

Delegated Report		Analysis sheet		Expiry Date:		25/03/2013	
		N/A		Consultation Expiry Date:		07/02/2013	
Officer				Application Number(s)			
Christopher Heather				2012/6857/P			
Application Address				Drawing Numbers			
Benham & Reeves Marlborough House 179-189 Finchley Road London NW3 6LB				Refer to draft decision notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
Erection of rear extension at second and third floor level and change of use of 2nd and 3rd floor offices (B1) to 14 residential units (C3). Alterations at ground floor level including new disabled access ramp, conversion of the existing office entrance to provide refuse and bike storage.							
Recommendation(s):		Refuse planning permission					
Application Type:		Full Planning Permission					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	168	No. of responses	02	No. of objections	01
				No. electronic	00		
Summary of consultation responses:		One letter was returned unopened. The other raised the following issues: <i>Neighbouring Amenity</i> – Noise and disruption caused by building work; privacy caused by overlooking (although objection refers to this as a security concern).					
CAAC		None					

Site Description

The site is a building 4 storeys in height, with a basement. It is located on the south west side of Finchley Road at the junction with Goldhurst Terrace. It is within the designated Town Centre, which is characterised by a mix of uses. The ground floor forms part of the shopping parade, and includes a number of shop units. The first floor has recently been extended and converted to residential units. The second and third floor units are in office use, with the second floor having been recently vacated. The top floor of the building provides 7 residential flats. The site is not within a conservation area and the building is not listed.

Relevant History

January 2014: Application for prior approval (Ref: 2013/7304/P) refused for “Change of use from office use (Class B1) at second and third floor levels to residential use (Class C3) to provide 14 units (six 1-bed and eight 2-bed units)”. The reasons for refusal were:

The proposed development, in the absence of a Section 106 legal agreement to secure the new development as car-free, would be likely to contribute unacceptably to parking stress and traffic congestion in the surrounding area and would not promote use of sustainable transport contrary to the National Planning Policy Framework chapter 4, paragraphs 29, 30, 35 and 39.

The proposed development, in the absence of a Section 106 Legal Agreement securing a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and be detrimental to general highway and pedestrian safety and residential amenity, contrary to the National Planning Policy Framework chapter 4, paragraph 29 and 32 .

The proposed development, in the absence of a Section 106 legal agreement securing a contribution towards the provision of public open space, would be likely to contribute to pressure and demand on existing open space in this area, contrary to the National Planning Policy Framework chapter 7, paragraph 58 and chapter 8, paragraph 73.

The proposed development, in the absence of a Section 106 legal agreement to secure affordable housing would fail to maximise the contribution of the site to the supply of affordable housing in the borough and fail to contribute towards the delivery of mixed and balanced communities, contrary to the National Planning Policy Framework chapter 6, paragraph 50

The proposed development, in the absence of a Section 106 legal agreement securing a contribution towards educational infrastructure, would place an unacceptable strain on existing local educational resources, contrary to the National Planning Policy Framework chapter 8, paragraph 72.

The proposed development, in the absence of a Section 106 legal agreement requiring the development to incorporate sustainability measures to reduce carbon emissions and minimise use of energy, water and resources, would fail to be sustainable in its use of its resources and meet the challenge of climate change contrary to the National Planning Policy Framework chapter 10, paragraphs 93 and 95-97.

The proposed development, in the absence of a Section 106 Legal Agreement securing a Servicing Management Plan, would be likely to contribute unacceptably to traffic disruption and be detrimental to general highway and pedestrian safety, contrary to the National Planning Policy Framework chapter 4, paragraph 29, 32 and 35 .

The proposed development, in the absence of a Section 106 legal agreement to secure the provision of wheelchair accessible housing and lifetime homes, would fail to deliver housing suitable for people with disabilities contrary to the National Planning Policy Framework Core planning principles, paragraph 17 and Chapter 6, paragraph 50.

The proposed development, in the absence of a Section 106 legal agreement to secure a contributions towards the provision of or improvements to existing community facilities, would be likely to result in unacceptable additional pressures on existing community facilities in the area, contrary to the National Planning Policy Framework Chapter 8, paragraph 70.

The proposed development, in the absence of a Section 106 Legal Agreement to secure the implementation of; and the permanent retention of the cycle parking, would be likely to fail to contribute towards sustainable and efficient transport modes, contrary to the National Planning Policy Framework chapter 4, paragraph 29, 30, and 35.

Subsequently, an appeal was lodged which was allowed in **July 2014**, with a partial award of costs.

June 2012: Planning permission (Ref: 2012/0663/P) refused for “Erection of rear extension at first floor and conversion of first floor from offices to 7 residential flats (1 x 3-bed, 3 x 2-bed, 2 x 1-bed and 1 studio) (in accordance with permission 2010/4614/P) and erection of rear extension at second and third floor level and change of use of 2nd and 3rd floor offices (Class B1) to 14 residential units (Class C3) comprising 2 x 3 bed, 4 x 2 bed and 8 x 1 bed. Alterations at ground floor level including new disabled access ramp, conversion of the existing office entrance to provide refuse and bike storage”.

January 2012: Planning permission (Ref: 2010/4614/P) granted for “Conversion of first floor office (Class B1) to 7 residential units (Class C3) comprising 1x3 bed, 3x2 bed, 2x1 bed and 1 studio) and erection of rear extension at first floor level plus alterations at ground floor to convert ancillary retail space at the rear of number 181 into a refuse storage area”.

June 2010: Planning application (Ref: 2010/1163/P) withdrawn for “Change of use and conversion of first floor office (Class B1) to residential use (Class C3) to provide 9 self contained flats (1 x 2 bed flats, 3 x 1 bed flats and 5 studio flats) including rear extension at first floor level”.

April 1986: Planning permission (Ref: 8401414) granted for “The change of use of the upper floors of nos. 179 and 181 Finchley Road from residential to office; the erection of an infill roof extension to provide seven self-contained flats at 179-189 Finchley Road and the erection of a three storey rear extension at 179-189”.

March 1986: Planning permission (ref: 8501457) granted for “Erection of ground floor extensions to the rear to provide additional retail floorspace”.

Relevant policies

LDF Core Strategy and Development Policies

CS1 (Distribution of growth)

CS3 (Other highly accessible areas)

CS5 (Managing the impact of growth and development)

CS6 (Providing quality homes)

CS7 (Promoting Camden's centres and shops)

CS8 (Promoting a successful and inclusive Camden economy)

CS11 (Promoting sustainable and efficient travel)

CS13 (Tackling climate change through promoting higher environmental standards)

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)

CS18 (Dealing with our waste and encouraging recycling)

CS19 (Delivering and monitoring the Core Strategy)

DP1 (Mixed use development)

DP2 (Making full use of Camden's capacity for housing)

DP3 (Contributions to the supply of affordable housing)

DP5 (Homes of different sizes)

DP6 (Lifetime homes and wheelchair homes)

DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses)

DP13 (Employment sites and premises)

DP15 (Community and leisure uses)

DP16 (The transport implications of development)

DP17 (Walking, cycling and public transport)

DP18 (Parking standards and limiting the availability of car parking)
DP19 (Managing the impact of parking)
DP21 (Development connecting to the highway network)
DP22 (Promoting sustainable design and construction)
DP23 (Water)
DP24 (Securing high quality design)
DP25 (Conserving Camden's heritage)
DP26 (Managing the impact of development on occupiers and neighbours)
DP28 (Noise and vibration)
DP29 (Improving access)
DP30 (Shopfronts)
DP31 (Provision of, and improvements to, open space, sport and recreation)
DP32 (Air quality and Camden's Clear Zone)

Camden Planning Guidance

CPG 1 Design
CPG 2 Housing
CPG 3 Sustainability
CPG 5 Town centres, retail and employment
CPG 6 Amenity
CPG 7 Transport
CPG 8 Planning obligations

London Plan 2011

National Planning Policy Framework 2012

Assessment

Background

The planning application was recommended for approval subject to conditions and a number of planning obligations to be secured through a section 106 legal agreement. The legal agreement was not signed and a concurrent application for prior approval was submitted for a change of use of the second and third floors. This was refused but allowed on appeal in July 2014. The applicant subsequently requested that the planning application be re-considered with the only planning obligation that was agreed to being that the units would be car-free.

In light of change to the circumstances since it was first heard it is necessary to review the committee report to consider if this change in circumstances warrants a change of approach, especially given the time that has passed since it was originally submitted. The details of the proposal itself remain unchanged, and the assessment below should be read alongside the committee report which provides detailed justification and reasoning. Following on from this it is necessary to assess the prior approval as a fallback and the weight to be attached to it.

Land Use

The proposal would involve the loss of office space (B1) and the provision of residential units in its place. This has not changed; there was support for this previously and it is not considered that there is any reason for this support not to continue.

Design

The proposal would include a rear extension at second and third floors. This has not changed; there was support for this previously and it is not considered that there is any reason for this support not to continue.

Quality of the resulting residential accommodation (including access)

The characteristics of the units have not changed; there was support for this previously and it is not considered that there is any reason for this support not to continue.

Housing Mix

The characteristics of the units have not changed; there was support for this previously and it is not considered that there is any reason for this support not to continue.

Neighbouring amenity

The relationship with neighbouring properties has not changed; there was support for this previously and it is not considered that there is any reason for this support not to continue.

Affordable housing

Policies CS6 and DP3 are of particular relevance, and are supplemented by CPG2. The committee report reported that the proposals had been independently assessed and it had been concluded that there would be an excess of £46,000, which was to be secured through the section 106 agreement. The applicant has not submitted any more up to date information on viability (the original viability information was dated November 2012) as they are relying on the fallback approach. Planning Practice guidance (Paragraph: 017 Reference ID: 10-017-20140306) states "Viability assessment in decision-taking should be based on current costs and values. Planning applications should be considered in today's circumstances."

The viability of the proposals will have changed since the preparation of the current information. It would therefore be necessary for the information to be updated prior to a complete assessment as to the current viability of the scheme. In the absence of this information it cannot be determined that the proposals make the maximum reasonable contribution to affordable housing as required by policy and is therefore recommended for refusal on that basis.

Highways and transportation

CS11 and DP18 concern transportation and parking. The site has a Public Transport Accessibility Level (PTAL) of 6B (excellent) and is within a controlled parking zone. No on-site parking is proposed as part of the application, and it was presented to the planning committee as a car free development. The appeal decision for the prior approval concluded that without evidence to the contrary there would not be a material increase in traffic generation or its movement, hence it was not considered necessary to remove parking permits. Significantly, the applicant has agreed to the units being car free.

The proposal remains for 14 units, as was the prior approval, so the question remains whether or not the development should be car free. There are a couple of important points to make. Firstly, the inspector acknowledged that Finchley Road is a major transport route in London. She noted that it had heavy traffic flow and there are strict parking restrictions locally. The prior approval scheme was for 875sqm of floorspace, whereas this proposal is more which results in a number of larger units which could logically have a greater impact. It is also noted that there is evidence of a need for the units to be car free. The site is within Controlled Parking Zone CA-R. At the last survey the ratio of permits to car parking spaces was 1.1, meaning that there are too many cars for the number of spaces. To add 14 residential units (and the number of permits is a function of the number of adults rather than simply the number of units) would exacerbate the existing problems. It is important to acknowledge that the existing office space would impact on the highway. However, it is unlikely that workers (and not all of the space is currently occupied) would drive to work to park nearby. Instead, the proximity to underground stations (Swiss Cottage and Finchley Road), and bus routes (Principally on Finchley Road but also others) suggests that most of the visits to and from the site would be on public transport. Contrast this to residents who are far more likely to introduce vehicles into the area.

It is considered that the current proposals, with their increased unit sizes, would result in greater likelihood of harmful impact on the local transport network than the prior approval scheme. This harm would need to be mitigated by the development being car-free and in the absence of a s106 to secure such measures the scheme is recommended for refusal.

Sustainability

The applicant is not now proposing for the units to be constructed to Code for Sustainable Homes Level 3. The prior approval was for purely a change of use, whereas this planning application involves external changes affecting a number of the units. Sustainability goes to the heart of the planning system and the NPPF encourages a 'low carbon future'. The applicant has previously demonstrated that a great deal could be achieved to achieve this, and this accorded with policies CS13 and DP22. Given that there are differences between the prior approval and the proposal here there is considered to be a justification for the policy being addressed. In accordance with CPG the council would require a post-completion certificate demonstrating that

the required Level 3 has been achieved. In the absence of a legal agreement to secure the sustainability measures and certificate the scheme is recommended for refusal.

All other sustainability considerations remain unchanged.

Other section 106 / planning obligations

Policy CS19 underpins the need for mitigation of development obligations for section 106 legal agreements. It sets out (19.14) that *“the Council will use planning obligations 28, in appropriate circumstances to influence the nature of a development or mitigate or compensate for its potential effects. Where existing and planned provision of infrastructure, facilities and services are not adequate to meet the needs generated by a proposal, the Council will negotiate planning obligations to secure measures to meet those needs”* and continues (19.15) *“planning obligations ... can enhance the quality of a development and enable proposals to go ahead that might otherwise be refused.”*

The committee report (para 6.36) sets out the obligations, calculated in accordance with CPG formula, which would be required in order to mitigate the impact of the development and make it acceptable. They comprise the following:

- Education contribution of **£25,922**
- Community Facilities contribution of **£23,520**
- Public open space contribution of **£17,360**
- Training and employment contribution of **£29,128**

Educational contributions

Policy CS10 expects *“development that increases the demand for community facilities and services to make appropriate contributions towards providing new facilities or improving existing facilities”*.

CPG8 echoes this *“4.5 All residential development (Class “C3” of the Town and Country Planning Use Classes) including new build, change of use and conversion where the scheme results in a net increase of five or more dwelling units will normally be expected to provide a contribution towards education provision”*. The proposal would provide for more than this, and there would be a number of units (8) which would potentially house children who would then need to be educated. Policy CS10 requires that the impact should be mitigated and the absence of such mitigation is recommended as a reason for refusal.

Community facilities

As set out above CS10 expects developments to contribute to mitigating the impact on community facilities for developments of 10 or more units. Local community facilities are important to ensure community cohesion as well as achieving aims for education, health and well-being. It is important that new developments mitigate the greater strain they would put on existing facilities, and without this those facilities would be worsened for all and CPG8 sets out the formula for the contribution, which is proportionate to the size of the development. In the absence of a legal agreement to secure the necessary mitigation in accordance with policy CS10 the development is recommended for refusal.

Public open space

Policies CS15 seeks to ensure that the growth in the number of residents will be supported by increases and improvements in open space provision, including outdoor sport and recreation opportunities. This is supplemented by CPG6 and CPG8. Policy requires development of more than 5 units to contribute to contributing to open space.

The site is within an area of open space deficiency (as shown by map 7 within the Core Strategy) where it is usually expected that on-site provision would be made. However, there are no opportunities to provide open space on site, but the requirement to mitigate still remains. There is no amenity space for the units proposed, and whilst this does serve a different purpose to open space there provision of neither does affect the quality of the residential units. It therefore becomes all the more important that provision is made within the section 106 agreement for a financial contribution. By definition within an area of open space deficiency there are fewer open spaces than is ideal. However, this is considered to be the most practical approach to the issue, and would make the development accord with relevant policies as closely as is possible, and hence the sum requested and previously agreed to (£17,360) is considered justified. The absence of a contribution to open space would result in the development failing to contribute to tackling the deficiencies and under-provision of

public open space and to ensure adequate new open space is provided in the borough and the proposals are recommended for refusal on this basis.

Training and employment

There were two obligations which fall under this heading, both as a result of the advice in CS8 with further support from CS5. A contribution to training and employment of £29,128 was agreed to, alongside an apprenticeship for each £3m of build costs at a fee of £1500 each. Policy CS8 states that Camden's industries will be supported, and this includes support for local enterprise development, employment and training schemes for residents. The supporting text provides more detail on this noting the importance of local residents benefit from the employment opportunities created. CPG8 provides further detail, including that there is an identified skills gap between Camden residents and the jobs on offer in the borough. Local initiatives can open up opportunities. The proposal would result in the loss of employment opportunities by losing B1 office space, and the obligations agreed to previously are important mitigation for this. Therefore, in the absence of the required mitigation, secured by s106 legal agreement, the proposals are recommended for refusal.

Local procurement

This is very much related to training and employment and also emanates from CS8, and is supplemented by CPG8. Where a development's value would exceed £1,000,000 CPG8 advises that the developer should sign up to the Local Procurement Code. This applies in this instance given the scale of the scheme and the comments above also apply.

Other matters

Having reviewed the proposals again there are not other issues which are considered to suggest a different approach.

Fallback and planning balance

The prior approval allows for 14 units to be constructed, without consideration of the full extent of mitigation required by policy. The current proposals differ from the prior approval in that the approved studios would be 1 bedroom units partly within the extensions and there would be greater construction activity involved to deliver the larger scheme. The overall impact of the scheme is assessed in the committee report which based a recommendation for approval on the provision of appropriate mitigation.

It is not clear if the prior approval would be implemented, as it appears from the approach taken with this planning application and others on the site previously that the development for which permission is now being sought was what was always intended to be constructed.

This is an application for full planning permission, requiring a decision to be made in accordance with the development plan unless material considerations indicate otherwise (NPPF para 150). It is concluded that the obligations which were originally sought remain relevant and required and therefore the issue is whether or not the recent inspector's decision suggests a deviation from considering the policy requirements. The prior approval decision was constrained by law to consider a limited extent of impacts arising from the development. Policy requires the full extent to be examined. In the absence of sufficient justification as to why the impact arising from the proposals should not be properly mitigated, the proposals seek to deliver a development which would result in harm, as summarised above and in the committee report, and is therefore refused.

Recommendation: refuse planning permission