

Delegated Report	Analysis sheet		Expiry Date:	11/11/2015		
	N/A / attached		Consultation Expiry Date:	15/10/2015		
Officer			Application Number(s)			
Tony Young			2015/4630/P			
Application Address			Drawing Numbers			
5-6 Eton Garages London NW3 4PE			Refer to decision notice			
Proposal(s)						
Change of use from offices (Class B1a) to residential use (Class C3) at ground floor level to provide one self-contained unit (1 x 2 bed).						
Recommendation(s):		Grant Prior Approval				
Application Type:		GPDO Prior Approval Class O Change of use B1a to C3				
Conditions or Reasons for Refusal:		Refer to Decision Notice				
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	15	No. of responses	00	No. of objections	00
			No. electronic	00	No. of comments	00
Summary of consultation responses:		A site notice was displayed from 23/09/2015 to 14/10/2015. A press notice was published from 24/09/2015 to 15/10/2015. No comments were received.				
CAAC/Local groups* comments: <small>*Please Specify</small>		The site sits within Belsize Park conservation area. No responses from local groups.				

Site Description

The property is a 2-storey mews building located centrally within a row of mews houses situated on the eastern side of Eton Garages and which is characterised by a variety of commercial buildings, offices, warehousing and residential uses. The building is identified as a positive contributor to the appearance and character of the Belsize Park conservation area.

The application relates to the ground floor of nos, 5-6 which are currently in use as offices (Class B1a) and operate as a single unit. The 1st floor is in residential use and has a separate entrance from the street.

Relevant History

9301377 (no. 5) - Erection of a front dormer and rear velux window to roof slope to create additional residential space for an existing residential flat. Granted planning permission 12/08/1994

9400742 (no. 6) - Erection of front dormer window. Refused planning permission 26/08/1994

Relevant nearby sites

2013/4492/P (no. 18) - Change of use from ground floor office (Class B1a) to 2 bedroom self contained flat (Class C3). Granted prior approval 09/09/2013

2013/4402/P (no. 11) - Change of use from 1 bedroom live/work unit (sui generis) to 2 bedroom residential unit (Class C3). Granted planning permission 10/09/2013

2013/6026/P (no. 14) - Change of use from 1 bedroom live/work unit (sui generis) to 2 bedroom residential unit (Class C3). Granted planning permission 25/11/2013

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)

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015

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

The London Plan 2015

Assessment

Proposal

The proposal seeks to change the use from offices (Class B1a) to residential use (Class C3) at ground floor level to provide one self-contained unit (1 x 2 bed).

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.

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 which came into force on the 15 April 2015 supersedes the 2013 amendment and considers change of use from B1 offices to C3 residential under Class O. There is little material change in the permitted development rights.

This is subject to a number of conditions listed within sub-paragraph O.1 [(a)-(g)] and a subsequent condition in sub-paragraph O.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 W 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 O.1

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

- (a) the building is on article 2(5) land;*

The proposal complies: the site falls outside any article 2(5) 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 at ground floor level since before 30 May 2013. The Valuation Office Agency lists the ground floor of only no. 5 as being registered as paying business rates since 01/04/2010. However, the Council's Business Rates service have since visited the site on 02/10/2015 and confirmed that business rates have been paid for nos. 5-6 as a single ground floor unit since 01/04/2010. At the time of the officer's site visit, it was clear that nos. 5-6 were in use as a single Class B1a office unit in support of evidence provided that confirms the office use.

- (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 within the curtilage of a listed building;*

The proposal complies: the building is not listed or within the curtilage of a listed building.

(g) *the site is, or contains, a scheduled monument;*

The proposal complies: the site is not, and does not contain, a scheduled monument.

Therefore, the proposal accords with sub-paragraph O.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 W(10) of the GPDO states: (10) 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 sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8);

(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 O.2 of the Order

The applicant has submitted information with regards to sub para O.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 W 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

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 3 which means it has moderate access to public transport. It is located in the Belsize controlled parking zone (CA-B) which operates between 0900 and 1830 hours on Monday to Friday, and 0930 and 1330 Saturday. 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.

However, Eton Garages is a private road and therefore has no parking restrictions. The property itself already has two privately owned car parking spaces within the mews, so it is not considered that the proposals would have an adverse impact on the character of traffic in the area nor cause harm to on-street parking within the vicinity of the site. Further, it is considered that making the development car-free would not prevent future occupiers parking in the mews as the road is not a controlled parking zone. This is consistent with a recent prior approval application (2013/4492/P) granted on 09/09/2013 at no. 18 where it was not considered necessary to place a restriction that the development be car-free (or indeed car-capped) given Eton Garages status as a private road.

(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 application site is not identified as being at risk from land contamination and the history of the building suggests that there have not been any potentially hazardous uses occupying the site for a considerable period of time. There are no extensions or excavation proposed and there is no outdoor garden space for the site which means the ground itself is not being disturbed. As such the prior approval of the Council with regard to contamination is not considered to be necessary

(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 Environment Agency rate this risk as being low. Further, the proposed change of use does not propose any additional basement or works of excavation, and as such, an assessment on local ground, surface water and ground water conditions would not be required for this Prior Approval application.

The site falls within Flood Zone 1, which is assessed as having a less than 1 in 1,000 annual probability of river or sea flooding (<0.1%). It is considered that a Flood Risk Assessment would not be required in the determination of this prior approval application as the proposed change of use should not have any adverse impact nor create any risk requiring mitigation.

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

Additional issues

Paragraph W(10) 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 sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8);

(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

One consultation response was received which raised no objection to the proposals, but expressed other concerns that have been addressed in the *Consultations* section of this report (see above).

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 give rise to any additional overlooking to rear or front. As such, the residential accommodation is not considered likely to result in additional unacceptable privacy impacts on adjoining or nearby properties.

Community Infrastructure Levy (CIL)

As the proposal results in a new dwelling, 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 O.2 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015.

Grant prior approval