

<b>Delegated Report</b>	<b>Analysis sheet</b>		<b>Expiry Date:</b>	<b>14/04/2015</b>			
	N/A / attached		<b>Consultation Expiry Date:</b>	<b>12/03/2015</b>			
<b>Officer</b>		<b>Application Number(s)</b>					
Tony Young		2015/0833/P					
<b>Application Address</b>		<b>Drawing Numbers</b>					
309 Kentish Town Road (accessed off 311 Kentish Town Rd) London NW5 2TJ		Refer to decision notice					
<b>Proposal(s)</b>							
Change of use from offices (Class B1) at mezzanine, 1st, 2nd and 3rd floor levels to residential use (Class C3) to provide 3 self-contained units (1 x 2 bed, 2 x studios).							
<b>Recommendation(s):</b>		Grant Prior Approval subject to a S106 Legal Agreement					
<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>19</b>	No. of responses	<b>00</b>	No. of objections	<b>00</b>
				No. electronic	<b>00</b>		
<b>Summary of consultation responses:</b>		A site notice was displayed from 19/02/2015 to 12/03/2015 No responses were received.					
<b>CAAC/Local groups* comments:</b> <small>*Please Specify</small>		The site is does not lie within a conservation area. No responses from local groups.					

## **Site Description**

The application site is located on the western side of Kentish Town High Road, south west of the junction with Regis Road and the Kentish Town Underground and railway station. The site is not located within a conservation area and is within Kentish Town Centre. The application property forms part of a terrace comprising of part three/four storeys with retail and commercial uses on the ground floor. The application relates to the mezzanine, 1st, 2nd and 3rd floors which are currently in use as offices (Class B1) at No.309. Access to these floors is provided at ground floor level from No.311.

## **Relevant History**

No relevant history in connection with mezzanine, 1st, 2nd and 3rd floor levels.

## **Relevant policies**

### **National Planning Policy Framework 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)

### **General Permitted Development Order 2008 (as amended)**

### **The Environmental Protection Act 1990(a) part IIA**

### **The Contaminated Land Statutory Guidance issued by the Secretary Of State for Environment, Food and Rural Affairs in April 2012**

## Assessment

### Proposal

The proposal seeks to change the use at mezzanine, 1st, 2nd and 3rd floors which are currently in use as offices (Class B1) to residential use (Class C3) to provide 3 self-contained units.

### 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 any article 1(6A) land.

- (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 since before 30 May 2013. The Valuation Office Agency lists the first, second and third floors as being registered as office premises for business rates since 13/08/2010

- (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**

##### Transport & parking impacts

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 has a PTAL rating of 6a which means it has excellent access to public transport. It is located in the East Kentish Town controlled parking zone (CA-M) which operates between 0830 and 1830

hours on Monday to Friday. The provision of any permits to future occupants would put pressure on the availability of on-street parking in the vicinity of the site and have associated traffic impacts with vehicles searching for spaces. As such the proposal is considered likely to have a material impact on the character of traffic in the vicinity of the site. For this reason, prior approval of the Council is considered to be necessary.

Subject to a Section 106 legal agreement designating the development as 'car free', the proposal would be considered to have an acceptable impact on the highway network. The Applicant has agreed to enter into a Section 106 legal agreement designating the units as car free.

#### **(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, with proposals affecting mezzanine and upper floor levels, and with no extensions or alterations proposed, so the ground itself is not being disturbed. As such, 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 identified as being at risk of surface water flooding, however the proposed residential space is all above ground floor level, As such, the proposal is considered to accord with this aspect of the assessment.

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

#### **Additional issues**

Paragraph N(8) of the GPDO requires that the local authority also:

*(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;*

#### **Consultation Response**

No consultations responses were received with regard to this application.

#### **National Planning Policy Framework**

Paragraph 17 of the NPPF states that, "*planning should always seek...a good standard of amenity for all existing and future occupants of land and buildings*".

#### **Neighbouring amenity**

The NPPF falls short of providing specific standards protecting the amenity of adjoining and nearby properties. The proposal would not arise in any overlooking to rear or front. As such, the residential accommodation is not considered likely to result in unacceptable privacy impacts on adjoining or nearby properties.

### **Community Infrastructure Levy (CIL)**

As the proposal results in new dwellings, it will be liable for the Mayor's and Camden's Community Infrastructure Levy (CIL). A standard informative is attached to the decision notice drawing CIL liability to the Applicant's attention.

### **Conclusion and recommendation**

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

Grant prior approval subject to Section 106 legal agreement securing the units as car-free.