

Delegated Report		Analysis sheet		Expiry Date:		29/01/2016	
		N/A		Consultation Expiry Date:		27/01/2016	
Officer				Application Number(s)			
Kate Phillips				2015/6803/P			
Application Address				Drawing Numbers			
112 Malden Road London NW5 4BY				Refer to draft decision notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
Change of use from retail (Class A1) to residential (Class C3) to create 1 no. self-contained 1-bed flat at ground and basement level.							
Recommendation(s):		Refuse prior approval.					
Application Type:		GPDO Prior Approval 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	9	No. of responses	00	No. of objections	00
				No. electronic	00		
Summary of consultation responses:		A site notice was displayed on 06/01/2016 (consultation end date 27/01/2016). No consultation responses have been received.					
CAAC/Local groups* comments: *Please Specify		N/A					

Site Description

No. 112 Malden Road is a mid-terrace, 3 storey, brick building on the eastern side of the road. The building comprises a retail unit on the ground floor with residential accommodation on the upper floors. At the time of the officer's site visit (13/01/2016), the retail unit was closed with the shutters down, but the fascia still advertises "Fruit Express". The accompanying Retail Impact Assessment (RIA) notes that the unit is currently vacant.

The application site is within a designated Neighbourhood Centre (Queen's Crescent). The building is not listed and the application site is not within a conservation area.

Relevant History

2003/3118/P - Conversion of basement into a 1-bedroom self-contained flat and creation of new front lightwell - Refused 26-02-2004

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) (England) Order 2015

The Environmental Protection Act 1990(a) part IIA

The Contaminated Land Statutory Guidance issued by the SoS for Environment, Food and Rural Affairs in April 2012

Assessment

The proposal

The proposal seeks to change the use of the ground and basement floors of the building from retail use (Class A1) to residential use (Class C3), to provide 1 no. self-contained 1-bed flat.

Procedure

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015, Class M (a) (i) allows for development consisting of a change of use of a building from a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule.

Class M (b) allows for building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

The change of use is subject to a number of conditions listed within sub-paragraph M.1 [(a)-(g)] and a subsequent condition in sub-paragraph M.2 which requires the developer to apply to the local planning authority for a determination as to whether prior approval of the authority is required for:

- (a) transport and highways impacts of the development,
- (b) contamination risks in relation to the building,
- (c) flooding risks in relation to the building,
- (d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use—
 - (i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or
 - (ii) where the building is located in a key shopping area, on the sustainability of that shopping area, and
- (e) the design or external appearance of the building,

Paragraph W sets out the procedure for applications for prior approval under Part 3. This application seeks to ascertain whether the proposed change of use would constitute permitted development and whether prior approval is required.

Compliance with Paragraph M.1

Development is not permitted by Class M if —

- (a) the building was not used for one of the uses referred to in Class M(a)—**
 - (i) on 20th March 2013, or**
 - (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use;**

The proposal complies. The RIA notes that the unit is currently vacant but was last used in March 2015 as a greengrocers (before the unit was repossessed by the bank for failed mortgage repayments).

At the time of the officer's site visit (13/01/2016), the retail unit was closed with the shutters down, but the fascia above still advertises "Fruit Express". The Council's latest retail survey suggests that the

unit was previously used as an off-license (Class A1), trading under the name "Fruit Express". Furthermore, an initial investigation suggests that appropriate business rates have been paid for a shop and premises from at least April 2010.

(b) permission to use the building for a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order has been granted only by this Part;

The proposal complies. Council records suggest that the use of the unit has been Class A1 (retail) since at least 2003 (when a planning application was made to alter the shopfront).

(c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres;

The proposal complies. The cumulative floor space of the existing building changing use does not exceed 150 square metres; it would amount to approximately 140 square metres (75 square metres at ground floor level and 65 square metres at basement level).

(d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M;

The proposal complies. No other part of the building has previously changed use under Class M and no other applications under Class M at the building are pending determination.

(e) 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 proposal complies. The proposal does not involve any changes to the external dimensions of the building.

(f) 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); or

The proposal complies. The proposal does not involve any demolition works.

(g) the building is—

(i) on article 2(3) land;

The proposal complies. The application site is not on article 2(3) land.

(ii) in a site of special scientific interest;

The proposal complies. The application site is not in a site of special scientific interest.

(iii) in a safety hazard area;

The proposal complies. The application site is not within a safety hazard area.

(iv) in a military explosives storage area;

The proposal complies. The application site is not within a military explosives storage area.

(v) a listed building; or

The proposal complies. The application building is not statutorily listed.

(vi) a scheduled monument.

The proposal complies. The application building is not a scheduled monument.

It is concluded that the proposal constitutes permitted development, pursuant to the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, Part M.1.

Compliance with Paragraph M.2

Where the development proposed is development under Class M(a) together with development under Class M(b), 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 of the authority will be required as to—

(a) transport and highways impacts of the development,

The application site has a PTAL rating of 3, which means it is only moderately accessible by public transport, and it is within the West Kentish Town controlled parking zone, which has a parking rate level of 0.68 (i.e. not identified as having on-street parking stress).

Because the site is not located within a 'highly accessible area' and has a PTAL level of less than 4, it would be unreasonable to seek a car-free development through a S106 planning obligation. Furthermore, because the area does not suffer from parking stress, the provision of any parking permits to future occupants would not put undue pressure on the availability of on-street parking in the vicinity of the site or have associated traffic impacts with vehicles searching for spaces. [NB. This is the same approach that was taken at Nos. 169-173 Malden Road (planning reference 2014/6043/P dated 27/11/2014)].

Ordinarily, 1 cycle parking space should be provided for a 1-bed unit. However, the constraints of the application site do not easily allow for this. The proposal is therefore considered to be acceptable in this regard also.

(b) contamination risks in relation to the building,

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.

The application is accompanied by an Environmental Risk Assessment which does not identify any environmental risks.

The prior approval of Council with regard to contamination is not considered to be necessary.

(c) flooding risks in relation to the building,

The application site is not within an area identified in Camden's Strategic Flood Risk Assessment as being at risk of flooding. As such the prior approval of Council with regard to flooding risk is not

considered to be necessary.

(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use—

(i) on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or

The Retail Impact Assessment (RIA) notes that the retail unit is vacant, and has been for 8.5 of the last 10 years. The RIA notes that the application property was marketed by Currell & Co for 6 months in 2015, without success. The applicant associated the lack of interest down to the poor trading location, the small size of the unit, the vacant neighbouring properties and the high costs of bringing the building back into use.

Notwithstanding the comments in the RIA, no detailed marketing evidence has been provided as part of the application. In any event 6 months is not considered to be a sufficient length of time to demonstrate that the unit is unviable. Furthermore, the RIA suggests that the unit has not been maintained properly by previous tenants and is now in a poor state of disrepair and unsuitable for use as a commercial unit without refurbishment. This indicates that the contended periods of vacancy are not necessarily indicative of the location being undesirable for A1 use.

From the evidence provided it is not possible to conclude that there is no reasonable prospect of the building being used to provide retail services in the future. On this basis, an assessment must be made as to whether the proposal would have a detrimental impact on adequate provision of A1 services (or, where the building is located in a key shopping area, on the sustainability of that shopping area).

The RIA notes that the building is currently vacant and therefore offers no services at this time. The RIA concludes that Queen's Crescent Neighbourhood Centre is a reasonably healthy retail centre performing an important local retail and services role, and there is no indication that there is currently an under-provision of services usually provided by A1 and A2 uses.

The application site is within the designated Queen's Crescent Neighbourhood Centre (131-203 Queen's Crescent north side; 58-104 Queen's Crescent south side; 21-30 Malden Road; 110-118 Malden Road). The Council's records indicate that, within the Queen's Crescent Neighbourhood Centre, currently 60% of the units are in Class A1 use, and there is a vacancy rate of 13% (which is relatively high for the borough).

In the parade itself however, the proposed change of use will result in only two A1 units remaining in the parade which is otherwise made up of D1 and A3 uses. Maintaining a sufficient amount of A1 use in commercial parades is critical to ensure the vitality, viability and function of the parade. The proposed change of use is considered to result in harm to the character function, vitality and viability of the parade and therefore it is considered that the proposal results in inadequate provision of A1.

Prior approval is therefore recommended to be refused for this reason.

Part (d)(ii) requires that an assessment be made as to whether the proposal would impact on the sustainability of the shopping area (see below).

(ii) where the building is located in a key shopping area, on the sustainability of that shopping

area, and

Within the designated Neighbourhood Centres outside of the Central London Area, the Council normally resists proposals that would result in less than 50% of ground floor premises being in retail use; or more than 3 consecutive premises being in non-retail use (CPG5, paragraph 3.60).

The frontage (Nos. 110-118 Malden Road) consists of 4 separate units. At the time of the officer's site visit (13/01/2016), the current uses were as follows:

- 110 – Café Andalouse (A3)
- 112 – vacant – previously Fruit Express off license (A1)
- 114-116 – vacant – previously Simpson's Cycles (A1)
- 118 – Four Trees Surgery (D1)

The proposal would not result in less than 50% of ground floor premises in the neighbourhood centre being in retail use; however, the proposal would further reduce the number of consecutive premises in retail use within the frontage.

It is considered that the introduction of a C3 use within the frontage (in between an A1 unit and an A3 unit) would undermine the potential viability and function of the parade. This is because commercial uses (e.g. A1, A2, and A3) generate trips which benefit surrounding businesses and support the centre, whereas the proposed C3 use would not attract visitors, who might also visit the neighbouring commercial premises, harming the function and viability of the parade. The residential use would be at odds with the neighbouring uses.

The adjacent unit is currently vacant (since April 2015 according to the applicant's RIA). The proposed change of use would result in an incompatible use unresponsive of the function of the parade. It would also further impact on the adjacent and surrounding premises ability to market their premises for commercial use (or encourage them to seek a similar change of use) and their potential viability. If increasing numbers of retail units within the neighbourhood centres are lost as proposed, this will have the knock-on and compounding effect of harming viability and sustainability of neighbouring shops and the centre as a whole.

Paragraph 3.60 of CPG5 guides that the Council will take into account any history of vacancy in the centres and the viability of a retail use when determining applications for change of use in line with the requirements of Class M.2(1)(d)(i); however, as noted above, there is evidence to suggest that the unit is currently vacant at least in part due to its previous neglect and the marketing period claimed by the applicant even if supported by evidence, of which none has been submitted, is too short to demonstrate that there is no reasonable prospect of letting the unit in A1 use.

To conclude, it would be undesirable for the building to change to a use falling within Class C3 (dwellinghouses) because the loss of the retail unit would have a detrimental impact on the sustainability of the Queen's Crescent Neighbourhood Centre shopping area. Prior approval is therefore refused on this basis.

(e) the design or external appearance of the building,

The proposal does not involve any changes to the design or external appearance of the application building. The only building operations necessary to convert the building are internal works. Therefore prior approval is not required in this respect.

Conclusion:

Prior approval is refused for the following reasons:

- The proposed change of use from retail (A1) to residential (C3) by virtue of the loss of the commercial unit would undermine the adequate provision of shopping or financial and professional services that may be provided by the building, contrary to The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015, Schedule 2, Part 3, Class M.2(1)(d)(i); and contrary to the National Planning Policy Framework, chapter 2.
- The proposed change of use from retail(A1) to residential(C3) would harm the character, function, vitality and viability of the commercial parade in which it is located, and have a detrimental impact on the sustainability of the Queen's Crescent Neighbourhood Centre shopping area, contrary to The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015, Schedule 2, Part 3, Class M.2(1)(d)(ii); and contrary to the National Planning Policy Framework, chapter 2.

Recommendation: Refuse.