

Delegated Report		Analysis sheet		Expiry Date:		15/10/2015	
		N/A / attached		Consultation Expiry Date:		23/09/2015	
Officer				Application Number(s)			
Shane O'Donnell				2015/4791/P			
Application Address				Drawing Numbers			
286-290 Kilburn High Road, London NW6 2DB				PN.OS REV IB, REV IB PN.01 REV IB, PN.01 REV IB, PN.03 REV IB, PN.04 REV IB.			
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature				
Proposal(s)							
Change of use of ground floor (part), first, second and third floors from office (Class B1a) to residential (Class C3) to create 11 one bed units, 1 two bed unit, and 4 studio units.							
Recommendation(s):		Granted Prior approval subject to Section 106 Legal agreement					
Application Type:		GPDO Prior Approval Class O Change of use B1 to C3					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:	No. notified	08	No. of responses	00	No. of objections	00	
			No. electronic	00			
Summary of consultation responses:		N.A.					

Site Description

The application site contains a 4 storey block including 3 shopfronts along Kilburn High Street on ground floor level. The floors have been used for (B1a) Office Use for over 10 years.

Relevant History

PWX0103835-*Alterations and extensions in connection with the use of the whole building as a solicitors office, including the installation of new shop fronts, the erection of rear extensions at first and second floor levels.* Approved 18/06/2002

Relevant policies

National Planning Policy Framework 2012

Chapter 4 (Promoting sustainable transport)
Chapter 10 (Meeting the challenge of climate change, flooding and coastal change)
Chapter 11 (Conserving and enhancing the natural environment)

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015

The Environmental Protection Act 1990(a) part IIA; and

The Contaminated Land Statutory Guidance issued by the SoS for Environment, Food and Rural Affairs in April 2012

Assessment

Proposal

This application seeks prior approval for conversion of the ground floor (part), first, second and third floors from office use (Class B1) to residential use (Class C3) creating 11 one bed units, 1 two bed unit, and 4 studio units.

Procedure

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 came into force on 30 May 2013 and introduced Class J, which allows for development consisting of a change of use of a building and any land within its curtilage to a use falling within C3 (dwellinghouses) of the Schedule to the Use Classes Order from a use falling within Class B1(a)(office) of that Schedule.

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 which came into force on the 15 April 2015 supersedes the 2013 amendment and considers change of use from B1 offices to C3 residential under Class O. There is little material change in the permitted development rights.

This is subject to a number of conditions listed within sub-paragraph O.1 [(a)-(g)] and a subsequent condition in sub-paragraph O.2 relating to the need for the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority is required as to:

- (a) transport and highways impacts of the development;
- (b) contamination risks on the site; and
- (c) flooding risks on the site.

It also refers to paragraph W and its provisions apply to such an application.

The application is to ascertain whether the proposed change of use would constitute permitted development within the General Permitted Development ('GDPO') and therefore be a lawful development and whether prior approval is required.

Sub-paragraph O.1

The development is assessed against paragraphs (a)-(f). Development is not permitted where:

(a) the building is on article 2(5) land;

The proposal accords: the application site is not on article 2(5) land.

(b) the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order immediately before 30th May 2013 or, if the building was not in use immediately before that date, when it was last in use;

The proposal complies – the areas defined by a red line in the floor plans have been used as Class B1(a) offices before 30 May 2013. The Valuation Office Agency lists the first and second floors as being registered office premises for business rates since 01 April 2010.

(c) the use of the building falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order was begun after 30th May 2016;

The proposal accords: the use would begin following this date in the event prior approval was granted.

(d) the site is or forms part of a safety hazard area;

The proposal accords – it is not in a safety hazard area.

(e) the site is or forms part of a military explosives storage area;

The proposal accords – it is not part of a military explosives area.

(f) the building is a listed building or a scheduled monument.

The proposal accords – the building is not listed.

Summary

The proposal therefore accords with all of the sub-paragraphs of O.1.

Impacts and risks

As the above pre-requisites are complied with, it falls to the Council to assess the proposal. With regard to the terms of reference of that assessment paragraph W(10) of the GPDO states: (10) The local planning authority shall, when determining an application—

(a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8);

(b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012 as if the application were a planning application;

Conditions under O.2 of the Order

The applicant has submitted information with regards to sub para O.2 in order for the Council to make a determination as to whether prior approval is required as to:

(a) transport and highways impacts of the development;

(b) contamination risks on the site; and

(c) flooding risks on the site

It also states that: the provisions of paragraph W shall apply in relation to any application (see above).

Interpretation of the legislation

Council's consideration of the proposal in light of the Planning Practise Guidance 2014, Nick Boles Ministerial Statement and the Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014.

On 7 February 2014 Nick Boles MP issued a ministerial statement on behalf of DCLG which sought to provide clarity regarding the intention of Class J of the GPDO. Within this statement Mr. Boles states that the intention of the permitted development rights is to make it easier to convert offices to new homes. He states that this applies nationally and that local authorities have already been given the opportunity to seek an exemption where they could demonstrate adverse economic impacts. He states that a light-touch prior approval process has been put in place to allow any transport, contamination, and flooding issues to be addressed by councils; and that under a prior approval process, councils can still refuse an application, on these set grounds.

In the closing remarks of his statement Mr. Boles comments that 'we are also aware that some local authorities may be unclear on the correct intention of the detailed provisions of national legislation for office to home conversions. He states that some have not applied the correctly intended tests to determinate applications for prior approval and have sought to levy developer contributions which are not appropriate (on matters unrelated to the prior approval process). He sets out his intention to update planning guidance to clarify this point.

The Planning Practice Guidance which was published on 6th March 2014 offers further clarity on the prior approval process. Of relevance it states,

'By its nature permitted development should already be generally acceptable in planning terms and therefore planning obligations would ordinarily not be necessary. Any planning obligations entered into should be limited only to matters requiring prior approval and should not, for instance, seek contributions for affordable housing.'

(Planning Obligations, Paragraph: 005 Reference ID: 23b-005-20140306)

It is clear from the above that the Government acknowledged that there was some ambiguity in Class J of the Order and that they intended to clarify how it should be interpreted. It was not until 13th March 2014 when the explanatory memorandum to the Town and Country Planning (General Permitted Development) Amendment and Consequential Provisions) (England) Order 2014 was published that this clarity was provided.

The Explanatory Memorandum paragraph 4.7 states:

'In light of feedback on these provisions since they were enacted in 2013, the prior approval procedures in paragraph N of Part 3 of Schedule 2 to the General Permitted Development Order are amended to clarify that local planning authorities:

- must only consider the National Planning Policy Framework to the extent that it is relevant to the matter on which prior approval is sought;
- may attach conditions to grants of prior approval, as long as those conditions are relevant to the matter on which prior approval is sought;

- may refuse the application if they are not satisfied that the proposed development qualifies as permitted development, or if they have insufficient information to establish whether the proposed development qualifies as permitted development; and
- may invite further information from applicants relevant to the matters on which prior approval is sought or to the question of whether the proposed development qualifies as permitted development.'

The Council has obtained further legal advice from Counsel on whether the Order, in light of the above statement and additional guidance, enables consideration of wider issues than transport, flooding and contamination. The Council has been advised that this additional statement which is now supported by guidance clarifies the intent of Class J, being that the NPPF can only be taken into consideration in relation to transport and highway impacts and contamination and flooding risks. As such, it is considered that assessment of this application can only take into consideration the matter of transport and highways impacts and flooding and contamination risks and not wider issues such as such as impact on amenity (unless the harm would contravene Article 8 of the European Convention on Human Rights - right to respect for private and family life) affordable housing, educational and community facilities contributions, and public open space contributions.

(a) transport and highways impacts of the development

Transport & parking impacts

The NPPF confirms that transport policies have an important role to play in facilitating sustainable development. Paragraph 29 states that “the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel”. It also recognises that “different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.” Given that Camden is within a densely populated urban area of London it is considered necessary to maximise sustainable transport solutions.

The site has a PTAL rating of 5 which means it has excellent access to public transport. The provision of any permits to future occupants would thus put pressure on the availability of on-street parking in the vicinity of the site and have associated traffic impacts with vehicles searching for spaces. As such the proposal is considered likely to have a material impact on the character of traffic in the vicinity of the site. For this reason, prior approval of the Council is considered to be necessary.

Subject to a Section 106 legal agreement designating the development as ‘car free’, the proposal would be considered to have an acceptable impact on the highway network. The Applicant has agreed to enter into a Section 106 legal agreement designating the units as car free.

Cycle parking

The proposed residential development consists of 15 units which are 1 bedroom or less and one 2 bed unit. The London Plan would require 1 cycle parking space per 1 bedroom property and 2 per 2 bedroom property. Hence, 17 cycle parking facilities should be provided for the four new units. These should be covered, secure and fully enclosed. To accommodate this need, a cycle store on the ground floor is shown on the proposed plans.

(b) contamination risks on the site

The NPPF notes that the planning system should contribute to and enhance the local environment by remediating contaminated land, and that the responsibility for ensuring a safe development rests with the developer.

The site has not been identified as being at risk from land contamination. It is noted, the development is for a change of use within the building only with proposals affecting the internal area of the lower ground floor level and with no extensions or alterations proposed, and the ground itself is not being disturbed. As such, there is no concern in respect of land contamination and the Council's prior

approval is not required on this point.

(c) flooding risks on the site

The NPPF also confirms that flooding is an issue to be considered when determining planning applications, and so it is important that this is considered for this type of application.

The site falls within Flood Zone on the Environment Agency's flood risk map. But the site is not identified as being at risk of surface water flooding. As such, the proposal is considered to accord with this aspect of the assessment and is therefore acceptable.

Therefore, the proposal accords with sub-paragraph O.2.

Additional issues

National Planning Policy Framework

Paragraph 17 of the NPPF states that, "*planning should always seek...a good standard of amenity for all existing and future occupants of land and buildings*".

Neighbouring amenity

The NPPF falls short of providing specific standards protecting the amenity of adjoining and nearby properties. The proposal would not give rise to any overlooking to rear or front. As such, the residential accommodation is not considered likely to result in unacceptable privacy impacts on adjoining or nearby properties.

Standard of accommodation

The NPPF falls short of providing specific standards relating to standards of accommodation. The proposed unit sizes for the studios range from 28 sqm to 30 sqm. As such the standard of accommodation is considered to be acceptable.

Community Infrastructure Levy

As the proposal results in new dwellings, it will be liable for the Mayor's and Camden's Community Infrastructure Levy (CIL). A standard informative is attached to the decision notice drawing CIL liability to the Applicant's attention.

Recommendation

Prior approval is required and is granted, subject to a section 106 legal agreement securing

- car-free development

The proposal complies with Class O.2 of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015.