

22 September 2016

Development Control  
London Borough of Camden  
5 Pancras Square  
LONDON  
N1C 4AG

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT (GENERAL PERMITTED DEVELOPMENT) ORDER 2015**  
**CONVERSION OF WAREHOUSE TO C3 RESIDENTIAL**  
**SITE AT: 1A HIGHGATE ROAD, LONDON, NW5 1JY**

I am instructed by my Client IDM Land to submit this Prior Approval Determination Application for the proposed conversion of the existing building of the above named premises from B8 to C3. The fee cheque of £80 has been couriered to your Office.

My Client's address is as follows:

IDM Land  
Office B  
West Gainsborough  
1 Poole Street  
N1 5EA

They prefer electronic communications to be via myself at:

[Kieran@krplanning.com](mailto:Kieran@krplanning.com)

The Site

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.

The application building comprises a single-storey double height, late 19<sup>th</sup> 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 than four (4) years.

The land is subject to an Article 4 Direction which restricts the change of use pursuant to Class O of the 2015 Order.

### The Legislation

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.

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.

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

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.*

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

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.

### Planning History

The site benefits from the grant of planning permission via the GPDO 2015 (as amended) for the beneficial change of use of part of the building to facilitate an 11 unit conversion.

### The 'Building'

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.*

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)*

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)*

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.

Two questions arise from this determination:

a) 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.

b) 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*

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.

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

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.

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).

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.

The material change between the consented Prior Approval and this scheme is that an additional 17sqm is now sought for prior approval , but still below the 500sqm threshold.

#### Impacts of air quality on the intended occupiers of the development

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

##### *Impact of Vehicle Emissions*

*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 modelled locations in each of the modelled years.*

##### *Mitigation of Vehicle Impacts*

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

##### *Overall Conclusion*

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

This report is attached with the application.

#### Highways and Transport Impacts

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. Cycle parking of 16 spaces is included within the proposed works. The Applicant will sign a S106 to remove rights to parking permits.

#### Contamination

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

*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**.*

#### Flood

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.

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

#### Noise

A noise report is included with the application material, identical to that submitted to discharge the condition on the previous approval. The inclusion of this detail will negate the need for any pre-commencement condition.

#### Locational Criteria

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.

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.

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.

In the context of the very recent Prior Approval granted on the site, it is considered that this requirement is met.

### Conclusion

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).

Officers have yet to provide their ruminations as to how their conclusions were reached, 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.

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.

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 Applicant's firm submission that its conversion will not undermine the sustainability of B8 sites within the local or wider area.

We trust that the application will be dealt with expeditiously, but as always, I can be contacted on 07545 264 252 or at [Kieran@krplanning.com](mailto:Kieran@krplanning.com).

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Kieran Rafferty', written over a horizontal line.

Kieran Rafferty

BA(URP) MPIA