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| Delegated Report | | Analysis sheet | Expiry Date: | 25/11/2016 |
| | | N/A / attached | Consultation Expiry Date: | |
| Officer | | | Application Number(s) | |
| John Diver | | | 2016/5073/P | |
| Application Address | | | Drawing Numbers | |
| 2A England's Lane London NW3 4TG | | | See draft decision notice | |
| PO 3/4 | Area Team Signature | C&UD | Authorised Officer Signature | |
| | | | | |
| Proposal(s) | | | | |
| Prior approval for change of use from A1 (retail) to restaurant/cafe (A3) under Class C, Part 3, Schedule 2 of the GPDO 2015. | | | | |
| Recommendation(s): | | Prior Approval Required - Approval Refused | | |
| Application Type: | | GPDO Prior Approval Determination | | |

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| Conditions or Reasons for Refusal: | Refer to Draft Decision Notice |
| Informatives: | |
| Consultations | |
| Consultations: | <p>A site notice was posted at the site between the 13/10/2016 and the 03/11/2016 The application was advertised in local press between the 12/10/16 and the 02/11/16</p> |
| Summary of consultation responses: | <p>No.3. letters of objection were received from the owners/occupiers of 1 Antrim Mansions; 2 Priory Mansions; and Henley Court. Their raised concerns can be summarised as follows:</p> <ul style="list-style-type: none"> - Unit unsuitable for A3 use due to limited servicing area to the rear and lack of extraction equipment. - Change would lead to an over concentration of A3 uses, detrimental to the local shopping street - Extract installed at roof level would severely impact nearby residents - GPDO application attempt to avoid planning controls - Change of use would exacerbate issues of odour, noise, rubbish and vermin - Unit has been operating unlawfully <p>No.2 letters of support were received from the owners/occupiers of 42 Belsize Park Gardens and 9 Camden Square, NW1. These letters highlighted the success of the current business and the quality of the products available.</p> <p>It should also be noted that the applicant had submitted a further no.4 letters of support. As these were not submitted directly to the Council these letters were not considered to represent consultation responses and were instead regarded as supporting documents.</p> |
| CAAC/Local groups comments: | <p><u>Belsize Park CAAC</u></p> <ul style="list-style-type: none"> - No objection / comment in relation to the proposed development |

Site Description

The application site is a ground floor premises located in a three storey building on the northern side of England's Lane. The applicant site is within a terrace with a variety of A1/A2 and A3 uses along the ground floor level with an A4 establishment further along. The building is towards the junction of England's Lane and Haverstock Hill, equidistant between Chalk Farm and Belsize Park. Currently, the premises is occupied by "Bonjour Brioche" which is trading as a café/bakery, although this is considered to be operating under A1 use.

Relevant History

2016/0948/P: Change of use from A1 (retail shop) to A3 (Café Restaurant). **Prior Approval Required – Approval Refused 27th May 2016**

2010/0028/P: Subdivision of the existing shop unit (Class A1) into 2 separate units to provide a restaurant (Class A3) and a shop unit (Class A1), together with the provision of an extract duct on the rear elevation. **Refused 19th October 2010**

Relevant policies

National Planning Policy Framework (2012)

Chapter 2 (Ensuring the vitality of town centres)
Chapter 4 (Promoting sustainable transport)
Chapter 7 (Requiring good design)
Chapter 12 (Conserving and enhancing the historic environment)

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

1. Proposal

- 1.1. The application seeks Prior Approval permission under Class C, Part 3, of the GPDO (2015) for change of use of the ground floor from shop (Class A1) to a restaurant (Class A3).
- 1.2. Within the application form and submission documents, the applicant describes the development as a change of use from retail (A1) to dual use of restaurant and café (A3 / A1). It should be noted that Class C of the GPDO does not make provisions for dual, flexible or mixed used scheme and as such the development has been accessed as a proposed change to A3 use in accordance with the criteria of Class C. It was however noted that were the proposed change considered to be in accordance with this Class and permitted, the use of the unit could return to an A1 use without express permission under Class A of this part. This resubmitted application also includes a greater analysis of the potential impacts upon the designated Neighbourhood Centre.

2. Prior approval procedure

- 2.1. The town and country planning (General Permitted Development) (Amendment) (England) Order (GPDO) 2015, Schedule 2, Part 3, Class C allows for the change of use of a building from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order, to a use falling within Class A3 (restaurants and cafes) of that Schedule.
- 2.2. Class C(b) also allows for building or other operations for the provision of facilities for: (i) ventilation and extraction (including the provision of an external flue), and (ii) the storage of rubbish, which are reasonably necessary to use the building for a use falling within Class A3 (restaurants and cafes) of that Schedule.
- 2.3. The change of use is subject to a number of conditions listed within sub-paragraph C.1 [(a)-(e)] and a subsequent condition in sub-paragraph C.2 relating to the need for the developer to apply to the local planning authority for a determination as to whether prior approval of the authority is required for:
 - (a) *noise impacts of the development;*
 - (b) *odour impacts of the development;*
 - (c) *impacts of storage and handling of waste in relation to the development*
 - (d) *impacts of the hours of opening of the development;*
 - (e) *transport and highways impacts of the development*
 - (f) *whether it is undesirable for a building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule of the Use Classes Order of the impact of the change of use*
 - (i) *on adequate provision of services of the sort that that may be provided by a building falling within Class A1 (shops), 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 the shopping area, and;*
 - (g) *the siting, design or external appearance of the facilities to be provided under Class C(b)*

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.

3. Assessment under Part 3, Class C of the General Permitted Development Order 2015

3.1. Compliance with Paragraph C.1

Development is not permitted by Class C if-

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

Proposal complies- The cumulative floor space of the existing building changing use does not exceed 150 square metres; it would amount to approximately 66 square metres (including 18 square metres of food preparation space)

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

Proposal complies- No other part of the building has previously changed use under Class C and no other applications under Class C at the building are pending determination.

(c) the land or the site on which the building is located is or forms part of-

(i) a site of special scientific interest

(ii) a safety hazard area

(iii) a military explosive storage area

Proposal complies- The application site is not within a site of special scientific interest, a safety hazard area or a military explosive storage area.

(d) the site is, or contains, a scheduled monument; or

Proposal complies- The application building is not a scheduled monument

(e) the land or building is a listed building or is within the curtilage of a listed building

Proposal complies- The application building is not statutorily listed and neither is it within the curtilage of a listed building.

3.2. Compliance with Paragraph C.2

3.3. Where the development proposed is development under Class C(a) together with development under Class C(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) noise impacts of the development

(b) odour impacts of the development

(c) impacts of storage and handling of waste in relation to the development

(d) impacts of hours of opening of the development

(e) transport and highways impacts of the development

(f) whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of its 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) 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

(g) the siting, design or external appearance of the facilities to be provided under Class C(b), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

(a) noise impacts of the development

- 3.4. Part W (13) of the legislation notes that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.
- 3.5. As set out in the officer's report for the previous application, it is considered that due to the size/capacity of the unit and its location, noise issues relating to the proposed change could be addressed via the conditioning of hours of operation as well as the require the submission and approval of details of the external noise level emitted from the plant/machinery/ equipment and noise insulation measures between floors. This former assessment remains unchanged, and subject to these conditions the proposal is considered to be acceptable in this regard.

(b) odour impacts of the development

- 3.6. No details of the proposed extraction equipment or odour attenuation measures were submitted as part of this application. Despite this, the commencement of primary cooking within the unit would necessitate the installation of relevant extraction equipment.
- 3.7. Under the previous application it was noted that the necessary extraction equipment could be conditioned alongside any approval in order to address odour issues. As such objection was not previously raised in relation to this issue.
- 3.8. During the public consultation process for this application, various comments were received in relation to the odour issues currently experienced as a result of the two existing A3 units within the row and concerns were raised in relation to the exacerbation of this issue as a result of the proposed change of use. The submission of further comments gave rise to the need to re-address this issue in greater depth.
- 3.9. The proposed change would result in a row of no.3 A3 units, all requiring extraction equipment to the rear which would discharge either at low level into the small, enclosed rear lightwell or at roof level adjacent to residential units featuring rear facing openable windows and/or private terraces. As a result of the building lines formed by nos.2-2c England's Lane, 1-2 Antrim House, 1-7 Antrim Road and 1-12 Priors Mansions, the area to the rear of the application unit forms a highly enclosed lightwell of 3 storeys (above lower ground floor level). Even if the submission of extraction equipment detailing adequately demonstrated that ducting could be installed to the rear elevation of the building up to roof level without diminishing outlook and with adequate attenuation measures to prevent disruption by virtue of noise and vibration; the discharge at this level would still result in a greater concentration of air pollution (including a range of emissions, including smoke, fumes, gases, dust, steam and odour as defined in Annex 2 of the NPPF (2012)) within this enclosed rear lightwell.
- 3.10. Having reassessed this issue, on balance it is considered that the conditioning of the submission of extraction equipment details would fail to prevent a further exacerbation of the concentration of odours/air pollution in the local vicinity. The resulting impact of the installation of a third extract system to this confined rear space would result in a detrimental impact upon the residential amenities of the surrounding residential occupiers. In light of the new public consultation responses, the application of conditions in accordance with Part W (13) would not be considered to adequately address this issue and mitigate against the exacerbation of the concentration air pollution / odours. The proposal is therefore considered to fail against this criteria.

(c) impacts of storage and handling of waste in relation to the development

- 3.11. Due to the limited size and capacity of the unit as well as the existing use, it is not anticipated that the proposed use would result in a significant increase in the amount of waste produced in association with

the business. Although objections received outline existing issues of waste management of the unit including the unauthorised use of the rear service yard and the impacts that this is currently causing; it is considered that were the scheme to be considered acceptable in other regards, conditions could be applied for the submission and approval of a waste management strategy (including details of storage provision and collection arrangements). Subject to the application of conditions under Part W (13), the proposed change would therefore not be objectionable in relation to this point.

(d) impacts of hours of opening of the development

3.12. The submitted application form and documentation do not contain a specific list of proposed opening hours, however within the submitted planning statement 'hours of operation' are listed within the 'Matters of Common Ground' section (para.1.4). It is therefore assumed that the proposed opening hours would remain the same as those proposed under the previous prior approval application (07:30 hours to 17:30 hours every day).

3.13. Based upon this assumption, the consideration set out in the previous officer's report would remain the same; principally that by virtue of the neighbourhood centre location and the hours of operation of surrounding businesses, these proposed opening times would remain appropriate and would not give rise to anti-social behaviour during the evening and late night period.

(e) transport and highways impacts of the development

3.14. Similarly to the previous application, due to the level of public transport accessibility level (3) as well as the size and capacity of the unit, the proposed change of use is not considered likely to generate significant travel demand and the scale of the development is not large enough to warrant cycle parking facilities. The proposal is considered to have an acceptable impact in this regard.

(f) whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of its 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) 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.**

3.15. The previous application found that due to the existing mix of ground floor uses within the England's Lane Neighbourhood Centre, the proposed change would result in an unacceptable loss of retail units as well as a concentration of non-retail units which would act to harm to the character, function, vitality and viability of the designated Neighbourhood Centre. In response, the applicant has prepared an in depth assessment of the Council's policies regarding food and retail uses as well as submitting a differing retail survey.

3.16. As previously outlined, within designated centres the Council's primary objective as demonstrated in Policy DP12 of the London Borough of Camden Local Development Framework Development Policies and CPG5 (Town Centres, Retail and Employment) is to ensure that new developments do not cause harm to the character, function, vitality and viability of a centre, particularly its shopping function. CPG5 notes that within Neighbourhood Centres, the council will resist schemes that result in less than 50% of ground floor premises being in retail use; or more than 3 consecutive premises being in non-retail use.

3.17. As stipulated within CPG5, the designated England's Lane Neighbourhood Centre includes nos. 2-50 England's Lane (north side), and nos. 41-55 England's Lane (south side) containing a total of 35 ground floor units. In order to ensure that the quoted uses outlined in the submitted survey were accurate, officers completed a retail survey of the centre on the 10 November 2016. Although this updated survey

found there to be a number of misrepresentations within the applicant's report; it did find that the existing and proposed percentage of retail (A1) units within the Centre, as well as the individual frontage (nos.2 – 26) would remain above the 50% guideline set out in CPG5. As such the assertion that the change would not result in a loss of A1 units below the stipulated 50% threshold is no longer disputed (the full survey completed by officers can be found in Appendix 1).

3.18. Notwithstanding this, the proposed change would still result in a row of no.5 consecutive non-retail uses (2x A2 units followed by 3x A3 units) at the end of the Northern frontage of the Centre, adjacent to the junction with Antrim Mews. This grouping of non-retail uses would remain contrary to the requirements of CGP5, and would lead to a diminished retail offer within the Centre. Whilst the Council's policies do not discourage a mix of uses that make a positive contribution to its character, function, vitality and viability of a Centre, there is requirement for these uses to be distributed. The resulting grouping of non-retail uses would effectively shorten the retail frontage of the centre considerably, meaning that visitors to the centre travelling East would reach no.6 and find there to be no further retail provision. Furthermore, the proposed change would fail to improve the function, vitality and viability of the centre, as the resulting grouping of A3 uses would lead to a concentration of uses that would provide the same function and attract similar custom, at similar timings. This narrowing of service provision would result in the frontage becoming less varied and becoming less attractive in terms of its shopping function.

3.19. As discussed in the submitted statement, although it is acknowledged that the existing café use within the site is lawful, and that the applicants would not intend to drastically alter the business model following the change to A3; the Council takes the view that in its current A1 usage, the business predominately provides for passing trade rather than seated customers (hence the consideration of the current use as lawful). Allowing the business to change to an A3 use would allow for the emphasis of the business to be altered to providing predominately for seated custom, which would fundamentally alter the function of the use and its value to the local community. If the change were permitted, the Council would have no control over what type of A3 business activities were commenced, and the site could lawfully lose its café provision fully without express permission. Furthermore, under the current permissions of the site the existing use could return at any point to a more traditional style of retail provision (i.e. a shop) without express permission.

3.20. As such it is considered that it would remain undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) because loss of the retail unit would have a detrimental impact on the sustainability and vitality of the Neighbourhood Centre. Prior approval is therefore refused on this basis.

3.21. Although the applicant has argued that a fall back option afforded by the allowances of Part 4, Class D of the GPDO would help to justify the hereby proposed change; this deemed consent would be for a temporary period of 2 years, and would include a flexible permission between A1, A2, A3 or B1a uses. It is not considered that this fall back option would result in greater harm than that which is hereby proposed as it would not allow for the installation of extraction equipment without express permission, would allow for a flexible A1/A3 usage and would only be for a maximum of 2 years. The issue of the fall back option under this part is therefore not considered to alter the above consideration.

(g) the siting, design or external appearance of the facilities to be provided under Class C(b), and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

3.22. Class C (b) allows for building or other operations for the provisions of facilities for: (i) ventilation and extraction (including the provision of an external flue), and (ii) the storage for rubbish, reasonable necessary to use the building for a use falling within Class A3 (restaurants and cafes) of the Schedule.

3.23. No details were provided on the design or citing of any proposed extraction or ventilation system or refuse storage and therefore the impact upon the character and appearance upon the Belsize Park Conservation Area cannot be fully considered. Were the application found to be otherwise acceptable this elements could be conditioned and assessed by the Council in order to ensure they were visually appropriate.

4. CONCLUSION

4.1. Prior approval is refused for the following reasons:

- (1) The proposed change of use would have a detrimental impact upon the residential amenities of surrounding occupiers as well as the sustainability and vitality of the England's Lane Neighbourhood Centre thereby failing to comply with Schedule 2, Part 3, Class C.2 (1)(E) and (F)(i)(ii) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and would be contrary to the aims of the National Planning Policy Framework, chapter 2.

RECOMMENDATION: REFUSE PRIOR APPROVAL

Appendix 1 – Officer's Retail Survey

| Unit | No. | Occupier | Use class | Lawful use? |
|---|--------------------|------------------------------|-----------|-------------------|
| <i>Beginning of frontage (North)</i> | | | | |
| 1 | (England's Lane) 2 | Ginger & White | A3 | Yes (2010/0028/P) |
| 2 | 2A | Bonjour Brioche | A1 | Yes |
| 3 | 2B | Il Primo | A3 | Yes (8702693) |
| 4 | 2C | Knights Estate Agents | A2 | Yes |
| 5 | 4 | Kernhams Estate Agents | A2 | Yes (2013/2466/P) |
| 6 | 6 | Brocklehurst Carpet/Flooring | A1 | Yes |
| 7 | 8 | Perspective Optometrists | A1 | Yes |
| 8 | 10 | Visage Hair Salon | A1 | Yes |
| 9 | 12 | American Dry Cleaning co. | A1 | Yes |
| 10 | 14 | Terrozzo Tiles | A1 | Yes |
| 11 | 16 | Belsize Health/Beauty Clinic | D1 | Yes (2008/0140/P) |
| 12 | 18 | Fernskin Health | A1 | Yes |
| 13 | 20 | Ecora | A1 | Yes |
| 14 | 22 | Jenny Jordan Makeup | A1 | Yes |
| 15 | 24 | Dental Surgery | D1 | Yes |
| 16 | 26 | Ripples | A1 | Yes |
| <i>Break of frontage @ junction with Primrose Gardens</i> | | | | |
| 17 | 28 | Allchin Pharmacy | A1 | Yes |
| 18 | 30 | Moonnite | A3 | Yes (8500893) |
| 19 | 32 | Lotus and Frog | A1 | Yes |
| 20 | 34 | Curry Manjill | A3 | Yes |
| 21 | 36 | Paradisco | A3 | Yes (8703263) |
| 22 | 38 | Kinleigh Folkard & Hayward | A2 | Yes (8501104 app) |
| 23 | 40 | Barratts Butchers | A1 | Yes |
| 24 | 42 | Lauren Nicholas | A1 | Yes |
| 25 | 44-46 | Tescos Express | A1 | Yes |
| 26 | 48 | Cheques Dry Cleaning | A1 | Yes |
| 27 | 50 | Public House | A4 | Yes |
| <i>End of frontage (North)</i> | | | | |
| <i>Beginning of frontage (South)</i> | | | | |
| 28 | 55 | Starbucks | A1 | Yes |
| 29 | 53 | Harvey Jones | A1 | Yes |
| 30 | 51 | RKP Hardware (vacant) | A1 | Yes |
| 31 | 49 | England's Papers | A1 | Yes |
| 32 | 47 | Laundrette | SG | Yes (9301571) |
| 33 | 45 | Chamomile Café | A1 | Yes (9400454) |
| 34 | 43 | Living in Space | A1 | Yes |
| 35 | 41 | Black Truffle | A1 | Yes |
| <i>End of frontage (South)</i> | | | | |
| Subject Frontage (nos.2 – 26) | | | | |
| Existing (x units): | | Proposed (x units): | | |
| Total: 16 | | Total: 16 | | |
| A1 – 10 | | A1 – 9 | | |
| A2 – 2 | | A2 – 2 | | |
| A3 – 2 | | A3 – 3 | | |
| D1 - 2 | | D1 - 2 | | |
| Existing A1 (10/16) 62.5% | | Existing A1 (9/16) 56.25% | | |
| North side frontage (whole) | | | | |
| Existing (x units): | | Proposed (x units): | | |
| Total: 27 | | Total: 27 | | |

| | |
|---|---|
| A1 – 16 A2 – 3 A3 – 5 A4 - 1 D1 - 2 <i>Existing A1 (16/27) 59%</i> | A1 – 15 A2 – 3 A3 – 6 A4 - 1 D1 - 2 <i>Proposed A1 (15/27) 56%</i> |
| Total centre frontages | |
| Existing (x units): Total: 35 A1 – 23 A2 – 3 A3 – 5 A4 - 1 D1 - 2 Sui Generis – 1 <i>Existing A1 (23/35) 66%</i> | Proposed (x units): Total: 35 A1 – 22 A2 – 3 A3 – 6 A4 - 1 D1 - 2 Sui Generis – 1 <i>Existing A1 (22/35) 63%</i> |

Completed 10/11/2016

N.B. There were no extant permissions for unimplemented changes of use at the time of writing