

<b>Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>		07/01/2016	
		N/A / attached		<b>Consultation Expiry Date:</b>		21/01/2016	
<b>Officer</b>				<b>Application Number(s)</b>			
Cilpa Beehook				2015/6337/P			
<b>Application Address</b>				<b>Drawing Numbers</b>			
96C South Hill Park London NW3 2SN				See Decision Notice			
<b>PO 3/4</b>		<b>Area Team Signature</b>		<b>C&amp;UD</b>		<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>							
Change of use of lower ground floor flat from C3 use (residential) to physiotherapy studio (D1 use) (retrospective application) for a temporary period of two years.							
<b>Recommendation(s):</b>		Refused and warning of enforcement action					
<b>Application Type:</b>		Full Planning Permission					
<b>Conditions or Reasons for Refusal:</b>		Refer to Draft Decision Notice					
<b>Informatives:</b>							
<b>Consultations</b>							
<b>Adjoining Occupiers:</b>		No. notified	0	No. of responses	00	No. of objections	00
				No. electronic	00		
<b>Summary of consultation responses:</b>		Site notice 25/12/2015 – 31/12/2015 Press advert 25/12/2015 – 29/12/2015  No comments received.					
<b>CAAC/Local groups comments:</b>		At the time of writing no responses received.					
<b>Site Description</b>							
<p>The site comprises a four storey semi-detached building located on the west of South Hill Park Gardens. The building has been subdivided into 3 separate flats with the application property relating to the lower ground flat. The flat has access to the private rear garden which stretches down to Hampstead Heath Pond. A 1.8 metre high brick wall forms the southern boundary of the site that adjoins a public pathway leading to the Ponds. Within close proximity to the southern side boundary of the site is a lime tree that is protected by a tree preservation order (TPO).</p> <p>The building is surrounded by mainly residential properties that have also been subdivided into flats. The site is not listed but it is located within the South Hill Park Conservation Area and is identified in the South Hill Park Conservation Area Statement (CAS) as making a positive contribution to the</p>							

character and appearance of the conservation area. The garden forms part of the 'Heath-Edge Gardens' which is designated private open space that comprises the gardens of properties adjacent to the southern margins of Hampstead Heath.

## **Relevant History**

### **Planning History**

**2007/4814/P-** *Erection of a single storey side extension and rear conservatory; excavation of front garden and cellar to provide a basement level patio and second bedroom served by a window overlooking new patio, infilling of existing front basement door and relocation of door to side extension following demolition and replacement of side garden wall and replacement of window at front basement level with French doors to basement flat. **Refused***

**2008/0302/P-** *Erection of a single storey side extension and rear conservatory; excavation of front garden and cellar to provide a basement level second bedroom and patio with new doors and windows, infilling of existing front basement door and creation on new entrance to flat in side extension from alleyway, partial demolition and of side garden wall and replacement by new fence. **Granted***

**2008/2955/P-** *Alterations and extensions including the erection of a rear and side extension at lower ground floor level and the relocation of the front door to the existing flat (Class C3). **Granted***

**2011/1279/P-** *Erection of rear and side extensions at lower ground floor level, creation of new entrance door from side passage, installation of new door and replacement of window with new door at front lower ground floor level, enlargement of front cellar to provide habitable room, excavation of enlarged front lightwell and reconfiguration of front garden, and other alterations to existing residential flat (Class C3). **Granted***

**2011/1753/P-** *Alterations and additions, including the erection of side extension at lower ground floor level, replacement of front lower ground floor window with new timber framed door, excavation and realignment of front garden, and alterations to wall and gate at rear of existing residential flat (Class C3). **Granted***

**2011/5346/P-** *Installation of two rooflights to front elevation and one roof light to side (south) elevation to residential flat (Class C3). **Granted***

### **Enforcement History**

**EN15/0550-** *Unauthorised change of use from C3 to D1. Ongoing enforcement investigation. The submission of this application resulting from this investigation and its determination has been significantly delayed while ongoing discussions have been undertaken in attempts to address the breach i.e. waiting for alternative locations to be found/additional information to be submitted The Council has liaised with the applicant during the determination period.*

## **Relevant policies**

### **LDF Core Strategy and Development Policies:**

#### **Core Strategy**

CS 5 Managing the impact of growth and development

CS 6 Providing quality homes

CS10 Supporting community facilities and services

CS11 - Promoting sustainable and efficient travel

CS14 Promoting high quality places and conserving our heritage

CS15 Protecting and improving our parks and open spaces and encouraging biodiversity

#### **Development Policies (2010)**

DP2 Making full use of Camden's capacity for housing

DP12 Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses  
DP15 Community and Leisure uses  
DP16 The transport implications of development  
DP17 Walking, Cycling and public transport  
DP19 - Managing the impact of parking  
DP25 Conserving Camden's Heritage  
DP26 Managing the impact of development on occupiers and neighbours  
DP29 Improving Access

### **South Hill Park Conservation Area Statement 2001**

#### **Camden Planning Guidance 2013/2015**

Camden Planning Guidance 2 Housing, Chapter 6  
Camden Planning Guidance 6 Amenity, Chapter 4 and 9  
Camden Planning Guidance 7 Transport, Chapter 7

#### **Camden Local Plan 2016 (Proposed Submission)**

Policy H3 Protecting existing homes  
Policy H7 Large and small homes  
Policy C1 Health and wellbeing  
Policy C3 Cultural and leisure facilities  
Policy A1 Managing the impact of development  
Policy A4 Noise and Vibration  
Policy T1 Prioritising walking, cycling and public transport  
Policy T2 Parking and car-free development

#### **London Plan 2011- Chapter 3, 6 and 7**

#### **National Planning Policy Framework 2012-Chapter 4, 6 and 12**

## **Assessment**

### **Proposal**

- 1.0 This retrospective application proposes the retention of the existing lower ground floor flat C3 (residential) to a D1 (Physiotherapy Studio) for a temporary period of two years.
- 1.1 The proposed D1 use will be open between the hours of 8am-8pm Monday to Friday and 9am-1pm on Saturdays.
- 1.2 The Planning Statement accompanying the application states that the use would consist of a range of group classes in addition to private consultation. The physiotherapy studio currently employs 8 full time staff members.
- 1.3 The studio is stated to have 212 patients at the time of the submission of the application.
- 1.4 No external alterations are proposed as part of the change of use.
- 1.5 The main areas for consideration are:
  - Principle of change of use
  - Impact on amenity
  - Transport

### **2 Principle of Change of use**

2.1 The proposed change of use would involve the loss of a residential unit at lower ground floor level with a floor space of approximately 88 square metres.

2.2 Core Strategy policy CS6 seeks to maximise the supply of homes and minimise their loss, as housing is considered to be a priority land use for the borough and is supported by the Camden Local Development Framework. In addition, Policy DP2 states that *“The Council will seek to minimise the loss of housing in the borough by: protecting residential uses from development that would involve a net loss of residential floorspace”*.

2.3 There is an exception to this policy where the change of use would:

1. Provide small scale health facilities; *provided*
2. the loss will not exceed one dwelling; *and*
3. no alternative non-residential premises are available nearby; *and*
4. The proposal will meet needs in a local catchment.

2.4 Taking the first test, requiring the provision of small scale health facilities (use class D1), it is noted that despite the description of the proposal, it is not considered that the application would benefit from this exemption. The proposed use as described in the Planning Statement is as a physiotherapy studio. Services provided include treatments such as massage and acupuncture, private consultation services, coaching and a range of group classes such as yoga, pilates, hardcore overall fitness and kids pilates (which are considered to fall within class D2). However, other elements of the business such as physiotherapy and osteopathy do fall within the D1 use class.

2.5 The services and classes are open to the general public with a maximum of 10 participants in a class suggesting that the premises has a mixed use of both D1 (physiotherapy osteopathy) and elements of a fitness studio (D2 Use Class). Therefore on balance, it is considered that the use as it currently stands falls outside the exemption of ‘providing small scale health facilities’. Therefore, with respect to the first test of Policy DP2 the application fails as services provided are not solely of a D1 use. On this basis the proposal fails the first test it is not necessary to address whether the proposal meets the other provisions, however for the sake of completeness these are assessed to below.

2.6 The change of use relates solely to the lower ground floor flat, 96c South Hill Park, therefore not exceeding the loss of one residential dwelling and complying with the second test.

2.7 It is also necessary, as part of Policy DP2, to look at the possibility of alternative non-residential premises available nearby. The applicant states that they have investigated other premises which could have been suitable for the business. However these premises were found to be inappropriate for various reasons such as the size, facilities or the locations were too noisy and polluted and there was not enough visibility.

2.8 The information provided reasoning why the applicant found alternative premises inappropriate is not clearly demonstrated in the planning statement. They have demonstrated that alternative accommodation in non-residential premises is available, but they have not found them to be satisfactory, and have failed to be more specific. Therefore the proposal fails this test of Policy DP2.

2.9 The Council requires thorough evidence to demonstrate that no alternative non-residential site is available. As a minimum, they should demonstrate the following:

- Use of a reputable local or national agent to aid with the finding of alternative non-residential premises in the borough.
- Evidence to support findings which demonstrate that there are no alternative uses found in the borough which could have been more suited to a change of use to D1.
- A commentary on the properties where the applicant showed interest in and visited with a detailed explanation as to why the premises were not suitable and pursued.
- Evidence to demonstrate that a search for non-residential properties was carried out over an appropriate amount of time.

2.10 The applicant has failed to provide information to clearly demonstrate that a suitable non-residential site could not be found. The submitted statement is very brief and does not give any details of the alternative premises explored, nor has it been demonstrated that there are no alternative uses more suited for a change of use rather than the loss of residential floorspace.

2.11 The Council believe that there are alternative sites in the borough which could have been more suited to a change of use to D1 rather than the loss of a residential unit. Further information submitted shows that an alternative location in the White Bear pub was turned down by the owner, and another location is being sought to convert from B1-D1 use elsewhere in the borough. However, this may take time to gain the requisite planning approval and therefore they have requested that they would like to extend the use at the current location for 2 years.

2.12 Further information was requested and the applicant provided copies of emails sent to various estate agents on the 13<sup>th</sup> January 2016 seeking 'premises with either D1 use, or a suitable residential property with conversion potential.' A few agents responded with having no suitable locations. However, the submitted statements are limited and there is no evidence to suggest that an alternative premise had been sought over a sustainable period of time. Therefore the applicant has failed to provide sufficient evidence to justify the proposal against LDF Policy DP2.

2.13 It is also necessary, as part of Policy DP2, to demonstrate that the proposal will meet needs in a local catchment area. The applicant has provided a map (attached as appendix 1 to the planning statement) demonstrating the immediate catchment ranges of the studio, revealing that over 130 patients are within 750m of the site. However as outlined above the use they are providing is not considered to be a small scale health centre and on that basis the existing provision is not relevant.

2.14 Furthermore, even if the use was considered to be a physiotherapy use, there are 6 existing physiotherapy facilities within the area of the proposed site as listed below:

Ergotec Health	100 and 100a Belsize Lane, Belsize Vilage, London NW3 5BB
Pilates Art Physiotherapy	Davu House, 2b, Heath Hurst Road, London NW3 2RX
Physio Fitness	UCS Active, Hampstead, London, NW3 6XH
The Hampstead Physiotherapy Practice	12 Church Row, London, NW3 6UT
Heath Healthcare Physiotherapy	5 Elm Terrace, London NW3 2LL
Royal Free Private Physiotherapy Clinic	Lyndhurst Rooms, Royal Free Hospital, Pond St, London NW3 2QG

2.15 The applicant has not demonstrated that an additional physiotherapy studio is required within the vicinity or provided evidence that the current facilities are not able to meet the needs of the local area. The applicant has failed to provide sufficient evidence to justify the proposal against LDF Policy DP2.

2.16 The change of use is contrary to policy CS6 and DP2 which seeks to resist proposals that lead to a net loss of residential floorspace. Housing is the priority use of the Camden Local Development Framework. The residential floorspace should therefore be safeguarded as set out in the Core Strategy CS6 and Development Policy DP2. Moreover, the principle of the use is considered to set an unacceptable precedent in this predominantly residential street.

#### *Introduction of community use*

2.17 Policy DP15 (Community and leisure use) requires new community or leisure facilities to be located close to the people who use them and accessible by a range of transport modes. It considers the Central London Area and Town Centres, to be an appropriate location for new community and leisure uses, particularly those that may attract large numbers of people. Smaller facilities which will attract people from a local area should be located within their catchment area or in other locations

where they are easily reached by the community they serve. The policy also states that new community or leisure uses should not harm residential amenity, the environment or transport. They must also be consistent with their surroundings in terms of scale, character and mix of uses.

2.18 The property lies within a poor public transport accessibility area with a PTAL score of 1b. Due to the site's location in the Hampstead area, the surrounding uses being predominantly residential and being with a poor public transport accessibility area, the proposed location is considered inappropriate and contrary to Policy DP15. The issue of transport is discussed in more detail in the transportation section in this report.

2.19 Centres are generally the most appropriate location for D1/D2 uses. Policy DP12 states that these uses can add to the vitality and vibrancy of local areas. However, they can also have other impacts such as diverting trade and displacing existing town centre functions. As a result, the Council will seek to guide such uses to locations where their impact can be minimised. As such, the proposed change of use would not be supported.

### **3 Impact on Amenity**

3.1 Under planning guidance CPG 6, all developments are required to have some regard for the amenity of existing and future occupants. Policies CS5 (Core Strategy) and DP26 (Development Policies) state that the council will protect the quality of life of existing and future occupiers and neighbours by only granting permission for those developments that would not have a harmful impact on amenity. Such issues include visual privacy, overlooking, overshadowing, outlook, sunlight, daylight and artificial light levels.

3.2 The proposed development would retain the existing floor levels and window opening and as such would have no impact on neighbouring properties in terms of overlooking or loss of outlook. There are no alterations or extensions proposed and hence the levels of daylight and sunlight to the property would remain the same.

3.3 The proposed use includes group classes which operate at least once on Monday- Friday. Currently, there is a maximum of 9 classes on a single day with a maximum of 10 participants in a class. Classes range from Yoga, Pilates to 'Hard-core overall fitness' and can be attended by anyone without a referral from a physiotherapist. The provision of a D2 use (fitness studio), within a residential street with residential to either side and above is not considered to be appropriate and has the potential to cause disturbance.

Whilst the current occupation has not received complaints, it is considered that given the location and the proposed use that it would have the potential to impact the amenity of neighbouring occupiers. Whilst a condition could be added to restrict operation hours if the loss of residential use was supported by the Council a, it is not simply the case this type use would be disturbing at the evening, but would be unsuitable during the day, evenings and weekends. Furthermore it is not considered that a condition to restrict occupation numbers would be sufficient to address the concern.

3.4 The existing use is at lower ground floor level with 2 self-contained flats on the upper floors and residential uses at adjoining properties. Whilst D1 uses do not normally present amenity problems for local residents, fitness studios can generate potential noise nuisance from the use of the equipment and amplified music. The potential number of clients coming in and out of the property whilst classes and treatment are carried out in tandem could be disruptive for residential occupiers of the building and surrounding street.

3.6 96c South Hill Park Gardens is located on a primarily residential street. An unfettered D1/D2 use would have the potential to cause considerable disturbance to occupants of the street in terms of noise from customers and staff entering and leaving the premises and associated vehicle. If the loss of residential use was supported by the Council a condition restricting the opening hours, restrictions

on the occupancy numbers and restrictions on the use of the outside space would be required to tackle this issue.

3.7 The introduction of a D1/D2 use along this street is likely to cause concern to neighbouring properties in terms of noise and disturbance given the location of the site and the fact that it is a quiet residential area. On this basis, the proposed use would be considered to cause harm to the amenity of adjoining occupiers.

#### **4 Transport**

4.1 The proposed development is located on a primarily residential street and has very limited space for parking. The property lies within a poor public transport accessibility area with a PTAL score of 1b. The proposal states that currently, a third of its visitors walk to the studio, a third use public transport and the remaining third drive.

4.2 Policy DP17 states that the Council will resist development that would be dependent on travel by private motor vehicles. Paragraph 17.2 states that accessibility in Camden is generally good, with the majority of the borough already served by frequent public transport services through London Underground, London Overground, rail and bus links. There are few areas in the borough where development would have relatively limited accessibility to public transport (for example at the fringes of Hampstead Heath). In such areas, private cars may be the only practical option for some journeys.

4.3 The applicant has stated that they are committed to promoting sustainable travel options for both staff and visitors in accordance with Policy CS11 (Promoting sustainable and efficient travel). However, it is at the visitors and staffs discretion should they wish to take sustainable modes of transport, and is therefore out of the applicant's control and unable to prohibit the use of visitors using their cars. The location of the premises is not ideal given the nature of the use, as many people attending will have movement and access issues relying on the use of a private motor vehicle.

4.4 The site is not well served by public transport, with a PTAL rating of 1b, indicating that it is one of the worst accessible areas in the borough for public transport and is considered to have poor accessibility. Although the applicant states that they are committed to promoting sustainable travel options, they will be unable to prohibit the use of motor vehicles to and from the property.

4.5 The applicants planning statement states that parking permits are issued from the studio for exceptional cases where visitors have acute injuries or mobility difficulties. The use of visitor permits issued to the residents of the property for customers is considered to be an inappropriate use of the permits and the Council intends to investigate this issue further. Visitor permits for this site should not be used for commercial purposes or gain.

4.6 The proposal fails to comply with The London Plan as it has not provided any cycle parking for staff or visitors. A site with a use of this nature and that employs 8 staff members, is normally required to provide 1 long term cycle parking space and 2 short term space.

4.7 As such, the proposed development is considered to be contrary to Policy CS11 and DP17 given the location of the site and its poor proximity to the public transport networks and lack of cycling provision.

#### **5 Additional Information**

5.1 While this application was being determined, the applicant submitted another application which has since been approved (ref: **2016/1588/P** – '*Change of use from B1 office to D1 (Physiotherapy studio)*'- Granted). The premises are currently operating. An update was requested on whether the property at 96c South Hill Park would be reverted back to a residential use following the approval of the application, as suggested in their planning statement. However, the applicant wished for the application to still be determined as the property is still operating as a Physiotherapy studio despite

the recent approval. This leads the Council to believe that a temporary 2 year period requested while the applicant sought out a suitable premises for the D1 use was not a temporary solution.

## **RECOMMENDATION: REFUSE AND WARN OF ENFORCEMENT ACTION**

### **Recommendation:**

That the Head of Legal Services be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended requiring *the use of the lower ground floor flat from C3 use (residential) to mixed use of Fitness studio/ physiotherapy studio (sui generis use) to cease permanently*, and to pursue any legal action necessary to secure compliance and officers be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

### **The notice shall allege the following breaches of planning control:**

The change of use of the lower ground floor flat from C3 use (residential) to mixed use of Fitness studio/ physiotherapy studio (sui generis use)

### **WHAT ARE YOU REQUIRED TO DO:**

1. Cease the use of the lower ground floor flat as a mixed use of Fitness studio/ physiotherapy studio (sui generis use)
2. Make good any damage to the building as a result of the works.

### **PERIOD OF COMPLIANCE:**

The Notice shall require *the use of the lower ground floor flat from C3 use (residential) to mixed use of Fitness studio/ physiotherapy studio (sui generis use) to cease permanently* within a period of 3 months of the Notice taking effect.

### **REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:**

1. It appears that the breach of planning control has occurred within the last 4 years.
2. The change of use to mixed use of Fitness studio/ physiotherapy studio (sui generis use) would result in the unacceptable loss of permanent residential housing (Class C3) contrary to objectives to maximise the supply of additional homes in the borough, contrary to policies CS5 (Managing the impact of growth and development), CS6 (Providing quality homes) and CS14 (Promoting high quality places and conserving) of the London Borough of Camden Core Strategy Development Plan Document and policy DP2 (Making full use of Camden's capacity for housing) of the London Borough of Camden Development Framework Development Policies
3. The change of use from a residential flat (C3 use) to a mixed use of Fitness studio/ physiotherapy studio (sui generis use) by virtue of its location and proximity to neighbouring properties results in a detrimental impact on neighbouring amenity in terms of potential for noise and disturbance to surrounding residential units, thereby contrary to policy CS5 (Managing the impact of growth and development) and CS10 (Supporting community facilities and services) of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses), Policy DP15 (Community and leisure use) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.
4. The mixed use development (sui generis use), by reason of its location, would create additional parking stress in the surrounding area contrary to policies CS11 (Promoting sustainable and

efficient travel), CS19 (Delivering and monitoring the Core Strategy), DP16 (The transport implications of development), DP18 (Parking standards and limiting the availability of car parking) and DP19 (Managing the impact of parking) of the London Borough of Camden Development Framework Development Policies