

Delegated Report	Analysis sheet	Expiry Date:	28/04/2016
	N/A / attached	Consultation Expiry Date:	30/03/2016
Officer		Application Number(s)	
Tony Young		2016/0887/P	
Application Address		Drawing Numbers	
85 Royal College Street London NW1 0SE		Refer to decision notice	
Proposal(s)			
Change of use from studio offices (Class B1a) to residential use (Class C3) at ground and part mezzanine floor levels in connection with the existing residential use on the upper floors to form a single dwelling house (Class C3).			
Recommendation(s):	Refuse 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	12	No. of responses	06	No. of objections	06
			No. electronic	06	No. of comments	00
Summary of consultation responses:	<p>A site notice was displayed from 10/03/2016 to 30/03/2016.</p> <p>Six objections have been received from surrounding occupiers in Royal College Street. A summary of the objections are as follows:</p> <ol style="list-style-type: none"> The existing floor plans show office space, however, this has been in residential use for some time; Given past drainage problems in relation to previous permissions, need assurance that no hidden works to the drainage system are proposed; Concern that proposals may include alterations to window openings; No details in relation to light. <p>Officer's response:</p> <ol style="list-style-type: none"> Existing residential use - see section below entitled, 'Other matters with regards to sub-paragraph O.2' and 'Other matters with regards to paragraph W(11)'; b-d. The proposals do not involve any external alterations nor include alterations to the drainage system. Furthermore, the floorspace is already in residential use, so no additional impact on the drainage system are likely as works of conversion have already taken place. 					
CAAC/Local groups* comments: *Please Specify	<p>The site does not sit within a conservation area.</p> <p>No responses were received.</p>					

Site Description

The site is located on the west side of Royal College Street and comprises a 4-storey building with ground floor reception area at the front in connection with a 2-storey building (ground and mezzanine floor levels) located at the rear of the site and a 1 x 2-bed self-contained maisonette on the upper floors. To the south of the site is a terrace of several 4-storey properties that have been designated Grade II listed buildings and to the north of the site is a terrace of 3-storey properties which are also listed grade II. The application site itself is not listed and does not sit within a conservation area.

The application relates to the ground and mezzanine floor levels only. The upper floors are in residential use and have a separate entrance from street level.

Relevant History

2008/4441/P - Redevelopment of the front part of the site by erection of a 4 storey building comprising ground floor reception area for existing B1 studio at rear of site, and 1x 2-bedroom self-contained maisonette on the upper floors. Planning permission granted 04/11/2008

2005/0396/P - Redevelopment of the front part of the site by the erection of a 4-storey infill building with mansard roof comprising office B1 use at ground floor and two one-bedroom self-contained residential units on the upper floors. This is a revision of planning permission granted on 17/11/04 (2004/4087/P). Planning permission refused 12/04/2005 (on design ground and it's setting in relation to the adjacent listed buildings).

2004/4087/P - Redevelopment of the front part of the site by erection of a 4-storey infill building comprising office B1 use at ground floor and a two-bedroom self-contained maisonette on the upper floors. (Planning permission (PEX0200753) granted on 14/03/03 for a similar scheme). Planning permission granted 17/11/2004

PEX0200753 - Redevelopment of the front part of the site by erection of 4-storey infill building comprising office B1 use at ground floor to architects offices at rear ground level and a two bedroom self-contained maisonette on the upper floors including rear terrace at second floor level. Planning permission granted 14/03/2003

9500931 - The erection of a ground and three storey infill building to be used as a reception/gallery to architects offices on the ground floor, a studio flat on the first floor and a two bedroom maisonette on the second and third floors. Planning permission refused 09/02/1996

9400447 - Construction of metal roof to existing building. Planning permission granted 27/05/1994

29699R1 - The change of use of No. 75-to two self-contained dwelling units and Nos. 77-85 (odd) to three self-contained dwelling units, including works of conversion, the provision of steel spiral staircases at the rear, and the enlargement of the dormers at the front. Planning permission granted 03/04/1980

J12/23/A/14848 – Residential conversion. Planning permission granted 18/10/1961

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 (as amended by Order 2016, effective 06 April 2016)

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 studio offices (Class B1a) at ground and mezzanine floor levels to residential use (Class C3) in connection with the existing residential use on the upper floors to form a single dwelling house (Class C3). No external alterations are proposed.

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.

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2016 came into force on 06 April 2016 and introduced amendments to the 2015 Order.

This is subject to a number of conditions listed within sub-paragraph O.1 [(a)-(f)] and a subsequent condition in sub-paragraph O.2 relating to the need for the developer to apply to the local planning authority before beginning the development 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;
- (c) flooding risks on the site; and
- (d) impacts of noise from commercial premises on the intended occupiers of the development.

It also refers to paragraph W and its provisions also 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)-(f). Development is not permitted where:

(a) the building is on article 2(5) land and an application under paragraph O.2(1) in respect of the development is received by the local planning authority on or before 30th May 2019;

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 applicant has stated that the ground and mezzanine floor levels have been used as Class B1(a) offices since before 30 May 2013. The Valuation Office Agency lists the ground and mezzanine floor levels as being registered as paying business rates since at least 01/01/2011.

(c) the site is or forms part of a safety hazard area;

The proposal complies: it is not in a safety hazard area

(d) *the site is or forms part of a military explosives storage area;*
The proposal complies: it is not part of a military explosives area

(e) *the building is a listed building or within the curtilage of a listed building;*
The proposal complies: the building is not listed, and though the site has several listed buildings to both the north and south, it does not sit within the curtilage of a listed building.

(f) *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-paragraph O.2 in order that before beginning the development the Council makes 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;

(c) flooding risks on the site;

(d) impacts of noise from commercial premises on the intended occupiers of the development.

It also states that: the provisions of paragraph W shall apply in relation to any application.

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 commercial noise impacts, 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 6b which is the best rating possible and means it has excellent access to public transport. It is located in the Somers Town controlled parking zone (CA-G) which operates between 0830 and 1830 hours on Monday to Friday only. 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, the proposed ground floor and mezzanine residential floorspace would be used in connection with the existing residential use on the upper floors to form a single dwelling house. Therefore, given that no new residential unit would be created and no additional pressure is likely to be placed on the availability of on-street parking in the vicinity of the site, it is considered expedient not to remove any parking rights but to allow the same level of parking restrictions to be retained that currently exist for the residential unit on the upper floors.

(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 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 not identified within the Council as being at risk from either ground or surface water flooding. The Environment Agency also rate this risk as being very low. 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.

(d) impacts of noise from commercial premises on the intended occupiers of the development.

There are no commercial premises either adjoining the site or within close proximity to the site, and as such, the prior approval of the Council with regard to commercial noise impacts is not considered to be necessary.

Other matters with regards to sub-paragraph O.2:

Sub-paragraph O.2 requires that an application must be made to determine the above areas (a-d) as to whether the prior approval of the authority will be required before beginning the development.

The application form submitted as part of this submission states that the ground floor and mezzanine levels are not currently being utilised as a studio office and are considered part of the maisonette dwelling (on the upper floors) even though existing drawings show these areas as studio office Class B1a space. The agent confirmed in a later email that these floors had not been used as Class B1a space for some time and were considered part of the dwelling. A number of consultation responses were also received that asserted the use to be residential. At the time of the officer's site visit on 01/04/2016, the officer was able to confirm that the ground and mezzanine floor levels were indeed in residential use.

As sub-paragraph O.2 requires that an application should be made before beginning the development, and that in this case, the ground floor and mezzanine floor levels are already in Class C3 use, it is considered that the development has begun and that in this regard the proposal does not accord with the condition specified in sub-paragraph O.2.

Other matters with regards to paragraph W(11):

Paragraph W(11) of the GPDO requires that the development must not begin before the occurrence of one of the following:

- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;*
- (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or*
- (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.*

As the development has begun prior to the occurrence of one of the above (a-c), the requirements of the GDPO are not met and it is therefore considered that the prior approval process does not apply.

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

Six consultation responses were received from local residents who raised objection to the proposals. These have been taken into consideration in so far as the regulations allow (please see the consultation summary section 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 would involve the creation of a new residential use, it may be liable for the Mayor's and Camden's Community Infrastructure Levy (CIL). A standard informative would normally be attached to any approved decision notice drawing CIL liability to the Applicant's attention.

Conclusion and recommendation

The ground and mezzanine floor levels are already in Class C3 residential use and therefore the development is considered to have begun prior to the determination of criteria a-d as set out in subparagraph O.2. As such, the proposal does not accord with Condition O.2 of Class O of Part 3 of The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016.

Refuse prior approval