

1. Introduction

- 1.1. This appeal follows the refusal of the LB of Camden to grant Prior Approval for the conversion of the above named address from B8 to C3.
- 1.2. The Application was refused for 4 reasons, only two of which are of substance.

2. The Site

- 2.1. The site is 0.07ha in size, and is located to the rear of the properties on the south side of Highgate Road in the north of the designated Kentish Town town centre. The site is accessed via a cobbled alleyway between the 3-storey Bull and Gate public house and 4- and 5-storey mixed use properties with residential use on upper floors (nos. 1-7 odd) fronting onto Highgate Road.
- 2.2. The application building comprises a single-storey double height, late 19th Century brick-built warehouse which has a floor area of 481 square metres. The adjoining garage is not part of the application (see below). The building is neither statutorily nor locally listed, nor is it a non-designated heritage asset. The site is not part of any industrial or employment land designation. The building last use was as a warehouse, and this land use was in situ for more that four (4) years.
- 2.3. The land is subject to an Article 4 Direction which restricts the change of use pursuant to Class O of the 2015 Order.

3. The Legislation

- 3.1. Section 55 of the Town and Country Planning Act 1990 (“the 1990 Act”) defines “development” for the purposes of the Act to cover both operational development (i.e. building work) and material change of use.
- 3.2. Section 57 provides that planning permission is normally required for any development of land. Under section 58, planning permission may be granted on application to a local planning authority or by way of a development order under the 1990 Act. The Order is made under sections 59, 60, 61 and 333(7) of

the 1990 Act. These provisions give the Secretary of State power to grant planning permission for categories of development specified in a development order.

3.3. Pursuant to the Town and Country Planning Act (General Permitted Development) Order 2015 the proposed development proposal comprise a 'Class P' development where conversion is proposed from existing past use as B8 Warehouse to class C3 residential dwellings

3.4. The Town and Country Planning Act (General Permitted Development) Order 2015 states:

Class P development is permitted subject to the condition that before beginning the development, the developer shall apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (i) impacts of air quality on the intended occupiers of the development;*
- (ii) transport and highways impacts of the development,*
- (iii) contamination risks in relation to the building,*
- (iv) flooding risks in relation to the building,*
- (v) noise impacts of the development, and*
- (vi) where the authority considers the building to which the development relates is located in an area that is important for providing storage or distribution services or industrial services or a mix of those services, whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services, and the provisions of paragraph W (prior approval) shall apply in relation to any such application.*

3.5. Paragraph W restricts the consideration of the Local Planning Authority to those heads listed above, with reference to the NPPF.

3.6. The proposal is permitted development under Class O of The Town and Country Planning Act (General Permitted Development) Order 2015. The proposal is permitted by Class P for the following reasons:

- the building is not on article 2(5) land;
- the building was used as Class B8 of the Schedule to the Use Classes Order—
- the site is not near, nor forms part of, a safety hazard area;
- the site is not, nor forms part of, a military explosives storage area;
- the building is not listed building nor within the curtilage of a listed building; or
- the site doesn't contain a scheduled monument.

4. The 'Building'

4.1. A previous application was refused on the basis that:

The gross floor space of the existing building exceeds 500 square metres and therefore the proposal fails to accord with the provisions of paragraph P.1 (d) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015.

4.2. Building is defined in the 2015 Order as follows:

“building”—

(a) includes any structure or erection and, except in Class F of Part 2, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16 and Class T of Part 19, of Schedule 2, includes any part of a building;

(b) does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and

Class C of Part 11, does not include any gate, fence, wall or other means of enclosure; (my emphasis)

4.3. Section 336(1) of the Town and Country Planning Act 1990 defines 'building' as:

any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building (my emphasis)

4.4. The Council rejected the application because it regarded the “building” for the purposes of the application as larger than the “building” which was the subject matter of the application, that is, the Warehouse. Patently, both the Garage and the Warehouse comprise structures and, if they are regarded as separate buildings would each be capable of being described as “buildings” for the purposes of the 2015 Order when taking into account s. 336 of the Town and Country Planning Act 1990.

4.5. Two questions arise from this determination:

4.5.1. The first is whether the word “building” contained in paragraph P.1(d) includes part of a building. If it does, the fact that the “building” being proposed under Class P is part of a larger building would be irrelevant; in these circumstances, so long as the part being considered is below 500 metres, the criterion would be satisfied.

4.5.2. The second issue is whether, if the word “building” means only a single, whole building and not part of it, whether the Council has correctly concluded that the “building” includes the Garage in this case.

Whether “building” within paragraph P.1(d) includes part of the building

4.6. In my view, the phrase “building” in paragraph P.1(d) includes part of a building. It requires, therefore, that the part of the building being proposed for use under Class P be below 500 metres. As a result, in this case, paragraph P.1(d) is not contravened. My reasons are as follows.

4.7. First, paragraph P.1(d) must be read consistently with both the 2015 Order as a whole and the permission granted by Class P.

4.8. “Building” is defined in the Order (as it is in s. 336(1) of the 1990 Act) as including part of a building. On the face of it, therefore, Class P is capable of applying to part of a building. There is nothing within the wording of the permission in Class P to suggest that a different approach is taken in that Class. Indeed, that is consistent with the position on an application for planning permission under s. 62 of the 1990 Act. Applications for a material change of use can be made to change the use of part of a building (for example, a dwelling house or flat into two separate flats). Moreover, other classes under Part 3 (see, for example, part M) patently allow for applications to be made which would change the use of part of the building; they use the phrase *“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”*. Part 3 clearly envisages that a permission will extend to part of the site.

- 4.9. Since the permission itself is granted in respect of part of a building, paragraph P.1(d) would have to be construed as applying a different and more restrictive definition of “building” to the main provisions within Class P. In my view, that is unlikely. Indeed, the definition within the 2015 Order of “building” specifically excludes the inclusion of part of the building in respect of certain Classes and did not take that opportunity in respect of either paragraph P.1(d) or Class P as a whole. An alternative would have been to make clear that the paragraph related to a whole building only rather than part of the building – that step was not taken.
- 4.10. Class P’s provisions are, therefore, capable of operating in respect of changes of use of part of a building as much as a whole building (e.g. the use for warehouse and storage for a particular period).
- 4.11. As a result, in my view, if the change of use in question relates to part of a building, paragraph (d) applies its restriction to the part in question.
- 4.12. Officer’s counter view was that the Class P refers to the “existing” building. This is arguably suggestive that the building being looked at is the whole building. However, in my view, an “existing” building can equally be the “existing” part of the building and this is specifically permitted as part of the Order. If Parliament intended another result, it would have legislated as such.
- 4.13. Even if the above analysis is incorrect it is the Applicant’s firm view that the Garage should be considered to be a separate building, and would note the following characteristics to support this contention
- 4.13.1. While the building is connected, it appears to have been constructed onto the separate external wall of the Warehouse and each could stand independently of the other.
 - 4.13.2. It was built at a different time to the Warehouse.
 - 4.13.3. It has limited connection to the Warehouse.
 - 4.13.4. It has a separate roof structure from the Warehouse.
 - 4.13.5. It is used for different purposes to the Warehouse, for vehicle storage rather than warehousing.

- 4.13.6. It was designed for such uses, again, different from the Warehouse's designed use.
 - 4.13.7. There is a functional connection but, as I indicated above, for different specific purposes.
- 4.14. The Officer report has not been made available to understand any counter analysis, but it is difficult to understand how any other conclusion could be reached given the factual matrix above

5. Impacts of air quality on the intended occupiers of the development

- 5.1. An Air Quality Report has been commissioned, and it concludes:

Impact of Vehicle Emissions

- 5.1.1. The predicted concentrations of PM10 and NO2 at all modelled receptors in 2013 and 2018 are below the relevant objectives. Predicted concentrations at all the modelled receptors fall within APEC Category A, which states that there are "no air quality grounds for refusal, however, mitigation of any emissions should be considered. Overall, using the flow chart presented in Figure 3, air quality is a low priority consideration at the modeled locations in each of the modeled years.

Mitigation of Vehicle Impacts

- 5.1.2. Based on the results and discussion above there is no need to consider building mitigation.

Overall Conclusion

- 5.1.3. Based on the outcome of this assessment the current proposals are considered acceptable in terms of the potential air quality impacts across the development.

- 5.2. This is the same conclusion the Borough had reached previously on S70 determinations.

6. Highways and Transport Impacts

- 6.1. The sustainable site location within the town centre reflecting the excellent access to the public transport, pedestrian and cycle infrastructure therefore meets the first and second test of the NPPF. A

transport assessment has been prepared which highlights the benefit of moving to a residential use on the site.

- 6.2. The Applicant will sign a S106 to remove rights to parking permits. As to Highways works, the Appellant is yet to see if four other agreements have been signed since April 2010 and awaits the advice of the Borough.

7. Contamination

- 7.1. A Phase 1 Study is enclosed with the application and it concludes:

- 7.1.1. Given the known history of the Site it is considered likely that significant contamination is present within the subsurface. However, given that the proposed development comprises hardstanding across the entire Site, the preliminary risk assessment suggests that the risks posed by in situ land quality to human health is therefore likely to be **low**.

8. Flood

- 8.1. A FRA is included with the application, and it provides that the site does not lie within Flood Zone 2 or Flood Zone 3, nor does it lie within an area in Flood Zone 1 which has critical drainage problems.

- 8.2. The London Borough of Camden Surface Water Management Plan flood mapping shows that the site has not been subject to any historical flooding

9. Noise

- 9.1. A noise report is included with the application material. It recommends noise attenuating glazing and the Applicant is happy to discharge a condition relating to this consideration.

10. Locational Criteria

- 10.1. The GPDO reflects that in certain locations it may not be appropriate for premises to change use, which is why this permitted development right is subject to prior approval. Local planning authorities are able to take account of the impact of the loss of a warehouse unit on the sustainability of the employment

park, and to ensure that an adequate provision of warehouse services of the sort provided is retained, provided there is a reasonable prospect of the building being used to provide such services, or on the sustainability of the area where the building is located in an employment zone.

10.2. The aim of the Class P of the GPDO is to enable local planning authorities to protect valued and successful employment sites, and adjacent site from potential nuisance claims.

10.3. The site is not identified on a proposals map as lying within a defined Industrial/Warehouse (such as Regis Road. None of the adjacent uses can be categorised as B8 storage and distribution.

10.4. In the context of the very recent S70 determination, Officer comment was:

10.4.1. The proposed scheme would result in the loss of storage (Class B8) accommodation. The site is used for the storage of pianos and associated equipment. The site is compromised due to existing access which cannot be widened as it is flanked by listed buildings either side. Due to the width of the alleyway vehicular access is not possible.

And concluded:

10.4.2. With regards to the introduction of residential on this site it is noted that housing is the priority land use of the LDF

10.5. Members did not disagree with the determination to permit the Class B8 use to cease on the site, and this has established the principle that the B8 use can be permitted to cease and that no detrimental impacts would arise on surrounding land use from the introduction of residential use.

10.6. This author is conscious that the determination was underpinned by marketing evidence. However, there is no requirement to provide marketing evidence for the premises as the Development Plan is not a consideration for the determination of a Prior Approval application. It would make a nonsense of a 'light-touch', as made explicitly clear by the NPPG (inter alia):

10.6.1. The statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications. This is deliberate, as prior approval is a light-touch process which applies where the principle of the development has already been established. It is

important that a local planning authority does not impose unnecessarily onerous requirements on developers, and does not seek to replicate the planning application system.

11. Conclusion

- 11.1. Class P already grants planning permission for the change of use from B8 Storage and Distribution to C3 Residential. The decision to permit the development that is the subject of this application has therefore, as a matter of principle, already been made through the provisions of the GPDO (albeit subject to the prior approval process set out in paragraph W).
- 11.2. Officer's have yet to provide their ruminations as to how their conclusions were reached in relation to the 'existing building', but the analysis now provided demonstrates that there is no comfort for them in the definitions provided within the Town and Country Planning Act 1990 and the GPDO 2015.
- 11.3. There is no harm identified by the material submitted in support of the application in respect of transport and highways, contamination risks, flooding risks, air quality and noise.
- 11.4. The aim of the Class P of the GPDO 2015 is to enable local planning authorities to protect valued and successful employment sites in employment lead areas. It is the Appellant's firm submission that its conversion will not undermine the sustainability of B8 sites within the local or wider area.
- 11.5. The Appeal should be permitted.