

Delegated Report		Analysis sheet		Expiry Date:		22/10/2014	
		N/A		Consultation Expiry Date:		08/10/2014	
Officer				Application Number(s)			
Gideon Whittingham				2014/5495/P			
Application Address				Drawing Numbers			
49 Fortess Road London NW5 1AD				Refer to Decision Notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
The change of use of the retail unit (Class A1) to a public house (Class A4).							
Recommendation(s):		Refuse Planning Permission					
Application Type:		Full Planning Permission					
Conditions or Reasons for Refusal:		Refer to Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	13	No. of responses	06	No. of objections No. of support	05 01
Summary of consultation responses:		<p>A site notice was displayed from 17/09/2014 .</p> <p>5 objections were received from residents in: Fortess Road (5)</p> <ul style="list-style-type: none"> • Kentish Town is already well served with drinking establishments • Noise impact on nearby residents from use (both patrons and deliveries) • Additional waste generated • Reduce value of adjacent properties • Unsuitable location for drinking establishment • Smokers noise disturbance and pavement congestion <p>1 support was received from residents in: Lady Somerset Road (1):</p> <ul style="list-style-type: none"> • Welcomed use in locality 					
CAAC/Local groups comments:		N/A					

Site Description

The application relates to a ground floor retail unit (Class A1) forming part of a 3 storey, mid terrace building located on the west side of Fortress Road. The ground floor level retail unit (Class A1) is 32 sqm in floorspace. The only entrance/access point is via the shopfront on Fortress Road.

The application unit is flanked by retail units, but the wider parade comprises a variety of uses including classes A1 (Shop), A2 (professional services) and A3 (café).

The application building is not sited within any conservation area nor is it listed. The site is not within any retail centre nor does it form part of a designated shopping frontage.

Relevant History

49-51 Fortress Road:

- 8802312 (Granted on 02/11/1988) - Retention of single storey building at rear of 49-51 Fortress Road for use as workshop ancillary to retail shop.
- 2012/6046/P (Withdrawn) - Conversion of rear lower ground floor and erection of two storey rear extension and ground floor infill extension to create 4 no. two bedroom residential units (class C3) to existing

Relevant policies

LDF Core Strategy and Development Policies

CS5 (Managing the impact of growth and development)

CS7 (Promoting Camden's centre and shops)

CS8 (Promoting a successful and inclusive Camden economy)

CS10 (Supporting community facilities and services)

DP10 (Helping and promoting small and independent shops)

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

DP15 (Community and leisure uses)

DP20 (Movement of goods and materials)

DP26 (Managing the impact of development on occupiers and neighbours)

DP28 (Noise and vibration)

Camden Planning Guidance 2011/2013

CPG5 Town Centres, Retail and Employment – Section 2, 3, 4, 5 & 6

CPG6 Amenity – Section 4 & 8

CPG7 Transport – Section 4, 7, 8 & 9

Assessment

1. Proposal:

1.1 The application proposes:

- The change of use of a retail unit (Class A1) to a pub (Class A4). The total floorspace is 32sqm, where the customer floor would be 25sqm serving approximately 25 people.

1.2 No external alterations are sought as part of this application, including external plant, shopfront alterations or advertisements.

1.3 A shopfront advert plan was submitted, however this was provided without the requisite application form and will not therefore be assessed as part of this report.

1.4 The bar would be accessed via the existing shopfront entrance on Fortress Road.

1.5 The principal considerations material to the determination of this application are summarised as follows:

- Land use
- Impact of the proposed use on neighbouring amenity
- Transport
- S106 Matters

2. Land use

2.1 The application site is located to the north of the Kentish Town Centre (as defined by Map 4 in CPG 5 – Town centres, retail and employment) and to the south of the Fortress Road Neighbourhood Centre (as defined by Appendix 1- Properties located within Camden's Centres). The application site is therefore outside of a designated Town and Neighbourhood Centre.

2.2 Therefore commercial units of this nature would be assessed in accordance with, amongst others, policy DP10 rather than DP12 of Camden Development Policies.

2.3 Policy DP10 (Helping and promoting small and independent shops) in Camden Development Policies encourages the provision of small shop premises suitable for occupation by small and independent businesses, and seeks to protect shops outside of designated centres.

2.4 Whilst Policy DP12 prescribes levels at which Class A1 retail uses should not fall below, policy DP10 states that the Council will protect shops outside designated centres by only granting planning permission for development that involves a net loss of shop floorspace, provided that:

- a) Alternative provision is available within 5-10 minutes walking distance (400-800m away) – on the scale of provision
- b) There is clear evidence that the current use is not viable - We will also take into account the viability of the premises for the existing use, in particular any history of vacancy in a shop unit and the prospect of achieving an alternative occupier
- c) The development positively contributes to local character, function, viability and amenity.

With regard to part a) –

2.5 The Neighbourhood Centre of Fortress Road is some 200m to the north. Kentish Town Centre is some 400m to the south. The adjacent commercial units are in retail use (Class A1), one of which is a newsagents/shop. Therefore alternative provision is available within 5-10 minutes walking distance, with further alternatives to the north and south in the respective town and neighbourhood centres.

With regard to part b) –

2.6 Although little in terms of marketing evidence and history of vacancy has been submitted, it is

acknowledged that the premises have been vacant for upwards of 1 year, the previous occupier having since relocated elsewhere. Given the size and location, it is considered the premises could be viable for a retail use.

With regard to part c) –

2.7 It is considered a public house would complement the character, function, vitality and viability of the local area bringing both social and economic benefits to this small parade.

2.8 Although the submitted details fall short of the prescriptive requirements DP10 could expect, the vacancy of the existing premises and the otherwise plentiful supply of A1 units in the vicinity will be balanced against the normal policy requirements in this instance. Notwithstanding the implications of the use upon the neighbouring amenity, the proposal would represent a complimentary use to this parade and the locality.

3. Impact of the proposed use on neighbouring amenity

3.1 Policy CS7 of the Core Strategy recognises that food, drink and entertainment uses can add variety and vibrancy to commercial areas. It also makes it clear however that this should not be at the expense of the living conditions of local residents. Policy DP12 sets out detailed criteria in relation to the potential effect of such uses on residential amenity. Policies CS5 and DP26 of the Development Policies deal with the effect of development on residential amenity in more general terms

3.2 This section of Fortess Street (west) is largely commercial at ground floor level with residential accommodation above. The eastern side of Fortess Road is solely residential in character. The commercial uses on the western side comprise mainly shops and services, with one restaurant. Within this context, noise levels remain low and hours of operation do not open late into the evening.

3.3 The application proposes opening hours: Monday – Closed, Tuesday/Saturday - 11am - 2.30pm + 5pm – 9.30pm and Sunday - 11am – 3pm.

3.4 The proposed change of use would involve the ground floor of the application premises accommodating no more than 25 customers. With regard to noise as a result of day to day operations, an assessment has not been submitted to indicate the likely noise generated from the Class A4 use at the application premises and the potential increase in noise experienced by local residents. No details of potential noise attenuation measures have been submitted and there is no indication of their likely effectiveness. Given the location of the premises and proximity to local residents, activity generated in and around the premises and the coming and going of customers is likely to be a source of noise and disturbance. It is therefore remains unclear that effective attenuation measures could be introduced to avoid noise from within the premises having an adverse effect on those living directly above or adjacent. To some degree, such impacts could be satisfactorily addressed via sound attenuation measures/conditions to the shop unit itself.

3.5 Whilst it can be acknowledged that those living on a trafficked road above commercial units can expect or at least become accustomed to a certain level of background noise, the nature and associated activity of the proposed use would likely be a source of additional noise and disturbance to a significant number of local residents at times when they are entitled to a degree of tranquillity.

3.6 In this instance, an Operational Management Plan (OMP), secured by a s106 legal agreement, could ensure that potential impacts are minimised such as how the premises will be managed including door staff, smoking and dispersal, opening hours and leaving the premises.

3.7 The applicant has indicated an unwillingness to enter a S106 legal agreement in this regard, contrary to policies CS5, CS7, DP12, DP26 and CPG6 – Amenity and this therefore substantiates a reason for refusal.

4. Transport

Service Management

4.1 The Council will seek Delivery and Servicing Management Plans (SMP) for developments that are likely to generate a significant need for the movement of goods and materials when occupied, in order to ensure that potential impacts are minimised.

4.2 The way that trips are managed will influence their impact on local communities, traffic movement and the environment. Delivery timings can also have a significant influence on the impact of goods movement, both on the highway network (including site specific and cumulative impacts), and on residential amenity from deliveries made out of working hours. The Council will therefore ensure that delivery timings are managed to optimal effect through the use of Delivery and Servicing Management Plans. We will also control the impact of goods vehicles through waiting and loading restrictions.

4.3 Transport Assessments represent the best tool to consider how a development can most appropriately be serviced. Some developments can safely and appropriately take place on-street, depending on the nature of the street and the development. This is in accordance with policies CS5, CS11, CS19, DP20, DP21, DP26 and CPG7 – Transport.

4.4 Although the proposal for the site is relatively small, it is recognised that there could be a cumulative impact upon the heavily trafficked highway of Fortress Road (itself serviced by a single yellow line) as result of additional vehicle movements, in particular loading, unloading and waste collection storage.

4.5 Therefore Camden, in accordance with policies CS5, CS11, CS19, DP20, DP21, DP26 and CPG7 – Transport will seek to ensure that impact is properly managed by the developer through a Service Management Plan (SMP), secured by a S106 legal agreement.

4.6 A planning obligation is considered to be the most appropriate mechanism for securing an SMP in this case simply because to a considerable extent much of the activity that would cause conflict with other road users or be detrimental to the amenity of the area will necessarily take place outside the curtilage of the planning unit of the application site.

4.7 Potential impacts for the proposed use which should be controlled by a SMP include traffic generation from removal and delivery of goods and services and deliveries to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.

4.10 The applicant has indicated an unwillingness to enter a S106 legal agreement in this regard, contrary to policies CS5, CS11, CS19, DP20, DP21, DP26 and CPG7 – Transport and this therefore substantiates a reason for refusal.

Cycle Parking

4.11 Camden's cycle parking standards require cycle parking for new A4 (Drinking establishment) uses at a ratio of 1 cycle space per 250sqm from a threshold of 500sqm. The proposed floorspace of the bar would be 32sqm and so cycle parking would not be required as part of the proposal.

4.12 External alterations do not form part of this application; therefore the change of use would only require a degree of refurbishment. As the works are relatively minor in nature and mainly comprise internal works, the proposal would have limited construction implications. A Construction Management Plan (CMP) would not therefore be required in this instance.

Outdoor Seating and Boundary Treatments

4.13 A seating/smoking area along the frontage on Fortress Road does not form part of this application, with this said however, any seating or structure proposed on the public highway would require a licence, obtained from Camden's highways Department.

5. S106 Matters

5.1 Under the Planning Act, conditions are used to control matters on land within the developers' control. However, an SMP/OMP is designed to be an enforceable and a precise document setting out

how measures will be undertaken not just on site but also around the site in order to minimise as far as reasonable the detrimental effects of operation and patronage, servicing on local residential amenity and / or highway safety on the nearby roads hence, using a condition to secure the type of off-site requirements usually included in an SMP/OMP would, in this case be unenforceable.

5.2 Conditions can only lawfully be used to control matters on land within the developer's control. Many of the SMP/OMP provisions will relate to off site requirements, particularly public highway (which is not land within the developers' control). As such, a Section 106 Agreement (rather than a condition) is the most appropriate mechanism. This is in accordance with Circular 11/95, where it states at Appendix B as an example of an unacceptable condition, is one requiring loading and unloading and the parking of vehicles not to take place on the highway, as it purports to exercise control in respect of a public highway which is not under the control of the applicant.

6. Other Matters

Licensing

6.1 Licensing Panels determine applications made under the Licensing Act 2003 where a relevant representation has been received. The types of applications considered include those for premises licenses, variations of premises licenses, temporary event notices where an objection has been received and applications for a review of a premises license.

6.2 An application for a new premises license was heard on the 6th October 2014, for the supply of alcohol (for consumption on and off the premises) between 11:00 – 22:00 Monday to Sunday. The subsequent rejection of the application was undertaken to uphold the licensing objective of the prevention of public nuisance.

Recommendation: Refuse Planning Permission