

<b>Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>		14/12/2017	
		N/A / attached		<b>Consultation Expiry Date:</b>		08/12/2017	
<b>Officer</b>				<b>Application Number(s)</b>			
Alyce Keen				2017/5901/P			
<b>Application Address</b>				<b>Drawing Numbers</b>			
114 - 116 Malden Road London NW5 4BY				17021.00.050; 17021.00.100. Planning Statement prepared by Studio Uskuri dated September 2017.			
<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 from storage or distribution (Class B8) to 5 no. residential units (Class C3) across the basement, ground floor and part of the first floor.							
<b>Recommendation(s):</b>		Prior Approval Required - Approval Refused					
<b>Application Type:</b>		GPDO Prior Approval Determination					
<b>Conditions or Reasons for Refusal:</b>		Refer to Draft Decision Notice					
<b>Informatives:</b>							
<b>Consultations</b>							
<b>Adjoining Occupiers:</b>		No. notified	<b>00</b>	No. of responses	<b>01</b>	No. of objections	<b>00</b>
<b>Summary of consultation responses:</b>		<p>A site notice was displayed close to the site on the 17/11/2017 (consultation expiry date 08/12/2017)</p> <p>One comment was received from a local resident, which is detailed below.</p> <ul style="list-style-type: none"> <li>Is the required percentage or realistically affordable housing being enforced here?</li> </ul> <p>These comments made by this local resident have been taken into consideration in assessing this proposal. However as this is a prior approval application Council is unable to seek an affordable housing contribution under this type of application.</p>					
<b>CAAC/Local groups comments:</b>		Not Applicable.					



## Site Description

No. 114-116 Malden Road is a three storey building with a historic use as retail (Class A1) within a parade of shopfronts historically used for retail purposes. The existing plans submitted show the commercial unit being currently used for storage purposes (Class B8) with a small component of retail (Class A1) at the front of the unit. However from review of Council's records the commercial unit was depicted as a bike shop (Class A1) with ancillary store/workshops. Therefore Council does not believe the storage (Class B8) use was ever lawful within this property.

The application site is located within the Queen's Crescent Neighbourhood Centre.

## Relevant History

2013/0350/P - Erection of a mansard roof extension to numbers 114 and 116 Malden Road and change of use from 1 x 3 bed maisonette at 114 Malden Road and 1 x 2 bed maisonette at 116 Malden Road (Class C3) in the creation of 2 x one-bed and 2 x two-bed self-contained flats (Class C3) over first, second and third floor levels. Granted 25/04/2013.

2012/5289/P - Erection a mansard roof extension on each property, and the conversion of 1x 3bed maisonette at 114, 1x2bed maisonette at 116, into a 1x1 bed apartment at first floor level and 1x 2 bed maisonette to second and third floors within each property. Withdrawn 05/12/2012.

9200691 - Installation of a new shopfront as shown on one un-numbered drawing. Granted 03/09/1992.

## Relevant policies

**The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 2 Class P**

**The Environmental Protection Act 1990(a) part IIA**

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

**The National Planning Policy Framework (2012)**

**The London Plan (2016)**

**Camden Local Plan (2017)**

C1 Health and wellbeing

A1 Managing the impact of development

A4 Noise and vibration

CC4 Air quality

T1 Prioritising walking, cycling and public transport

T2 Parking and car free development

**Camden Planning Guidance**

CPG1 Design (2015)

CPG6 Amenity (2011)

CPG7 Transport (2011)

CPG8 Planning Obligations (2015)

## Assessment

### Proposal

This application seeks planning permission for the following:

- Change of use from storage or distribution (Class B8) to 5 no. residential units (Class C3) across the basement, ground floor and part of the first floor.

### 1.0 Prior Approval Procedure

The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 came into force on 15th April 2015 and introduced Class P, which allows for development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B8 (storage or distribution centre) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule.

This is subject to a number of conditions listed within sub-paragraph P.1 [(a)-(j)] and a subsequent condition in sub-paragraph P.2 requiring that before beginning the development, the development must –

- a) submit a statement, which must accompany the application referred to in paragraph (b), to the local planning authority setting out the evidence the developer relies upon to demonstrate that the building was used solely for a storage or distribution centre use on the date referred to in paragraph P.1(a) and for the period referred to in paragraph P.1(b);
- b) apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to —
  - (i) impacts of air quality on the intended occupiers of the development;
  - (ii) transport and highways impacts of the development,
  - (iii) contamination risks in relation to the building,
  - (iv) flooding risks in relation to the building,
  - (v) noise impacts of the development, and
  - (vi) where the authority considers the building to which the development relates is located in an area that is important for providing storage or distribution services or industrial services or a mix of those services, whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services,

Paragraph W sets out the procedure for applications for prior approval under Part 3. This application is to ascertain whether the proposed change of use would constitute permitted development within the General Permitted Development Order ('GPDO') and whether prior approval is required. It states particularly in sub-para (13) that 'The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.'

### 2.0 Assessment

Assessment under Part 3, Class C of the General Permitted Development Order 2015

Compliance with Paragraph P.1 and Paragraph P.2 are assessed below:

Development is not permitted by Class P if —

- (a) the building was not used solely for a storage or distribution centre use on 19th March 2014 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use;**

The proposal does not comply. The commercial unit appears to have been historically used for retail not storage purposes. From review of images from public records and Google streetview imagery, the unit appears to be used as Simpson's Cycle shop from June 2008 to June 2014, which would be

regarded as retail (A1). This would align with the Council's planning records. In addition, the plans submitted for a historical planning application (2013/0350/P) illustrated that the unit was used for retail at ground level and storage ancillary to the retail use at basement level. The use of the basement for storage purposes ancillary to the main retail (A1) use of the property would not constitute a change of use to a use defined under Class B8 (Storage and Distribution) which is a materially different form of land use. There also does not appear to be any record of a planning application relating to the change of use from Class A1 to Class B8. Therefore there appears to be inconsistencies on the historical use of the commercial unit at ground and basement level. In light of these inconsistencies, it is considered that insufficient evidence has been submitted for the commencement of a Class B8 use before or on 19th March 2014.

**(b) the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins;**

The proposal does not comply. As outlined above, the commercial unit appears to have been historically used for retail not storage purposes. From review of Google street view the unit appears to be used as Simpson's Cycle shop from June 2008 to June 2014, which would be regarded as retail (Class A1). In addition, the plans submitted for a historical planning application (2013/0350/P) illustrated that the unit was used for retail at ground level and storage ancillary to the retail use at basement level. There also does not appear to be any record of a planning application relating to the change of use from Class A1 to Class B8. Therefore there appears to be inconsistencies on the historical use of the commercial unit at ground and basement level. In light of these inconsistencies, it is considered that insufficient evidence has been submitted to demonstrate that the building was not used solely for a storage or distribution centre use for a period of at least 4 years before the date development under Class P begins.

**(c) the use of the building falling within Class C3 (dwellinghouses) of that Schedule was begun after 15th April 2018;**

The proposal does not comply. Insufficient evidence has been submitted to demonstrate that the use of the building falling within Class C3 (dwellinghouses) of that Schedule was begun after 15th April 2018.

**(d) the gross floor space of the existing building exceeds 500 square metres;**

The proposal complies. The applicant has applied for the basement, ground floor and part of the first floor of the building to be changed from B8 to C3, this area measures 355sqm.

**(e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;**

The proposal complies. There is no evidence to suggest it is occupied under an agricultural tenancy.

**(f) less than 1 year before the date the development begins—**

**(i) an agricultural tenancy over the site has been terminated, and**

**(ii) the termination was for the purpose of carrying out development under this Class, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural purposes;**

The proposal complies. There is no evidence to suggest that an agricultural tenancy over the site exists.

**(g) the building is within—**

**(i) an area of outstanding natural beauty;**

**(ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981(a);**

- (iii) **the Broads; or**
- (iv) **a National Park;**
- (v) **a World Heritage Site;**

The proposal complies. The site does not lie within any of these areas.

- (h) **the site forms part of –**
- (i) **a site of special scientific interest;**
- (ii) **a safety hazard area;**
- (iii) **a military explosives storage area;**

The proposal complies. The application site is not within a site of special scientific interest, a safety hazard area or a military explosives storage area.

- (i) **the building is a listed building or is within the curtilage of a listed building;**

The proposal complies. The application building is not listed and neither is it within the curtilage of a listed building.

- (j) **the site is, or contains, a scheduled monument.**

The proposal complies. The application site is not, nor does it contain a scheduled monument.

In the absence of further evidence, the proposed works therefore fail against clauses (a-c) of Paragraph P.1.

## **Compliance with Paragraph P.2**

**P.2 Development is permitted by Class P subject to the condition that before beginning the development, the developer must—**

- (a) **submit a statement, which must accompany the application referred to in paragraph (b), to the local planning authority setting out the evidence the developer relies upon to demonstrate that the building was used solely for a storage or distribution centre use on the date referred to in paragraph P.1(a) and for the period referred to in paragraph P.1(b);**

The proposal does not comply. A formal statement was not submitted setting out the evidence the developer relies upon to demonstrate that the building was used solely for a storage or distribution centre use on the date referred to in paragraph P.1(a) and for the period referred to in paragraph P.1(b).

- (b) **apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—**

- (i) **impacts of air quality on the intended occupiers of the development;**

The proposal does not comply. The application site immediately fronts Malden Road, a busy thoroughfare for vehicular traffic throughout the day. This is a medium scale (5-9 dwellings) proposal involving change of use from commercial to residential. The Council's Air Quality Officer has advised that LAEI 2013 maps indicate the location is an area with poor background air quality, not meeting annual objectives. All but two of the proposed flats are found to have a window fronting a main road (Malden Road) including bedrooms, increasing potential AQ impacts to residents. Together this means that additional residents are proposed to be introduced to an area of existing poor air quality. Concern is therefore maintained as to the standard of accommodation for any future residents as well as the potential health implications for the future occupiers.

On grounds of the above, a basic Air Quality Assessment should be prepared for the applicant by a suitably qualified professional and submitted, alongside a Camden Air Quality Checklist, to the

Council for standard consultation and approval prior to commencing works to confirm fulfilment of the requirements of Local Plan policy CC4 Air Quality.

**(ii) Transport and highways impacts of the development,**  
In the absence of a S106 legal agreement the proposal does not comply with this condition.

The proposal does not comply. Policy T1 of the Camden Local Plan requires development to provide cycle parking facilities in accordance with the minimum requirements of the London Plan and the design requirements outlined in CPG7. The London Plan (Table 6.3) requires a minimum of 7 cycle parking spaces in total for the residential development, two for each two bedroom unit and one for each one bedroom unit.

The plans show cycle parking will be provided for the two single bed units at lower ground floor, in a cycle store below the pavement. It is not clear from the plans or the supporting information what type of cycle parking facilities are to be provided. No.2 cycle stores are shown on proposed plans, each for the sole use of the proposed lower ground floor flat. The location of the cycle stores are not compliant with requirements provided in CPG7, as access to the cycle stores is not step free from street level and the plans do not provide confidence that the area designated for cycle parking for the lower ground floor units would be practically adequate to provide storage.

The three remaining units (2 x 2 bed and 1x 1 bed) would require a total of 5 cycle parking spaces. These cycle spaces are not proposed to be provided, which is contrary to Policy T1 and the London Plan.

In summary, the application is contrary to Policy T1 of the Camden Local Plan, and CPG7, and therefore fails against criteria (b)(ii).

Policy T2 of the Camden Local Plan states that the Council will limit the availability of parking and require all new developments in the borough to be car-free. Limiting the opportunities for parking within the borough can reduce car ownership and use and therefore lead to reductions in air pollution and congestion and improve the attractiveness of an area for local walking and cycling. The council will not issue on-street parking permits in connection with new development and use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits.

The proposal consists of the creation of 5 new residential (C3) units. A car free development needs to be secured via a legal agreement for all units, allowing the proposal to be in accordance with Policy T2 of the Camden Local Plan. Without such a legal agreement in place to secure car-free housing, the change would be considered contrary to criteria (b)(ii) by virtue of the impacts caused upon the local street parking capacity.

**(iii) Contamination risks in relation to the building**

The proposal does not comply. Following a review of online records, the Council's Environmental Health (Contamination) officers have found that the site is within 50m of historic Industrial sites which have been identified as high risk sites as they have the potential to cause ground contamination. As a result Environmental Health officers advise that the application site is at risk of ground contamination and the use of the site for residential purposes should not commence until such a time as a Contamination Report has been commissioned to evidence this potential issue. Therefore the Council will require a Phase 1 Environmental Desk Study to demonstrate the above. In the absence of such reporting, the development is considered contrary to clause (b)(iii).

**(iv) Flooding risks in relation to the building,**

The proposal does not comply. The application site is located within a Flood Risk Zone(1) as defined by the Environment Agency's online resources. The Council's Sustainability officers also advise that Malden Road is a local flood risk zone, with a history of surface water flooding issues along the street. Given the proposed basement flats and enhanced by proximity to the LFRZ, it is recommended that a site specific flood risk assessment is required to fulfil the requirements of clause (b)(iv) and policy

**(v) Noise impacts of the development,**

The proposal complies. The Council's Environmental Health officer has reviewed the submitted information and concludes that if not constructed sufficiently, the proposed flats may suffer from a poor standard of accommodation by virtue of noise being transmitted through the walls and floors. Concerns are therefore maintained with regard to the noise impacts of the development however were the scheme considered to be otherwise acceptable, this could reasonably be dealt with by way of appropriate conditions for noise insulation measures to be submitted and approved. This would therefore not form a reason for refusal.

**(vi) where the authority considers the building to which the development relates is located in an area that is important for providing storage or distribution services or industrial services or a mix of those services, whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services.**

As outlined above, the Council considered there to be insufficient evidence to demonstrate that the lawful use of the site has ever been for storage purposes (B8). The site is not located within an area that is important for providing storage or distribution services however the site is within a parade of commercial retail units within a designated neighbourhood centre. The Council considers the change of use would not impact on the operation of nearby employment uses. Given the predominantly residential character of the surrounding area, an increase in residential would not have an impact on the sustainability or provision of storage services.

The Council's records show the application site to have a lawful use as retail (Class A1). Unless it can be demonstrated that the lawful use of the site remains for storage purposes (Class B8), a change of use from retail (Class A1) to residential (Class C3) would therefore need to be applied for under Class M of The Town and Country Planning (General Permitted Development) (England) Order 2015. It should be noted however that the Council would likely object to the loss of retail (Class A1) space within the designated neighbourhood centre of Queen's Crescent in line with conditions M.2-(1) (d) of the relevant Class due to the resulting impact upon the sustainability of that shopping area.

#### **4. CONCLUSION**

Prior approval is refused for the following reasons:

1. In the absence of sufficient information to demonstrate that the building was used solely for a storage or distribution centre use on 19th March 2014 (the date referred to in paragraph P1.(a)) and for a period of at least 4 years before the date development under Class P begins the applicant has not satisfied the requirements of Class P subparagraphs P.1(a) and (b) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015.
2. In the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote more sustainable and efficient forms of transport. Therefore the proposed scheme is contrary to policies T2 of the London Borough of Camden Local Plan 2017.
3. In the absence of sufficient cycle storage in terms of step-free, covered and the lack of provision would fail to promote more sustainable and efficient forms of transport. Therefore the proposed scheme is contrary to policies T1 of the London Borough of Camden Local Plan 2017 and CPG8 of the Camden Planning Guidance.
4. In the absence of a Phase 1 Environmental Desk Study the applicant has failed to demonstrate that the development would not cause harm to future occupiers of the development in terms of contamination risks in relation to the building as required by sub-paragraph P.2 (b) (iii) of Class

P of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and policy A1 (Managing the impact of development) of the London Borough of Camden Local Plan 2017.

5. In the absence of a basic Air Quality Assessment the applicant has failed to demonstrate the impact of air quality on the intended occupiers of the development as required by sub-paragraph P.2 (b) (i) of Class P of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and policy CC4 (Air Quality) of the London Borough of Camden Local Plan 2017.
6. In the absence of a Flood Risk Assessment the applicant has failed to demonstrate that the development would not cause harm to future occupiers of the development in terms of flooding risks in relation to the building as required by sub-paragraph P.2 (b) (iv) of Class P of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and policies CC3 (Water & Flooding) and A5 (Basements) of the London Borough of Camden Local Plan 2017..1.

**RECOMMENDATION: REFUSE PRIOR APPROVAL**