor quality; visual privacy within the development is not acceptable and measures which could ensure visual privacy would harm outlook from habitable rooms within the development; and the refuse storage arrangements are not considered to be acceptable.

The development is considered to provide substandard accommodation and the application is refused due to inadequate overall size of Flat 4, daylight levels to flats 3 and 5, poor quality of outlook to flats 3 and 5 and inadequate refuse storage to all flats.

Impact on neighbour amenity

Given that there is no increase in the external volume of the building as a result of the development (apart from the timber fencing to the front of the property), there is no detrimental impact on sunlight and daylight to neighbouring occupiers.

The applications drawings indicate a window on the flank wall of the building serving the bedroom to flat 5. This has not been inserted and instead a small window has been inserted within the rear wall facing the residential properties nos. 37 and 38 Netley Street - this is not on the proposed drawings. The separation distance from the bedroom window to the rear elevations of 37 and 38 Netley Street is 13.3m (6.5 and 7.7m to the rear elevation of the rear extensions). This is well below the minimum separation distance of 18m set out in Camden Planning Guidance for windows to habitable rooms that directly face each other. This window is considered to result in a loss of privacy to occupiers of these properties and the application is refused on this basis.

Transport

Camden's Parking Standards for cycles (Appendix 6 of the Unitary Development Plan), state that 1 storage or parking space is required per residential unit. The proposal is for 4 residential units; therefore 4 cycle storage/parking spaces are required. An area of cycle parking has been identified at the front of the property within the ground floor lobby (measuring 1.5m x 3.1m). While it may be possible to accommodate the required amount of cycle storage/parking in the proposed space, there is insufficient space to easily include cycle parking of the required standard within the proposed layout. In particular, no information on the method of securing the cycles, nor on the spacing of the cycles, has been provided. The matter cannot be dealt with by condition and the application is refused on this basis.

The site has a Public Transport Accessibility Level of (PTAL) of 6b (excellent) and is within Somers Town Controlled Parking Zone. One hundred and seven parking permits have been issued for every 100 estimated parking bays within the Camden Town South (CA-F(s)) CPZ. This means that this CPZ is highly stressed. If the application was to be recommended for approval a S106 Agreement would be required securing car-free housing for all units. The absence of a Section 106 Agreement to secure these requirements is considered to constitute a reason for refusal of the application.

Other issues

External alterations

The principal external alterations that have been carried out are: replacement of timber-framed sash windows to the front elevation with PVC windows; replacement of timber doors to upper floors of front elevation with pvc French doors and accompanying Juliette balconies with metal railings; insertion of a window within the rear wall facing the properties that front onto Netley Street. Finally a timber enclosure has been erected at the front of the property at ground floor level (outside the red line of the site), for unknown purposes. It is noted that none of these alterations have been indicated on the proposed drawings.

The choice of pvc materials for the alterations to the front elevation is regrettable, as timber windows and doors would more appropriately reflect the type and history of the building. The alterations are insensitive to the character, materials and robust architectural style of this old industrial premises. However the building is not in a Conservation Area and does not face a highway. Therefore it is considered that the choice of materials, while unfortunate, is insufficient reason to refuse the application. However the ground floor enclosure is a large solid barrier which detracts from the sense of openness in the street and is an unacceptable addition to the front elevation. The application is refused on this basis.

Community Safety

As noted above, the enclosure to the front of the property is a large solid timber barrier measuring

approximately 1.7m in height and projecting from the front of the property by approximately 3m into Prince of Wales Passage. As also noted, Prince of Wales Passage is a narrow stopped-up lane which passes underneath an arch. The northern side of the passage is occupied by a blank wall with flats further to the rear – occupants of these flats do not readily have access to the passage and would not be in a position to intervene in the case of a community safety incident. The neighbouring properties on the southern side of the passageway do not have frontages onto this stretch of the passageway. As existing there is therefore extremely little passive surveillance from surrounding buildings. In addition the relative shortage of active frontages on both sides of the passage is not likely to generate enough pedestrian traffic to provide a significant amount of passive surveillance. There is no vehicular through-traffic.

The enclosure due to its height, form, location and materials significantly detracts from the openness and restricts views through the passageway.

The cumulative impact of the narrow width of the passageway, the high walls which enclose it on the northern side, the relative lack of passive surveillance, together with this large solid enclosure is not considered to provide a feeling of safety and security for pedestrians. It is considered to have potential for community safety incidents and to lead to the fear of crime. The application is refused on this basis.

Recommendation: Refuse permission to retain the change of use and the alterations to the building carried out as part of the development and that the Head of Legal Services be instructed to issue an **Enforcement Notice** under Section 172 of the Town and Country Planning Act 1990 as amended, and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.

The Notice shall allege the following breach of planning control:

- Unauthorised change of use of first and second floors from office (Class B1) to residential use (Class C3) as four self-contained flats (action to be taken)
- Unauthorised insertion of window to upper floor on southern (rear) elevation (action to be taken)
- Unauthorised erection of a timber enclosure at ground floor level in front of property (action to be taken)
- Replacement of timber-framed windows and doors on front elevation with pvc windows and doors and accompanying metal Juliette balconies (no action to be taken)

The Notice shall require that within a period of 6 months of the Notice taking effect:

- the residential use of the first and second floors of the building shall cease and the associated fixtures and fittings to be permanently removed from the site
- the timber enclosure to the front of the building shall be removed
- the new window to the rear shall be removed and the opening permanently blocked up.

REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE.

1. The development, by virtue of flat 4 failing to meet the council's minimum size standards, and flats 3 and 5 receiving unacceptable levels of daylight and having unacceptable levels of outlook, fails to provide residential accommodation of an acceptable standard of amenity, contrary to the provisions of policies SD6 (Amenity for Occupiers and Neighbours) and H1 (New Housing) of the Camden Replacement Unitary Development Plan 2006.
2. The development, in the absence of adequate shared refuse and recycling storage arrangements, has potential to result in an unacceptable loss of amenity to occupiers of the ground floor of the property and to users of the area generally by reason of smells, fumes, dust and vermin. This is contrary to Policy SD6 (Amenity for Occupiers and Neighbours) of the Camden Replacement Unitary Development Plan 2006.

3. The development, by reason of the window which has been inserted within the rear wall facing the residential properties nos. 37 and 38 Netley Street fails to safeguard visual privacy of occupiers of these properties. This is contrary to Policy SD6 (Amenity for Occupiers and Neighbours) of the Camden Replacement Unitary Development Plan 2006.
4. The development, in the absence of a S.106 legal Agreement requiring car-free housing results in an unacceptable impact on the local transport system, contrary to policies T8 (Car free housing and car-capped housing), T9 (Impact of Parking) and Sd2 (Planning obligations) of the Camden Replacement Unitary Development Plan 2006.
5. The enclosure to the front of the property, due to its height, form, location and materials significantly detracts from the design of the building, the openness of the passageway and local views past and around the front of the property and has the potential to contribute to community safety incidents and to lead to the fear of crime locally. This is contrary to policies B1 (General Design Principles), B3 (Alterations and extensions) and SD1d (Quality of Life- Community Safety) of the Camden Replacement Unitary Development Plan 2006.

The change of use and works to the building have been carried out within the last four years and it is therefore expedient to pursue enforcement action.

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