

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	12/10/2017
		N/A / attached	<b>Consultation Expiry Date:</b>	27/09/2017
<b>Officer</b>			<b>Application Number(s)</b>	
John Diver			2017/4666/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
47 Mill Lane London NW6 1NB			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 at ground floor and basement levels from retail use (Use Class A1) to Personal Training Studio (Use Class D2) under Class J, Part 3, Schedule 2 of the GPDO 2015				
<b>Recommendation:</b>	Grant conditional Prior Approval			
<b>Application Type:</b>	GPDO Prior Approval Class J Change of use of A1 to D2			
<b>Conditions or Reasons for Refusal:</b>	Refer to Draft Decision Notice			
<b>Informatives:</b>				
<b>Consultations</b>				
<b>Summary of consultation:</b>	Multiple site notices were posted near to the site between the 06/09/2017 and the 27/09/2017			
<b>Adjoining Occupiers:</b>	No. of responses	00	No. of objections	00
<b>Summary of consultation responses:</b>	No responses were received in relation to the application.			
<b>CAAC/Local groups comments:</b>	No responses were received in relation to the application.			

## Site Description

The application site is a ground and basement floor commercial unit located within a three storey property on the North side of Mill Lane, NW6. Residential accommodation is provided at the two upper floors above the ground floor unit which feature a dedicated entrance onto Mill Lane. The application site is situated within the Mill Lane neighbourhood centre as designated by the Council's Development Plan framework. The application site sits within a terrace which forms the Northern frontage to the neighbourhood centre. The frontage (spanning from no.33 – no.83 Mill Lane (odd)) contains a variety of uses at ground floor level including retail (A1), financial and professional services (A2), restaurants (A3) as well as some vacant units.

As outlined within the history section below, planning permission was granted for the unit to be converted for use as an estate agent (A2) in 1997. Although an A2 use was in situ within the unit for main years, at a point between 2010-2012 the unit was converted back into a retail use (A1). Although no formal permission or certificate was sought for this change, it would have been permitted under Class D of the General Permitted Development Order 1995 (subsequently superseded by the 2015 Order) and as such no formal requirement for prior consent from the Local Council would have been required. Since this point the unit has been used for retail purposes and at the time of the site visit was occupied by "The Village Haberdashery" which has been trading from the site since approximately 2014. Although submitted documents refer to the application unit as being within A2 use, a view is taken that this is no longer the established use of the site and as such the following assessment is based upon the unit being within an A1 use class. The submitted description of development was amended accordingly.

## Relevant History

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

**PW9605081:** Planning permission was granted on the 21/03/1997 for the '*change of use of the ground and basement floors from A1 (retail) to A2 (estate agent)*'.

**P9602132:** Planning permission was refused on the 23/10/1996 for the '*The change of use from A1 (Retail) to A3 (Restaurant)*'

*Reasons for refusal:*

- 1) The proposed use would be likely to have a detrimental effect on the amenities of occupiers of neighbouring residential properties by reason of noise, smells and business activity associated with the use.*
- 2) It is considered that the introduction of a non-retail use in this location would have an adverse effect on the quality and character of the shopping parade*

A subsequent appeal of this decision was dismissed on the 26/02/1997.

## 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)

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

## Assessment

### 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 unit from a retail shop (Class A1) to a gym (Class D2). No external alterations are hereby proposed and the purposes of this applications is purely to establish the lawful use of the premise.
- 1.2. As noted within the site description section of the report, the described existing use of the unit was altered upon registration to reflect the current established use as retail (A1). As Class C includes provisions for the change of use from both an A1 or A2 use, this has not altered the procedure for the assessment of the proposed change.

### 2. Prior approval procedure

- 2.1. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order (GPDO) 2015, Schedule 2, Part 3, Class J allows for the following permitted changes of use:
- 2.2. *Development consisting of a change of use of a building from a use—*
  - (a) falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order, or*
  - (b) as a betting office or pay day loan shop,**to a use falling within Class D2 (assembly and leisure) of that Schedule.*
- 2.3. These permitted right are however curtailed by a number limits set out within paragraph J.1 as well as a number of conditions set out within paragraph J.2. The change is also subject to the provision of paragraph W, which sets out the procedure for the determination of applications for prior approval under Part 3. An assessment of the proposal against these paragraphs will now follow.

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

#### Compliance with sub-paragraph J.1

- 3.1. Development is not permitted by Class C if-
  - (a) the building was not used solely for a use falling within Class J(a) or (b)—*
    - (i) on 5th December 2013, or*
    - (ii) in the case of a building which was in use before that date but was not in use on that date, on the date it was last in use, or*
    - (iii) in the case of a building which is brought into use after 5th December 2013, for a period of at least 5 years before the date development under Class J begins;*
  - 3.1.1. Proposal complies- Since 2013 the application site has been in sole use for retail purposes (A1 – J(a)).
  - (b) the cumulative floor space of the existing building changing use under Class J exceeds 200 square metres;*
  - 3.1.2. Proposal complies- The application unit has a combined floor area of approximately 57sqm.
  - (c) the development (together with any previous development under Class J) would result in more than 200 square metres of floor space in the building having changed use under Class J;*
  - 3.1.3. Proposal complies- No other part of the building has been subject to a change of use and the resulting D2 floor area would remain below the 200sqm threshold.

**(d)** *the building is on article 2(3) land;*

3.1.4. Proposal complies- The application site is not located within a conservation area, national park, or area of outstanding natural beauty.

**(e)** *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; or*

*(iii) a military explosives storage area;*

3.1.5. Proposal complies- The application site is not subject to of the above designations.

**(f)** *the land or building is, or contains, a scheduled monument; or*

3.1.6. Proposal complies- The application site is not and does not contain any scheduled monuments.

**(g)** *the land or building is a listed building or is within the curtilage of a listed building.*

3.1.7. Proposal complies- There are no listed buildings or structures on or adjacent to the application site.

3.2. The proposed change therefore conforms to the requirements of sub-paragraph J.1.

### **Compliance with sub-paragraph J.1**

3.3. Development under Class J 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) impacts of hours of opening of the development*

*(c) transport and highways impacts of the development*

*(d) whether it is undesirable for the building to change to a use falling within Class D2 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) or, as the case may be, Class A2 (financial and professional services) 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, and*

*the provisions of paragraph W (prior approval) 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. The proposed use of the building as a personal training studio (/gym) would involve significant comings and goings and the use of training and resistance equipment. Although not included within this proposal, it is also noted that the heating, ventilation and cooling (HVAC) requirements would be substantially increased by the proposed change, necessitating the replacement and update of the small existing AC unit. The level of noise emanating from the unit is therefore likely to significantly increase beyond the current levels from the existing retail use of the unit. As the unit is in close proximity to a number of residential units, concern is therefore raised in this regard.

Notwithstanding the above due to the small size of the unit and its location within a designated Neighbourhood Centre, it is considered that noise issues relating to the proposed change could be successfully addressed via the application of conditions. The conditions reasonably required to address this concern would include limiting hours of operation (discussed further below); limitations to the thresholds for the maximum levels of noise emitted from the plant/machinery/equipment; restrictions to audible levels of music; as well as a requirement for the submission and approval of details of noise insulation measures between ground and first floor levels. Subject to the application of these conditions,

the proposal would be considered acceptable in this regard.

### **(b) impacts of hours of opening of the development \**

- 3.6. The submitted design and access statement outlines the proposed opening time for the business as follows: 06:00am to 20:30pm Monday to Friday, 07:00am to 18:00pm Saturdays and 08:00am to 16:00pm on Sundays.
- 3.7. Whilst the proposed opening hours are generally acceptable, it is considered that commencing operation of what will be a noise generating use mid-week at 06:00am is excessive and to cause harm to local residents. As the application site is located within a neighbourhood centre, local residents will however expect to see more comings and going in this area than the surrounding residential areas and so were the Monday-Friday opening time delayed until 07:00am this (combined with the noise mitigation measures outlined above) would be considered appropriate for the setting. It is also considered that Sunday opening hours should be applied to bank holidays for this same reason. It is noted that uses such as personal training studios rely upon customers visiting on their way into work (before 09:00am) and so this opening time would still allow for some trade at these times.
- 3.8. Subject to this revision, the proposed opening hours would remain acceptable 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.

### **(c) transport and highways impacts of the development**

- 3.9. Due to the high level of public transport accessibility level (5) as well as the size and capacity of the unit, the proposed change of use is not considered to generate significant travel demand and the scale of the development is not large enough to warrant cycle parking facilities in line with London Plan. The proposal is considered to have an acceptable impact in this regard.

**(d) whether it is undesirable for the building to change to a use falling within Class D2 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) or, as the case may be, Class A2 (financial and professional services) 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**

- 3.10. Within designated Neighbourhood centres the Council's primary objective as demonstrated in Policy TC2 of the London Borough of Camden Local Plan (2017) 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.
- 3.11. As stipulated within CPG5, the designated Mill Lane Neighbourhood Centre includes odd nos. 31-83 Mill Lane and 4-9 Mansions (north side), and even nos. 32-114 Mill Lane (south side) containing a total of 35 ground floor units. In order to test the existing health of the neighbourhood centre officers completed a retail survey, a copy of which can be found in appendix one of this report.
- 3.12. This retail survey shows that in this instance the proposed change would result in the proportion of A1 units remaining above 50%; both within the Northern frontage (17/28 - 61%) as well as across the entire centre (35/66 - 53%). The unit would not lead to more than 3 consecutive premises being in non-retail use, and it is not considered that the development would lead to an over concentration of similar or non-retail uses within the frontage. The proposed change would result in the loss of a retail use within the centre and its replacement with a non-retail use. Notwithstanding this the overall levels of retail across the centre remain in accordance with the Council's acceptable threshold and the proposed use would retain the unit in a publicly accessible use with a good level of activity / coming and going. The proposed use is considered to compliment the neighbourhood centre by providing a use that would be beneficial to the local population, provide a local service and would encourage additional trips to the neighbourhood centre.
- 3.13. As such it is not considered that the change of use would result in harm to the character, function,

vitality and viability of the neighbourhood centre. The development is therefore acceptable in this regard.

#### **4. CONCLUSION**

4.1. Prior approval is required and is granted, subject to conditions including:

- Restricted opening hours
- Submission of noise insulation details between GF and 1<sup>st</sup> floor levels
- Restrictions to audible levels of music
- Restrictions to maximum noise thresholds for plant/equipment

4.2. In light of the above, the proposal complies with Class J, Part 3 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015.

#### **5. RECOMMENDATION: GRANT CONDITIONAL PRIOR APPROVAL**

## **Appendix One – Mill Lane retail survey (2017)**

<b>Unit</b>	<b>Address</b>	<b>Occupier</b>	<b>Use class</b>	<b>Lawful use</b>
<b>Beginning of frontage (South)</b>				
1	32 (Mill Lane)	Spice Tree Restaurant	A3	
2	34	HBF Hair and Beauty	A1	
3	36	ABI Dry Cleaners	A1	
4	38	Vacant	-	B1
5	40-42	The Alliance Pub	A4	
6	44-46	Dass on Mill Lane	A1	
7	48	Bernardita Beauty Clinic	Sui Generis	
8	50	Just Sew	A1	
9	52	Computer Clinic	A1	
10	54	Taxi cab office	B1	
11	56	A.K. Locksmiths	A1	
12	58	Vacant	-	A1
-	60	(no longer a unit)	-	-
13	62	Michael Leonard Estate Agents	A2	
14	64	Choose Your Price Dentistry	D1	
15	66	Passionate about Vintage	A1	
16	68-70	Mill Lane Vet Surgery	Sui Generis	
17	72	Oulton + Hofmann	C3	
18	74	Vacant	-	A2
19	76	Alison Davidson Opticians	A1	
20	78	Alan Heywood + Co	A2	
21	80	ODG Joinery	A1	
22	82	Vacant	-	C3
23	84	Vacant	-	A2
24	86	Vacant	-	A3
25	88	Barrett Firrell Surveyors	A2	
26	90	Chartered Accountants	A2	
27	92	Achillea Flower	A1	
28	94	Glass Art	A1	
29	96	West Hampstead Physiotherapy	D1	
30	98	Curled Leaf	A1	
31	100	Norman Motors	A1	
32	102	Holitic Health Lab	D1	
33	104	Brandon Tools	A1	
34	106	Thou Art	A1	
35	108	Tarrant & Sons Property Marketing	A2	
36	110	Supersave Foods	A1	
37	112	Monsters of Art	A1	
38	114	Vacant	-	A2
<b>End of frontage (South)</b>				
<b>Beginning of frontage (North)</b>				

39	The Mansions, Mill Lane	Mill Lane Picture Shop	A1	
40	The Mansions, Mill Lane	Londis	A1	
41	33 (Mill Lane)	Zen Architectural Fittings	A1	
42	35	Prestige Dry Cleaners	A1	
43	35b	Vini Vini Wines	A1	
44	37	The Kitchen Table	A3	
45	39	Mill Lane Barbers	A1	
46	41a	Post Office	A1	
47	41	Beauty Blossom	A1	
48	43	Berns & Company	A2	
49	45	Antiques	A1	
50	47	Haberdashery (application site)	A1 Existing	D2 Proposed
51	49	Vacant	-	A1
52	51	Browns	A2	
53	53	Direct Car Services	Sui Generis	
53	55	George Fry	A1	
54	57	The Cotton Club	A1	
55	59	Aqua Pharmacy	A1	
56	61	Yi Dao Healthcare	D1	
57	63	Jerome David + Co	A2	
58	65	Vacant (Beauty Salon permitted)	-	Sui Generis
59	67	Ja's Hair Design	A1	
60	69-73	B + R Carpet Company	A1	
61	75	Vacant	-	A1
62	77	Mill Lane Bistro	A3	
63	79	Plus Café	A3	
64	81	Dispensing Chemist	A1	
65	83	The Tiffin Tin	A3	

**End of frontage (South)**

**North side frontage**

**Existing (x units):**

Total: 28

A1 – 18

A2 – 3

A3 – 4

D1 - 1

Sui Generis – 2

*Existing A1 (18/28) 64%*

**Proposed (x units):**

Total: 28

A1 – 17

A2 – 3

A3 – 4

D1 - 2

Sui Generis – 2

*Existing A1 (17/28) 61%*

**South side frontage**

**Existing (x units):**

Total: 38

A1 – 18

A2 – 8

A3 - 2

A4 – 1

B1 – 2



C3 – 2 D1 – 3 Sui Generis – 2  <i>Existing A1 (18/38) 47%</i>	
<b>Mill Lane Centre Total</b>	
<b>Existing (x units):</b> Total: 65 A1 – 36 A2 – 11 A3 - 6 A4 – 1 B1 – 2 C3 – 2 D1 – 4 Sui Generis – 4  <i>Existing A1 (36/66) 56%</i>	<b>Proposed (x units):</b> Total: 65 A1 – 35 A2 – 11 A3 - 6 A4 – 1 B1 – 1 C3 – 2 D1 – 5 Sui Generis – 5  <i>Proposed A1 (35/66) 53%</i>