

Delegated Report		Analysis sheet		Expiry Date:		29/03/2006	
		N/A / attached		Consultation Expiry Date:		28/2/2006	
Officer				Application Number(s)			
Hugh Miller				2006/0544/P			
Application Address				Drawing Numbers			
6 Fortess Road London NW5 2ES				See draft decision notice			
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature				
Proposal(s)							
Retention of existing self-contained lower ground and ground floor studio maisonette (Class C3) from former ancillary storage space to the above retail unit (Class A1).							
Recommendation(s):		Grant planning permission subject to s106 legal agreement.					
Application Type:		Full Planning Permission					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:	No. notified	13	No. of responses	0	No. of objections	0	
			No. Electronic	00			
Summary of consultation responses:		No response.					
CAAC/Local groups* comments: <small>*Please Specify</small>		None required to be consulted.					

Site Description

The property consists of three upper floors with a ground floor and basement shop unit. The property is located mid –terrace on the eastern side of Fortress Road close to the junction of Kentish Town Road to the south and Falkland Road to the north.

The property is not listed and does not lie within a conservation area.

Relevant History

6 April 1996, pp granted for the erection of a single storey rear extension to the shop, ref. 9500209.

10 June 2003, pp refused for the change of use to convert the rear part of the ground floor shop into a self - contained studio flat, Ref. PEX0201021 for the following reasons:

- 1. The proposed change of use would prejudice the future viability of the ground floor and basement retail unit and thereby the Kentish Town District Centre in which it is located, contrary to policy SH8 of the Unitary Development Plan.*
- 2. The proposed residential accommodation would be substandard in that the Councils floorspace standards as set out in Supplementary Planning Guidance, would not be met.*

Relevant policies

B1 –General design principles
B3 –Alterations and extensions
R7 B- Neighbourhood centres
H1- New housing
T3 – Pedestrian and cycling
H7 –Lifetimes homes and wheelchair housing
H8 –Housing mix
T8 - Car-free housing and car capped housing,
T7 - Residential parking standards.

CPG

Residential development standards

Assessment

Background Information

The current application ref. 2006/0544/P seeks the retention of the self-contained studio flat at the rear of the site at ground and basement floor levels. The delay in its determination was associated with complaints made by neighbours regarding the access over land identified as part of the application sites curtilage and outlined in red on the submitted Ordinance Survey Plan. Following discussions, it was considered that this matter should be clarified prior to the formal assessment and determination by Development Control. It was also considered that this issue of access was not a material consideration relevant to planning. It nevertheless, was investigated by the Council's Enforcement Service.

The Council's Enforcement Service identified issues as follows:

- The shop unit at 6 Fortress Road, used to be a Chemist and the owner had an agreement with 2a Falkland Road to use the rear drive as a safe delivery area when drugs were delivered to the shop. However, this use had ceased, and the rear access way had never belonged to the

shop.

- The former Chemist owner is now seeking to claim Rights of Way across the land after 20 years continuous use. The Land Register details also show that the property benefited from Rights of Way, but doesn't specifically show who has these.
- The rear of the shop has been converted into a studio flat despite this being applied for and refused planning permission on 10th June 2003 (Ref: PEX0201021; see history section above). The front door to the studio flat is only accessible from the rear gated driveway owned by 2a Falkland Road. Therefore, they have to trespass over this land to access their front door.
- The complainant wants enforcement action to be taken because the flat had been created despite planning permission being refused. There were noise nuisance issues from the occupiers' use of the gate particularly late at nights also sets the security lights off.
- The unauthorised studio flat is of the appropriate size and its creation does not conflict with any of the Council's policies or CPG guidelines.
- A new planning application was requested to regularise the situation, as it was considered that the original reasons for refusal were considered in error. This was then withdrawn because the owner had not marked appropriately on the plans which bits of land he owned and had an interest in.

After careful consideration, officers of the Enforcement Service concluded that to serve an Enforcement Notice (EN) in this case would be limited in what it could achieve. If an EN were to be served in respect of the ground floor flat, it could only require the use to cease. The EN could not require the owner to return the flat area to the shop area with access from No.6. Similarly, the EN could not require the removal of doors and openings onto the neighbour's land to the rear. Officers considered that as no harm was being caused by the use of the conversion of the rear of the shop to a flat, apart from a neighbour dispute over access (which is now not a planning matter), it is not considered expedient to take any action in order to resolve this matter.

Current position

In September 2008, the Land Registry, paragraph 4, (18/8/2008) states "*The land has the benefit of the following rights created by an Order of Central London County Court dated 24 June 2008:*

*"The land in his title has the benefit of right of way for all purposes connected with the use and enjoyment of the said property over and along **the land coloured blue on the plan attached hereto** (being land comprised within the freehold title now known as 2a Falkland Road, London, NW5 2PT and registered with HM Land registry under title number NGL705437)."*

Title Number NGL613400, property -6 Fortess Road, London NW5 2ES, Registered proprietor –Dilp Kumar Patel.

Land use policy

Policy R7 B (Protection of shopping frontages and local shops) states that planning permission for development would **a) will only be granted where it would not cause harm to the character, function, vitality and viability of the centre, and b) planning permission will not be granted for development that would prevent the centre from being capable of providing a range of convenience shopping.**

Loss of retail floor space

The scheme comprises the change of use from ancillary retail storage floor space at the rear, ground and basement floors to residential flat. Excluding the common parts, the net floor (NFA) area of the ground & basement floors as existing measures approx. 39.04sqm. The net floor area of the retail unit

excluding the partial storage within the basement is approximately 47.88sqm. This is considered to be sufficiently large not to prejudice the continued retail use in this unit and within Kentish Town, Town Centre. The studio flat as created had not resulted in the change of use of the principal retail floor space and in this instance is considered to be satisfactory. The studio flat as created accords with UDP policy R7.

Residential floor space

The self-contained studio flat as created would increase the amount of land and floor space in residential use and it has provided an additional residential accommodation. As created, the studio flat is in compliance with policy H1.

The proposal meets the requirements of policy H7 (Lifetime homes) to the extent that is reasonable and practicable for a conversion of this kind.

The studio flat as created occupies the basement and ground floors and it has dimensions of 39.04sqm net floor area (NFA). The NFA would be compliant with the CPG minimum floor space standards, (32sqm). Notwithstanding, the lack of daylight to the bathroom and wc unit, the studio flat as created would be in compliance with other UDP housing policies and is satisfactory

Design

The window alterations are the main design issues in this instance. Timber box sash windows have been installed and as implemented, it is considered that the alteration to the rear elevation would not harm the appearance of the host building and is considered satisfactory. The alterations are in compliance with policies B1 and B3.

Residential amenity

Notwithstanding the issues of noise nuisance raised above (background), it is not considered that the retention of the self-contained studio flat would cause harm to adjacent occupiers' amenity. The retention of the studio flat accords with policy SD6.

Transport

The proposal would result in the creation of an additional unit on the site. As the site is located within a town centre the Council would require under policy T8 that the proposed new unit be designated as being car free to prevent additional parking stress and congestion in the locality. A s106 legal agreement would need to be entered into stating the any occupiers of the new unit would not be eligible to apply for a Residents Parking Permit. The applicant has agreed in principle to the "carfree" housing provision.

It is noted that secure cycle parking has not been shown on the plan. Policy T3 requires that 1 secure cycle space shall be provided for all new residential units. One cycle storage/parking space is required. The cycle storage is not feasible due to site constraints (lack of storage space), but this does not in itself provide significant reason to warrant refusal of permission to retain the new residential unit. Moreover, it would be considered unreasonable to attach a condition to provide storage therefore this requirement should be waived.

Recommendation: Grant Planning Permission

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