

<b>Delegated Report</b>	<b>Analysis sheet</b>		<b>Expiry Date:</b>	13/04/2015		
	N/A / attached		<b>Consultation Expiry Date:</b>	12/03/2015		
<b>Officer</b>		<b>Application Number(s)</b>				
Sally Shepherd		2015/0804/P				
<b>Application Address</b>		<b>Drawing Numbers</b>				
4 Highgate West Hill London N6 6JS		Refer to decision notice				
<b>Proposal(s)</b>						
Change of use of front portion of ground floor unit from office (B1) to residential (C3) to extend existing one bedroom flat.						
<b>Recommendation(s):</b>		Grant Prior Approval				
<b>Application Type:</b>	GPDO Prior Approval Class J Change of use B1 to C3					
<b>Conditions or Reasons for Refusal:</b>	Refer to Decision Notice					
<b>Informatives:</b>						
<b>Consultations</b>						
<b>Adjoining Occupiers:</b>	No. notified	<b>18</b>	No. of responses	<b>00</b>	No. of objections	<b>01</b>
			No. electronic	<b>00</b>		
<b>Summary of consultation responses:</b>	<p>A site notice was displayed from 20/02/2015 to 18/02/2015  A press notice was published from 20/02/2015 to 19/02/2015</p> <p>One objection was received from 11 Grove Terrace:</p> <ul style="list-style-type: none"> <li>Objection to the loss of a business unit at this location. This building is an important local commercial centres and its use should remain commercial. <b>Officer's response:</b> <i>the only matters that can be considered are transport, contaminated land and flooding matters. The impact of the proposal on town centre therefore fall outside of any assessment of this type of application and are not able to be taken into account.</i></li> </ul>					
<b>CAAC/Local groups* comments:</b> *Please Specify	Dartmouth Park CAAC: No Response					

## Site Description

The application site comprises a three storey (plus basement) property located on the west side of Highgate West Hill. The application relates to the front section of the ground floor which is currently in use as an office (B1). The rest of the property is in residential use with a residential unit on the lower ground floor, the rear section of the ground floor, first floor and the second and third floors.

The site is located within the Swains Lane Neighbourhood Centre and is in the Highgate Conservation Area.

## Relevant History

**2005/1636/P** – Planning permission granted on 21/06/2005 for the change of use from Class A1 (Juice Bar) to a Class A2 (Financial and Professional Services) at ground floor level

**2003/3018/P** – Planning permission granted on 19/12/2003 for the change of use of the basement to health centre (Class D1).

**8502046** – Planning permission granted on 05/02/1986 for the change of use of basement from ancillary shop storage to office premises for chauffeur driven car company

## Relevant policies

### NPPF 2012

- Chapter 4 (Promoting sustainable transport)
- Chapter 10 (Meeting the challenge of climate change, flooding and coastal change)
- Chapter 11 (Conserving and enhancing the natural environment)

## Assessment

### Proposal

The proposal seeks to change the use of the front section of the ground floor which is currently in office (B1) use to residential to combine it with the existing residential unit to rear to increase the size of the existing one bed flat.

### Procedure

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 came into force on 30 May 2013 and introduced Class J, which allows for development consisting of a change of use of a building and any land within its curtilage to a use falling within C3 (dwellinghouses) of the Schedule to the Use Classes Order from a use falling within Class B1(a)(office) of that Schedule.

This is subject to a number of conditions listed within sub-paragraph J.1 [(a)-(f)] and a subsequent condition in sub-paragraph J.2 relating to the need for the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority is required as to:

- (a) transport and highways impacts of the development;
- (b) contamination risks on the site; and
- (c) flooding risks on the site.

It also refers to paragraph N and its provisions apply to such an application.

The application is to ascertain whether the proposed change of use would constitute permitted development within the General Permitted Development ('GDPO') and therefore be a lawful development and whether prior approval is required.

### Sub-paragraph J.1

The development is assessed against paragraphs (a)-(f). Development is not permitted where:

*(a) the building is on article 1(6A) land;*

The proposal complies: the site falls outside of the area defined by Part 4 of the amended Order and the accompanying map.

*(b) the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order immediately before 30th May 2013 or, if the building was not in use immediately before that date, when it was last in use;*

The proposal complies: the site has been used as Class B1(a) offices before 30 May 2013.

*(c) the use of the building falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order was begun after 30th May 2016;*

The proposal complies: at the current time the use has not commenced and so the proposal accords as far as is possible at this stage.

*(d) the site is or forms part of a safety hazard area;*

The proposal complies: it is not in a safety hazard area.

*(e) the site is or forms part of a military explosives storage area;*

The proposal complies: it is not part of a military explosives area.

*(f) the building is a listed building or a scheduled monument;*

The proposal complies: the building is not listed.

Therefore, the proposal accords with sub-paragraph J.1.

### **Impacts and Risks**

As the above pre-requisites are complied with, it falls to the Council to assess the proposal. With regard to the terms of reference of that assessment paragraph N(8) of the GPDO states: (8) The local planning authority shall, when determining an application:

- (a) take into account any representations made to them as a result of any consultation under paragraphs (3) or (4) and any notice given under paragraph (6);
- (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012 as if the application were a planning application;

### **Conditions under J2 of the Order**

2.2 The applicant has submitted information with regards to sub para J.2 in order for the Council to make a determination as to whether prior approval is required as to:

- (a) transport and highways impacts of the development;
- (b) contamination risks on the site; and
- (c) flooding risks on the site

It also states that: the provisions of paragraph N shall apply in relation to any application (see above)

### **Interpretation of the legislation**

Council's consideration of the proposal in light of the Planning Practise Guidance 2014, Nick Boles Ministerial Statement and the Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014.

On 7 February 2014 Nick Boles MP issued a ministerial statement on behalf of DCLG which sought to provide clarity regarding the intention of Class J of the GPDO. Within this statement Mr. Boles states that the intention of the permitted development rights is to make it easier to convert offices to new homes. He states that this applies nationally and that local authorities have already been given the opportunity to seek an exemption where they could demonstrate adverse economic impacts. He states that a light-touch prior approval process has been put in place to allow any transport, contamination, and flooding issues to be addressed by councils; and that under a prior approval process, councils can still refuse an application, on these set grounds.

In the closing remarks of his statement Mr. Boles comments that 'we are also aware that some local authorities may be unclear on the correct intention of the detailed provisions of national legislation for office to home conversions. He states that some have not applied the correctly intended tests to determinate applications for prior approval and have sought to levy developer contributions which are not appropriate (on matters unrelated to the prior approval process). He sets out his intention to update planning guidance to clarify this point.

The Planning Practice Guidance which was published on 6<sup>th</sup> March 2014 offers further clarity on the prior approval process. Of relevance it states,

*'By its nature permitted development should already be generally acceptable in planning*

*terms and therefore planning obligations would ordinarily not be necessary. Any planning obligations entered into should be limited only to matters requiring prior approval and should not, for instance, seek contributions for affordable housing.'*

(Planning Obligations, Paragraph: 005 Reference ID:

23b-005-20140306)

It is clear from the above that the Government acknowledged that there was some ambiguity in Class J of the Order and that they intended to clarify how it should be interpreted. It was not until 13<sup>th</sup> March 2014 when the explanatory memorandum to the Town and Country Planning (General Permitted Development) Amendment and Consequential Provisions) (England) Order 2014 was published that this clarity was provided.

The Explanatory Memorandum paragraph 4.7 states:

'In light of feedback on these provisions since they were enacted in 2013, the prior approval procedures in paragraph N of Part 3 of Schedule 2 to the General Permitted Development Order are amended to clarify that local planning authorities:

- must only consider the National Planning Policy Framework to the extent that it is relevant to the matter on which prior approval is sought;
- may attach conditions to grants of prior approval, as long as those conditions are relevant to the matter on which prior approval is sought;
- may refuse the application if they are not satisfied that the proposed development qualifies as permitted development, or if they have insufficient information to establish whether the proposed development qualifies as permitted development; and
- may invite further information from applicants relevant to the matters on which prior approval is sought or to the question of whether the proposed development qualifies as permitted development.'

The Council has obtained further legal advice from Counsel on whether the Order, in light of the above statement and additional guidance, enables consideration of wider issues than transport, flooding and contamination. The Council has been advised that this additional statement which is now supported by guidance clarifies the intent of Class J, being that the NPPF can only be taken into consideration in relation to transport and highway impacts and contamination and flooding risks. As such, it is considered that assessment of this application can only take into consideration the matter of transport and highways impacts and flooding and contamination risks and not wider issues such as such as impact on amenity (unless the harm would contravene Article 8 of the European Convention on Human Rights - right to respect for private and family life) affordable housing, educational and community facilities contributions, and public open space contributions.

#### **a) transport and highways impacts of the development**

##### Parking, cycling and public transport

The NPPF confirms that transport policies have an important role to play in facilitating sustainable development. Paragraph 29 states that "the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel". It also recognises that "different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas." Given that Camden is within a densely populated urban area of London it is considered necessary to maximise sustainable transport solutions.

The site is located in the Highgate controlled parking zone (CA-U) which operates between 0830 and 1830 hours on Monday to Friday and 0830 and 1330 on Saturday. In addition, the site has a PTAL

rating of 3 which means it is moderately accessible by public transport. The proposal would result in the extension of an existing residential property. Camden's car free policy does not therefore apply in this case and it is not required to secure the development as car free. Although the Council actively encourages sustainable and efficient transport and supports the provision of high quality cycle parking in line with national planning policy, there is no policy requirement to secure cycle parking facilities as a new unit is not being created.

#### Highway network impact

Camden's Transport officers have studied the proposal and have confirmed that a CMP is not necessary for the site based on the scale of the proposal. However, some highway licenses may be required to facilitate the proposed works. This might include a temporary parking bay suspension, a skip licence, a hoarding licence, and a scaffolding licence. The applicant would need to obtain such highway licences from the Council prior to commencing work on site.

#### **(b) contamination risks on the site**

The NPPF notes that the planning system should contribute to and enhance the local environment by remediating contaminated land, and that the responsibility for ensuring a safe development rests with the developer.

The development is for a change of use within the building only and no extensions or alterations, and so the ground itself is not being disturbed there would not be a concern in respect of land contamination and so the impact is considered acceptable.

#### **(c) flooding risks on the site**

The NPPF also confirms that flooding is an issue to be considered when determining planning applications, and so it is important that this is considered for this type of application. The site is not within an area which is known to flood, and so the proposal is considered to accord with this aspect of the assessment.

Therefore, the proposal accords with sub-paragraph J.2.

#### **Conclusion and recommendation**

Prior approval is required and is granted. The proposal complies with Class J2(a) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013.