

Delegated Report		Analysis sheet		Expiry Date:		21/09/2015	
		N/A		Consultation Expiry Date:		31/08/2015	
Officer				Application Number(s)			
Nanayaa Ampoma				2015/4194/P			
Application Address				Drawing Numbers			
230 Kilburn High Road London NW6 4JP				See draft Decision Notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
Change of use of part of ground floor from retail (Class A1) to studio flat (Class C3).							
Recommendation(s):		Refuse Prior Approval					
Application Type:		GPDO Prior Approval Part 3 Class M change of use of A1/A2 to C3					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	04	No. of responses	00	No. of objections	00
				No. electronic	00		
Summary of consultation responses:		Direct letters were sent to neighbours. No responses have been received					
CAAC/Local groups* comments: <small>*Please Specify</small>		The site is not within a conservation area. No responses have been received from local groups.					

Site Description

The application site lies to the east of Kilburn High Road in close proximity to the junction with Messina Road to the north and Gascony Avenue to the south. The boundary of the London Borough of Brent lies on the western side of Kilburn High Road. The site comprises a four storey building that is occupied by a commercial unit on the ground floor and six bedsits on the upper floors. The building has two access points. The ground floor retail unit is accessed from the front entrance onto Kilburn High Road. There is a gated access way to the rear of the building that is accessed from Messina Road. This provides access to the residential flats above.

The application site is not in a conservation area and is not listed. However is in an area of

underground surface water flow and a Flood Risk Zone.

Relevant History

2012/2992/P: Retrospective change of use at rear first floor level from shop (Class A1) into a self-contained 1-bedroom flat (Class C3). – **Granted with S106, 26/7/2013**

PW9605125: The change of use of basement ground and first floors from Class A1 (Retail) to Class A3 (Restaurant) with take away service, as shown on drawing number; 698/2 Rev A and NP34596PP/01. – **Appeal allowed, 19/01/1998.**

9501550: The change of use of basement ground and first floors from Class A1 (retail) to Class A3 (restaurant/wine bar) use as shown on drawing numbers 698-1 and 698-2. Rev. a.- **Refused 17/11/1995**

9300019: Retention of rear extension to ground floorshop including new flat roof and alterations to fenestration. as shown on drawing numbers M/KHR/103E M/KHR/105 as revised on 20.10.93.- **Grant 29/10/1993**

Relevant policies

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015: Class G, Part 3

National Planning framework (2012)

Assessment

Proposal

The application seeks Prior Approval for the change of use from A1 to C3 at the rear ground floor. The unit would sit behind the retail unit at the front of the property. The studio space would be 37.48 square metres. No extensions are proposed however a new window is proposed in the west elevation.

Assessment

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 Part 3 – *Changes of use* introduced Classes G (change of use from A1, A2 betting units to mixed use 2x flats) and M (A1, A2, betting office to dwelling house) allows for development consisting of a change of use of a building within the use class of A1 (retail) or A2 (financial and professional) or a betting shop or pay day loan to a residential use (C3).

The application proposes to create 1x flat however the application form specifies that the application is for prior approval under **Class M of Part 3**. This is incorrect as the proposed use is not a dwelling house but a flat. The correct Class for consideration of change of use to a flat is **Class G of Part 3**. The proposal however does not satisfy the requirements of either Class G or Class M.

Under **Class M** a shop (A1) may be changed into a dwellinghouse (C3) from a use or a mixed use combining betting office, payday loan shop, A1 or A2. In addition, building operations reasonably necessary to convert the building referred to a use falling within Class C3 (dwellinghouses) is also permitted. However the development is not permitted by Class M if—

- *The building was not used for one of the uses referred to above on 20th March 2013 or on its last known use before this time.*
- *The cumulative floor space of the existing building including any other works permitted under Class M would exceed 150 square metres;*
- *The development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;*
- *The development consists of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order);*
- *The building is listed, within a conservation area, is site of scientific interest, in a safety hazard area; in a military explosives storage area; or a scheduled monument.*

The development **complies** with all the above. However together with the above further *Conditions* must be met under parts M.2 (1) and (2). These state:

- (1) *(a) transport and highways impacts*
(b) contamination
(c) flooding
(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses)
(e) the design or external appearance of the building,
- (2) *development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval.*

The development **fails to comply** with condition M.2 (1) a. The highways Officer has stated that the application is acceptable subject to the signing of a S106 Legal Agreement for carfree development as the sites PTAL rating is 6a(Excellent). Additionally, the development would be close to a busy

highway that already suffers from traffic pressures. However this has not been signed.

The development **fails to comply** with condition M.2 (1) c. which relates to flooding. The application site falls within an area of underground surface water flow and a local Flood Risk Zone. However the applicant has failed to submit details to demonstrate that the added pressure on the local drainage, likely to be created by the residential use, would not contribute to flooding in the area.

The development **fails to comply** with condition M.2 (1) d. which relates to the undesirable of the building to change use to C3. The site falls within a Secondary shopping frontage and is considered a small shop unit. The Council actively aims to protect these smaller units for independent and small businesses and the reduction in the A1 floor space is not supported as it may have a harmful impact on the viability of the remaining A1 space. In addition, there is no evidence to suggest that the current unit is not viable and that there is no demand for its use under Class A1. As such it is considered more desirable for the unit to remain as A1.

The development **fails to comply** with condition M.2 which states that the development is permitted subject to the condition that prior approval is sought before any works take place to develop the house. Firstly, the development is for a flat and secondly the change of use has already been implemented as confirmed by an officer site visit on the 2nd of September 2015.

Under **Class G** a change of use from A1, A2, betting shop and/or payday loan to up to two flats may be effected subject to the following conditions—

- (a) some or all of the parts of the building used as a betting office or pay day loan shop or for any purposes within Class A1 or Class A2, as the case may be, of the Schedule to the Use Classes Order is situated on a floor below the lowest part of the building used as a flat;*
- (b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat;*
- (c) a flat must not be used otherwise than as a dwelling (whether or not as a sole or main residence)—*
 - (i) by a single person or by people living together as a family, or*
 - (ii) by not more than 6 residents living together as a single household (including a household where care is provided for residents).*

The proposed conversion would be to part of the retail use at ground floor which contains a display window. Therefore the application **fails to comply** with condition b) and is not permitted development.

Conclusion

The application proposes a change of use from A1(Shop) to C3(flat). The development was submitted under Class M of the Prior Approval legislation, however as Class M relates to the change of use to a dwellinghouse and not a flat, the proposed development is not relevant for this Class. Instead Class G would be more appropriate.

However the development fails to comply with the requirements of both these Classes for the reasons stated above. As such permission is refused under Class M and would also be refused under Class G should such an application be submitted for the site.

RECOMMENDATION: REFUSE PERMISSION FOR FAILURE TO SATISFY THE REQUIREMENTS OF CLASS M - PART 3 OF THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (ENGLAND) ORDER 2015.

