

Delegated Report (Refusal)		Analysis sheet N/A / attached		Expiry Date: 23/05/2017	23/05/2017
				Consultation Expiry Date:	11/05/2017
Officer John Diver			Application Number(s) 2017/1901/P		
Application Address 5 Jamestown Road London NW1 78W			Drawing Numbers <i>See Decision Notice</i>		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Change of use from shop (Class A1) to restaurant (Class A3) and associated alterations under the General Permitted Development Order 2015 Schedule 2, Part 3, Class C (as amended).					
Recommendation(s):		Prior Approval Required - Approval Refused			
Application Type:		GPDO Prior Approval Determination			
Conditions or Reasons for Refusal:		Refer to Decision Notice			
Informatives:					
Consultations					
Summary of consultation:		Multiple site notices were posted near to the site between the 20/04/2017 and the 11/05/2017.			
Adjoining Occupiers:		No. of responses	00	No. of objections	00
Summary of consultation responses:		No responses were received in relation to the application.			
CAAC/Local groups comments:		No responses were received in relation to the application.			

Site Description

The application site is a ground floor commercial unit located in a four storey building on the southern side of Jamestown Road. The application site lies next to a Caffe Nero (A1 use) and has residential flats (C3) above. The surrounding area on both sides of Jamestown Road consists predominantly of restaurants (A3) at ground floor level. The site is adjacent to the Oxford Arms public house (A4) to the east. The rear of the unit shares a party wall with an enclosed carpark, which services the offices within the upper floors of the adjacent building. The unit is close to the junction between Jamestown Road and Camden High Street.

The application site is situated within the 'Camden Town' centre as designated by the Council's Development Plan framework, with the unit being located within a designated 'secondary frontage'. The premises is currently vacant, with the previous tenants (a frozen yoghurt shop (A1)) vacating the unit in 2015/2016. The application site is not located within a listed building or conservation area.

Relevant History

A summary of the planning history for the site is given below:

2013/5237/P: Planning permission was granted on the 16/12/2013 for the 'Installation of new shop front'

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 8 (Promoting health communities)

Chapter 11 (Conserving and enhancing the natural environment)

Chapter 12 (Conserving and enhancing the historic environment)

Chapter 13 (Facilitating the sustainable use of materials)

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

1. Proposal

- 1.1. The application seeks Prior Approval under Class C, Part 3, of the GPDO 2015 for the change of use of the ground floor unit from a retail shop (Class A1) to a restaurant (Class A3).
- 1.2. Officers note that the submitted drawings indicate a use/fit more conducive to a hot foods takeaway use (A5) due to the presence of a service counter (i.e. a lack of table service) as well as the name of the business (Chicking) indicating a takeaway model. Notwithstanding this, within the application form and submission documents, the applicant describes the development as a change of use from retail (A1) to restaurant (A3) and as such, the following assessment will consider the use as proposed. Furthermore, if prior approval was granted any use of the unit as a takeaway unit would be an enforcement matter.
- 1.3. Works are proposed to the rear of the property which faces into the enclosed car park. These include the replacement of condenser units and an enlarged ventilation louver.

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 110 square metres.

(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. Due to the size of the unit and its location within a Town Centre, it is considered that noise issues relating to the proposed change could be successfully addressed via the conditioning of hours of operation as well as requirement for the submission and approval of details of noise insulation measures and reports relating to the external noise level emitted from the plant/machinery/equipment. Subject to the application of these conditions, the proposal would be considered acceptable in this regard.

(b) odour impacts of the development

3.6. No details of the proposed ventilation equipment or odour attenuation measures were submitted as part of this application despite the fact that the commencement of preparation of food (i.e. primary cooking) within the unit would necessitate the installation of relevant extraction equipment. It is noted that an existing ventilation louvre is labelled as 'enlarged ventilation louvre' on the proposed rear elevation drawing. During a site visit with the applicant, it was confirmed that the applicant's would intend to use this existing louvre to discharge ventilation equipment directly into the enclosed car park to the rear of the site.

3.7. The application property is within a row, which features four commercial units at ground floor level with the proposed change resulting in 3 out of 4 of the units being in a restaurant (A3) use. The site is also adjacent to the Oxford Arms public house which serves food and features extract equipment which appears to discharge at first floor level. During the site visit it was noted that the existing restaurants (Mildred's at no. 9 and Wagamama at no.11 Jamestown Road) utilise a combined duct which travels across the roof of the rear enclosed car park and then upwards to the rear of the Glasshouses building in order to discharge at roof level.

3.8. In accordance with DEFRA's 2011 guidance document 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems', odour control and extraction system should be designed to include an unrestricted discharge point at a position and velocity to disperse and dilute the residual odours adequately. The discharge of ventilation equipment into an enclosed car park would fail to adequately disperse and dilute the residual odours and would instead result in a significant concentration of odours and fumes within this space. Not only would this be unpleasant for users of the car park, but odours would also permeate out of the eastern side of this car park (which is open at higher level) and towards to windows of the residential units at upper floors in this location. It is also noted that the proposed extract system would not be in accordance with Building Regulation requirements (set out in Approved document F) and thus could not be implemented.

3.9. Furthermore, considering that these residential units are already in close proximity to the

discharge points of the systems serving nos.9 & 11 Jamestown Road and the Oxford Arms, it is considered that the proposed development would result in an over-concentration of such uses within the area. As such, even if full details of extraction equipment 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. On balance, it is therefore 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 an extract system for a fourth use within this confined rear space would result in a detrimental impact upon the residential amenities of the surrounding residential occupiers

3.10. The proposed development is consequently deemed to result in the creation of nuisances to neighbouring residents and users of the rear car park by virtue of the concentration of odour and air pollution (including a range of emissions, including smoke, fumes, gases, dust, steam and odour as defined in Annex 2 of the NPPF (2012)). In this instance, the application of conditions in accordance with Part W (13) would not be considered to adequately address this issue and mitigate against the concentration air pollution/odours. The proposal is therefore considered to fail against this criterion.

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

3.11. Submitted plans indicate that the unit would include seating for approximately 34 customers and would feature a kitchen with an area of approximately 25sqm. Due to the fair size of the unit and the potentially significant amount of refuse produced, the storage and handling of this waste is a concern.

3.12. Submitted plans indicate that refuse would be stored to the rear of the site, adjacent to the rear doors into the car park. This room has an area of 7.5sqm but also features two sets of double doors due to the fact that it serves as a fire escape through to the rear of the site.

3.13. Not only is this space considered to be insufficient in scale for the storage of commercial bins, the storage of refuse in this location would also result in a major obstruction to a means of escape. As there are no other internal spaces which might be conditioned for use as a more appropriate refuse store and no further details of any other means of storage and handling have been provided, the proposal is considered to fail against this criterion.

(d) impacts of hours of opening of the development

3.14. The submitted application form lists the proposed opening time for the business as 11:00am to 11:00pm Monday to Sunday.

3.15. Although the site is within a town centre (and therefore residents might expect a greater deal of businesses with late night licences), it is considered that the proposed opening hours are excessive and may give rise to disturbances, particularly on Sundays or Bank Holidays. Notwithstanding this, if the scheme were to have been found otherwise in accordance with the criteria set out under this class, a condition could have been applied to restrict opening hours on these days to a more appropriate limit in accordance with Part W. The proposed opening hours are not considered to give rise to anti-social behaviour during the evening and late night period.

(e) transport and highways impacts of the development

3.16. Due to the high level of public transport accessibility (PTAL 6a) as well as the size and capacity of the unit, the proposed change of use is not considered likely to generate significant travel demand. The scale of the development is on the threshold for a requirement for cycle storage, however, due to the PTAL level as well as spatial limitations of the unit, the lack of cycle parking facilities would not be objectionable in this case. 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.**

3.17. 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 Secondary frontages within the Camden Town Centres, the council will resist schemes that result in less than 50% of ground floor premises being in retail use; or more than 30% of each frontage being in food, drink or entertainment uses.

3.18. CPG5 designated the unit as being situated within a short 'secondary frontage' within the centre, which includes no.5 and no.7 Jamestown Road. The proposed change would result in 50% of this row remaining within a retail use (1/2) but would also result in 50% of the frontage being in food, drink or entertainment uses. Furthermore, if this assessment is expanded to all of the ground floor commercial units within Jamestown Road (10 in total) the proposed change would result in 80% of these units being within a food, drink or entertainment use (excluding the Oxford Arms which fronts Camden High Street).

3.19. As there is already considered to be an overconcentration of food, drink or entertainment use within the local area, the proposed change is considered to lead to an exacerbation of this concentration. The loss of the retail unit within this context would act to further reduce the retail offer of the Centre, to the detriment of its viability and vitality. As such it is considered that it would be undesirable for the unit 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 Town Centre. Prior approval is therefore refused on this basis.

3.20. Para 17 of the NPPF states that the planning system should '*take account of the different roles and character of different areas, promoting the vitality of our main urban areas*'. The surrounding area already has a low retail provision and an over-concentration of restaurant uses, which detract further from the retail offer within this designated town centre. On this basis, the loss of a retail unit here would contradict the core land-use planning principles of the NPPF as well as the golden thread of the document, which is to promote sustainable development.

(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.

3.21. 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.

3.22. As outlined above, no details have been provided on the design or siting of any proposed extraction or ventilation system or refuse storage other than an enlarged louvre and therefore the impact upon the character and appearance upon host property cannot be fully considered. Were the application found to be otherwise acceptable, these elements could have been conditioned and assessed by the Council in order to ensure they were visually appropriate.

RECOMMENDATION: REFUSE PRIOR APPROVAL