

Delegated Report (Members Briefing)	Analysis sheet	Expiry Date:	19/12/2014
	N/A	Consultation Expiry Date:	12/11/2014
Officer		Application Number(s)	
Sally Shepherd		2014/6652/P	
Application Address		Drawing Numbers	
48-56 Bayham Place London NW1 0EU		000-G; 001-F; 002-S; 05437_00A; 05437_01A; 05437_02B; 05437_10	
Proposal(s)			
Change of use from office (Class B1a) to residential (Class C3) comprising 29 x studio flats			
Recommendation(s):	Granted Prior approval subject to Section 106 Legal agreement		
Application Type:	GPDO Prior Approval Class J Change of use B1 to C3		

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	18	No. of responses	00	No. of objections	03
Summary of consultation responses:	<p>Two objections were received:</p> <p><u>7 Bayham Street:</u></p> <ul style="list-style-type: none"> • Increased noise pollution from an additional 58 people living in the building • Increased light pollution at night • Impact on privacy as would result in overlooking to bedrooms/bathroom/living room • Increased parking pressure (<i>officer's response: see section on car-free development below</i>) • Impact on street cleaning and rubbish collection in area • Safety impact due to proximity of rear elevation, may result in rubbish etc. being thrown from windows <p><u>3 Bayham Street</u></p> <ul style="list-style-type: none"> • Substantial noise impact, especially as it's likely that students will live in the new units • Increased pressure on environmental services, resulting in greater waste and rubbish on Bayham Street and Bayham Place <p><i>Officer response: As detailed in the assessment section below, the only matters that can be considered are transport, contaminated land and flooding matters. The impact of the proposal on the amenity of adjoining occupiers, security concerns and environmental services therefore fall outside of any assessment of this type of application. As such, the matters detailed above, apart from the transport implications of the proposal, are not able to be taken into account.</i></p> <p><i>However, in light of the Utopia Village decision, please see the section on 'interpretation of the legislation' and 'amenity' below.</i></p>					
CAAC/Local groups* comments: *Please Specify	<p><u>Camden Town CAAC objected to the application:</u></p> <ul style="list-style-type: none"> • Although the building is unlisted, it dates from 1804 and should be kept intact as much as possible. The proposed destruction of the existing interior would destroy the remaining historic structure • The proposed studios are well below Camden's residential standards and bathroom, kitchens etc. aren't shown on the plans • Noise impact • Overlooking to rear elevation of numbers 5 & 7 • Over-development <p><i>Officer response: As detailed in the assessment section below, the only matters that can be considered are transport, contaminated land and flooding matters. The impact of the proposal on the building, residential standards and amenity therefore fall outside of any assessment of this type of application. As such, the matters detailed above, apart from the transport implications of the proposal, are not able to be taken into account.</i></p> <p><i>However, in light of the Utopia Village decision, please see the section on 'interpretation of the legislation' and 'amenity' below.</i></p>					

Site Description

The application site is a three storey building located on the north side of Bayham Place which is located to the west of Bayham Street. The site is currently vacant but was previously occupied by Anders Electronics and used as offices (Class B1a). The site is located within the Camden Town conservation area and is noted as making a positive contribution to the character and appearance of the conservation area.

Relevant History

2013/7117/P – Planning permission was granted on 02/01/2014 for change of use from office (Class B1a) to 9 x 2 bedroom residential units (Class C3).

PEX0200987 – Planning permission was refused on 29/05/2003 for the erection of a single storey roof extension above existing workshops/offices for the provision of 1x1 bed and 1x2 bed flats, 2 in total with roof terrace. Additional alterations include the provision of open plan offices at ground to second floors, new doors at ground floor and new bin store.

Reasons for refusal:

- The proposed extension, due to its size, height, bulk, massing and design, including materials proposed, is considered unduly prominent within the street scene and harmful to the character and appearance of the Camden Town Conservation Area, contrary to UDP policy EN13, EN14, EN21, EN22 and EN24.
- The proposed extension, by reason of the number and location of windows and glazing and the proposed balconies, would be likely to result in unreasonable overlooking of neighbouring properties to the detriment of the amenities of the occupiers of those properties, contrary to UDP policy EN19, HG12 & DS5;
- The proposed extension, by reason of its size, height and location, would be likely to result in an unacceptable loss of light and enclosing effect of neighbouring properties to the detriment of the amenities of the occupiers of these properties, contrary to UDP policy EN19.

PEX0200986 – Planning permission was refused on 30/05/2003 for erection of two additional storeys above existing offices for the provision of 3 x 1 bedroom and 1 x 2 bedroom flats(4 flats total). Development includes internal alterations to existing offices, new doors at ground floor level, new bin store and residential roof terraces.

Reasons for refusal:

- The proposed extension, due to its size, height, bulk, massing and design, including materials proposed is considered unduly prominent within the street scene and harmful to the character and appearance of the Camden Town Conservation Area, contrary to UDP policy EN13, EN14, EN21, EN22 and EN24.
- The proposed extension, by reason of the number and location of windows and glazing and the proposed balconies, would be likely to result in unreasonable overlooking of neighbouring properties to the detriment of the amenities of the occupiers of those properties, contrary to UDP policy EN19, HG12 and DS5.
- The proposed extension, by reason of its size, height and location, would be likely to result in an unacceptable loss of light and enclosing effect of neighbouring properties to the detriment of the amenities of the occupiers of these properties, contrary to UDP policy EN19.

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 and Procedure

This application relates to 48-56 Bayham Place. The proposal seeks to change the use of the building at ground, first and second floor level from offices (Class B1a) to provide 29 x studio units (Class C3).

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 6th 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 13th 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

Car free development

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.

Camden’s strategy and policies in line with national planning policy consider access to car parking and seek to encourage car-free and car-capped developments in areas of moderate or good public transport accessibility. The application site has a PTAL rating (public transport access level) of 6a (excellent).

No off-street parking spaces are currently provided on site and so in accordance with the NPPF objectives, in favour of sustainable transport, the proposed residential units would be secured as car-free via a S106 agreement (i.e. with no right to apply for on-street car parking permits) to minimise impact on the highway network in accordance with paragraph 29 of the NPPF.

Walking, cycling and public transport

The Council actively encourages sustainable and efficient transport and supports the provision of high quality cycle parking in line with national planning policy.

The proposal includes provision for 32 cycle spaces (12 x Josta stands within the building and 4 x Sheffield stands outside the building). Given the development would provide 29 self-contained units; it is considered that the proposed provision of cycle parking would be acceptable and includes provision for visitor cycle parking. The permanent provision of the cycle spaces would be secured via the S106 legal agreement.

Highway network impact

Impact on the highway network and immediate environment is likely during construction. No information has been provided as to how the site will be converted from offices to 29 x residential units, although it is likely to require a significant amount of work to convert the property. Camden’s Transport Planners have advised that a Construction Management Plan (CMP) would be required to mitigate any adverse impacts. This would be secured via a S106 legal agreement.

(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.

Amenity

As noted in the consultation section, adjoining occupiers and the Camden Town CAAC have raised various concerns regarding amenity, safety and environmental services. Such matters should not have any bearing on the determination of an application for prior approval, where the only matters that should be considered are transport, flood risk and land contamination, as explained in the section of interpretation of legislation.

As stated above impact on existing occupiers amenity can be considered if the proposal would result in significant harm which would contravene Article 8 of the European Convention on Human Rights (Right to respect for private and family life).

The nearest residential properties are nos. 3-7 Bayham Street comprising three, three storey terraced houses. There are four windows on the rear elevation of the application site which face these properties which are approximately 8m away. There are also three windows at second floor level on the side elevation facing north which do not directly face the rear elevation of Bayham Street but are located approximately 5-6m away. It is acknowledged that there would be an element of overlooking from the rear windows of the proposed units into the rear windows of the properties along Bayham Street. However the building is located just off Camden High Street in a relatively built up area and so the separation distance between the two properties is not something which is unusual in this part of the borough. The side windows are located closer to the rear elevations of Bayham Street, however the level of overlooking from the side windows would be limited due to the oblique angle.

With regards to noise, the proposed residential use would not be out of keeping with the area and noise pollution would be limited due to the residential use. Any subsequent noise complaints should be reported to the Environmental Health team to investigate.

In this instance, it is not considered that the change of use from offices to 29 flats would seriously harm the amenity of adjoining occupiers to the extent that it would breach their human rights. Another prior approval application was approved in 2013 to convert all three floors to 29 residential units (with windows overlooking Bayham Street) and the impact on amenity was not considered to breach human rights.

Conclusion and recommendation

Prior approval is required and is granted, subject to a section 106 legal agreement securing the new units as car-free, the submission of a construction management plan and securing appropriate cycle storage for 32 cycles. The proposal complies with Class J2(a) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013.

Decision route to be decided by nominated members on 15th December 2014. For further information please go to www.camden.gov.uk and search for 'members briefing'