

Delegated Report		Analysis sheet	Expiry Date:	22/06/2017	
		N/A / attached	Consultation Expiry Date:	31/05/2017	
Officer			Application Number(s)		
John Diver			2017/1978/P		
Application Address			Drawing Numbers		
114A-116 Fortess Road London NW5 2HL			See decision notice		
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 including the installation of extraction system under the General Permitted Development Order 2015 Schedule2, Part3, Class C as amended.					
Recommendation(s):		Prior Approval Required – Approval Given			
Application Type:		GPDO Prior Approval Determination			
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice			
Informatives:					
Consultations					
Summary of consultation:		Multiple site notices were erected surrounding the property on the 10/05/2017 (Consultation expiry 31/05/2017)			
Adjoining Occupiers:		No. of responses	00	No. of objections	00
Summary of consultation responses:		No responses were received			
Local groups comments:		No responses were received			

Site Description

The application site comprises a mid-terrace three-storey building (plus loft) located on the east side of Fortress Road, in-between the junctions with Cottfried Mews (to the north-east) and Raveley Street (to the south-east). Cottfried Mews also runs to the rear of the application site (to the east). The site is not a listed building nor is it located within a conservation area, but it is within a designated Neighbourhood centre (Fortress Road).

As with most properties within the parade, the host building has been extended towards the front and features ground floor retail units with residential uses at upper floors. The roof of the front single storey extension is used as a terrace for the occupiers of the upstairs units. Following planning permission 2011/0320/P (see below), the rear section of the ground floor of no.116 has been subdivided into a separate residential unit.

Relevant History

No.116 Fortress Road

APP: 27911

DATE: 07/03/1979

DESC: Installation of a new shop front.

DEC: Granted

APP: 2011/0320/P

DATE: 27/05/2011

DESC: Change of use of one maisonette (1x 4 bed unit) into 4 self-contained dwellings (4 x one bedroom units) and additions and alterations to include the erection of two storey extension to rear of existing retail unit (class A1) and installation of railings to the front elevation.

DEC: Granted Subject to a Section 106 Legal Agreement

No.114a Fortress Road

APP: E12/10/16/18955

DATE: 29/07/1974

DESC: Installation of a new shop front at 114a Fortress Road, N.W.5.

DEC: Granted

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 a retail shop (Class A1) to a restaurant (Class A3) as well as the installation of an extract duct/plant to the rear.

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 140 square metres (including 32 square metres of staff / store room)

(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 proximity to residential units at upper floors, concern was initially raised by officers in relation to the potential for noise and disruption. As a result, the applicant has submitted various specification data for the proposed kitchen equipment as well as a Noise Impact Assessment. Having reviewed submitted information together with the Council's Environmental Health team, officers are confident that calculations outlined show compliance with Camden criteria with fitted noise attenuation. Subject to the predicted levels being secured on site then it is not considered that noise from plant / equipment would

lead to a detrimental impact upon any adjoining occupier. As such conditions are recommended to ensure that noise levels do not exceed those outlined within submitted report and that plant equipment and associated ducting shall be mounted with proprietary anti-vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced as outlined in submitted documents.

3.6. In terms of noise from the use of the unit itself, the nearest habitable room within the adjacent ground floor unit (within no116) would be separated away from noise generating areas via the original solid rear wall of the property as well as a bathroom. There are also no windows opening directly out to the rear of the site and so noise is likely to be well contained within the unit. As will be outlined in following sections, considering the Neighbourhood Centre location of the site, the proposed hours are not considered appropriate and as such, conditions to restrict hours of operation further are suggested. Subject to these conditions, the potential for impact in terms of noise and disturbance is not considered to substantiate a reason for refusal.

(b) odour impacts of the development

3.7. Submitted alongside this application are full details of the proposed kitchen extract and odour abatement equipment. It is proposed that the ducting from the extract canopy is passed up through a flue riser through the flat roof of the single storey rear extension to no.114a up to eaves level, where it would discharge 1m above the top dormer window to the rear of the property. Full details and maintenance information for the extract canopy, carbon filter unit, pre-filters, fan unit, ducting and electrostatic precipitators have all been submitted alongside the application.

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. In this instance, there are no other A3 uses in the immediate vicinity and no other extract systems discharging at high level in this location. Having reviewed the submitted information alongside Environmental Health colleagues, officers are confident that the specification of the proposed extract and odour abatement system, including the discharge arrangements would be sufficient to ensure that there would not be any concentration of odour or air pollution and that residential amenity would not be prejudiced by the proposed use. As these submitted documents remain listed as approved documents, the applicant is required by any approval to ensure that this equipment is installed and maintained as outlined in approved documents. The proposal is therefore not objectionable in this regard.

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

3.9. Submitted plans indicate that the unit would include an area for seating of approximately 54sqm and would feature a kitchen with an area of approximately 31sqm. Submitted plans indicated that refuse would be stored to the rear of the site, within the private courtyard to the rear of no.114a. This area is private (for the use of the ground floor unit only) and is fully enclosed. The yard features independent side access to Raveley Street towards the rear.

3.10. The use of this rear yard for the storage of waste is deemed appropriate, given its enclosed nature and independent access for collection purposes. Although no.116 features a residential dwelling towards its rear at ground floor level, a 2.4m boundary wall separates the two and as such it is not considered that the storage of waste in this location would lead to any harm in terms of outlook or odour. The application site is also not of such a great size that it would require more than one 1100lt Eurobins. Overall, the submitted details for the proposed storage of waste is considered to address this criterion.

(d) impacts of hours of opening of the development

3.11. Submitted documents propose opening time for the business as 09:00am to 11:00pm Monday to

Saturday and 10:00am to 22:30pm Sundays. Although the application unit is situated within a designated Neighbourhood Centre and within a retail parade, officers are of the view that these proposed hours would be may give rise to disturbances. Notwithstanding this, in accordance with the criteria set out under this class a condition can be applied to restrict opening hours on these days to a more appropriate limit in accordance with Part W. As such, it is recommended that the proposed opening hours of the business be amended/conditioned to the following: 09:00am – 22:30pm Monday to Friday; 09:00-23:00 Saturdays and 10:00 – 21:30 Sundays and Bank Holidays.

- 3.12. 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

- 3.13. Due to the high level of public transport accessibility (PTAL 5) 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 below the threshold for a requirement for cycle storage. 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.**

- 3.14. Within designated neighbourhood 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 outside of the central London area (i.e. Fortess Road neighbourhood centre), 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.

- 3.15. In order to test the existing condition of the neighbourhood centre/key shopping area, a retail survey was completed in June 2017. CPG5 defines the extent of the Fortess Road neighbourhood centre in appendix 1, including the following properties: 127-173 Fortess Road (west side); 114-158 Fortess Road (east side); and 225-235 Brecknock Road (west side). This survey found that of the 50 units within the designated centre, 26 (52%) are currently within A1 use and that the proposed change would lead to a reduction to 25 (50%). Adjacent to the application site on both sides are commercial units within the use class A1 and as such the proposed change would remain in accordance with the Council's adopted policies. As such it is not considered that the proposal would result in an overconcentration of food uses or to cause a detrimental impact upon the sustainability of the Fortess Road neighbourhood centre 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.

- 3.16. 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.

- 3.17. As outlined above, the proposed ducting would run through a section of flat roof and up along the party

wall between nos.114a and 116, discharging at roof level. Due to the fact that the rear building line of no.116 projects slightly further than that at no.114a, this siting would mean that the ducting would be fully predominantly concealed other than at high level, or for the occupiers of no.114a or the opposite properties along Lupton Street. Due to the pattern of development along Raveley Street, the proposed ducting would not be visible from any public place. Overall it is not considered that the proposed design or siting would result in any harm upon character or appearance, however in order to ensure that the ducting is less apparent in this private views, a condition is recommended that the external lagging/surface to the ducting shall be painted black. As the proposed bin store would be within the private courtyard adjacent to a tall boundary wall, no objection is raised in this regard.

4. CONCLUSION

4.1. Grant prior approval subject to conditions

RECOMMENDATION: GRANT PRIOR APPROVAL