

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b> 27/07/2018
		N/A / attached	<b>Consultation Expiry Date:</b> 14/07/2018
<b>Officer</b>		<b>Application Number(s)</b>	
Samir Benmbarek		2018/2371/P	
<b>Application Address</b>		<b>Drawing Numbers</b>	
308 Kentish Town Road London NW5 2TH		See draft 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>			
Prior approval for change of use of ground floor unit from A1 (retail) to A3 (cafe/restaurant) under Class C, Part 3, Schedule 2 of the GPDO 2015.			
<b>Recommendation(s):</b>	Prior Approval Required - Approval Refused		
<b>Application Type:</b>	GPDO Prior Approval Determination		

<b>Conditions or Reasons for Refusal:</b>	<b>Refer to Draft Decision Notice</b>
<b>Informatives:</b>	
<b>Consultations</b>	
<b>Consultations:</b>	<p>Site notices were displayed in close proximity to the site between 08/06/2018. However, there was an error with the development description and corrected site notices were displayed on 20/06/2018, expiring on 14/07/2018.</p>
<b>Summary of consultation responses:</b>	<p>9x letters of objection were received from the following addresses:</p> <ul style="list-style-type: none"> <li>• 320 Kentish Town Road</li> <li>• 381 Kentish Town Road</li> <li>• 383 Kentish Town Road</li> <li>• Flat 23, Highmore Mansions, 84 Camden Road</li> <li>• 67A Hilldrop Crescent</li> <li>• 7A Huddleston Road</li> <li>• 379 Kentish Town Road</li> <li>• 15 Evangelist Road</li> <li>• 55A Bassett Street</li> </ul> <p>Their raised concerns can be summarised as follows:</p> <ul style="list-style-type: none"> <li>- Numerous food establishments within the vicinity that provide eat-in and take-out hot food;</li> <li>- Smaller (and local) businesses are not operating well in competition with chain branches (should the proposed be a chain/franchise) as well as other eating establishments emerging;</li> <li>- The area needs the retention and growth of retail units;</li> <li>- Approving this application would be contrary to the planning aims of the Kentish Town Centre (retail area);</li> <li>- The area needs to be protected from being a generic “identi-kit” high street and its local identity maintained.</li> </ul>
<b>CAAC/Local groups comments:</b>	<p><u>Kentish Town Neighbourhood Forum</u></p> <ul style="list-style-type: none"> <li>- No objection / comment in relation to the proposed development.</li> </ul> <p><u>Kentish Town Road Action</u></p> <ul style="list-style-type: none"> <li>- Applicant misunderstands the definition of A1 retail;</li> <li>- Impact of the proposal upon the existing shopping provision of Kentish Town but a very low proportion of retail units within the core frontage;</li> <li>- Proposal would threaten the livelihood of ‘Delicious by Franco’, which is a main presence within the local area.</li> </ul> <p><u>Cllr Headlam-Wells, Cllr for Kentish Town Ward, Mayor of Camden</u></p> <ul style="list-style-type: none"> <li>- Fully endorses the objection from the Kentish Town Road Action (summarised above)</li> </ul>

## Site Description

The application site is a ground floor premises located within a two-storey building on the eastern side of Kentish Town Road. The application site is within a terrace which is predominantly made up of A2 and A3 units at ground floor level. The building is located near the junction of Kentish Town Road and Highgate Road/Fortess Road. The ground floor unit is currently vacant, although its last known use was as an opticians, occupied by 'Molyneux Phillips Opticians'.

## Relevant History

**2017/2732/P:** Erection of single-storey ground and 1st floor rear extensions, alterations to shopfront and provision of new entrance to new 2 bed self-contained flat. **Planning permission granted subject to S106 legal agreement 16 January 2018. Works are near completion as of 17 August 2018.**

## 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

### Camden Local Plan 2017

Policy TC2 (Camden's centres and other shopping areas)

### CPG Town Centres (March 2018)

### 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 shop (Class A1) to a restaurant (Class A3). Within the application form and submission documents, the applicant describes the development as a change of use from retail (A1) to use as restaurant and café (A3).

### 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)*
- 2.4. 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 82 square metres (including 12m<sup>2</sup> for food preparation and cooking at the rear).

**(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;**

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. It is considered that due to the size/capacity of the unit and its location, noise issues relating to the proposed change could be addressed via the conditioning of hours of operation. This is addressed further in paragraphs 3.13- 3.15 of this report.
- 3.6. Furthermore, as mechanical plant is being proposed, the submission of an acoustic assessment for the proposed plant would be required to ensure that the development complies with the noise standards within the Camden Local Plan. No details were provided on noise, and therefore it is not known the impact that the operation of the plant would have on neighbouring occupiers. Although paragraph W (13) stipulates that the local planning authority can secure conditions upon the prior approval, insufficient information has been provided in terms of mechanical plant proposed, predicted noise output or background noise levels. Prior approval would be refused on this basis as the submitted information does not satisfactorily address potential noise impacts on the amenity of adjoining residential occupiers.

#### **(b) odour impacts of the development**

- 3.7. The commencement of primary cooking within the unit would necessitate the installation of extraction equipment. No details of the proposed extraction equipment or odour attenuation measures were submitted as part of this application apart from the elevation drawing indicating its position at the rear of the building.
- 3.8. The application is part of a terrace of two storey buildings with residential use at first floor level across all of the buildings. There is also a three-storey building on the junction of Kentish Town Road and Leverton Place which adjoins the rear of the application building (No. 304 Kentish Town Road). The proposed flue would be positioned directly by the residential unit at first floor level at No. 308, and consequently, may adversely affect the occupiers of this unit as well as the neighbouring occupiers along the terrace at first floor level when the odour disperses.
- 3.9. It would also affect the first and second floor residential occupiers of No. 304 Kentish Town Road. Flues should be positioned at least 1.0m above roof level. The flue would terminate at first floor level and as such, would be unlikely to adequately mitigate odour issues for the occupiers at third floor level of No. 304 Kentish Town Road. Due to the height of the flue, its proximity to neighbouring residential buildings/units, and a lack of information demonstrating that they would not be adversely impacted by odour emissions, prior approval is refused on this basis.

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

- 3.10. The proposed ground floor plan indicates that a bin store would be located at the rear of the building which measures at 1sqm. A large waste and recycling space would be expected and required for the operation of a restaurant and the proposed space is considered inadequate as it would not be able to contain a sufficient amount of space for bins (e.g 1x 1100L Eurobin or more than 2x 240L wheelie bin)
- 3.11. The bin store would be located at the rear of the building from Falkland Place. Falkland Place is pedestrian route and is a narrow alleyway once it passes the rear of the site. Therefore, it is considered problematic for waste and recycling collection as the bins would need to be taken to the junction of Falkland Place and Leverton Place or taken through the ground floor unit to Kentish Town Road. Therefore, prior approval is refused on this basis.

#### **(d) impacts of hours of opening of the development**

- 3.12. Within the documentation, it is specified that the proposed opening hours of the restaurant would be 11:00am- 00:00am every day.

- 3.13. The application site is within a frontage that comprises of A1, A2 and A3 uses with daytime operating hours. An A3 unit at No. 320 Kentish Town Road operated between 12:00pm - 22:30pm every day (with a break between 14:30 – 17:00). A further A3 unit at No. 8 Fortess Road also has operating hours from 12:00pm - 22:30pm every day (with a break between 14:30- 18:00, excluding weekends).
- 3.14. In light of the operating times of the neighbouring restaurant uses and the operating times of the adjoining A1 and A2 units, it is considered that the hours of operation for this unit would be inappropriate as it would lead to increased noise and disturbance to the adjoining residential occupiers along the terrace and may give rise to anti-social behaviour.
- 3.15. Should prior approval be granted on this application, a condition would have been attached stipulating the operating hours for the proposed A3 unit. The operating hours would be in line with neighbouring A3 uses within the vicinity.

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

- 3.16. Due to the very good level of public transport accessibility level (PTAL level 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 and the scale of the development is not large enough to warrant cycle parking facilities. 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 TC2 of the Camden Local Plan and CPG Town Centres is to ensure that new developments do not cause harm to the character, function, vitality and viability of a centre, particularly its shopping function. CPG Town Centres notes that within Kentish Town Town Centre, the council will resist schemes that result in less than 75% of ground floor premises being in retail use in a primary frontage; or more than 2x consecutive premises being in non-retail use.
- 3.18. In order to ensure that the quoted uses outlined in the submitted survey were accurate, the case officer completed a retail survey of the centre on the 17 July 2018, along with research of planning application history of the ground floor units within the core frontage concerned. The retail survey found that the existing percentage of retail units were at 52.63% which is below the minimum guidance of 75% for the primary frontage, and therefore the shopping function and overall vitality is considered to be at harm. The change of use of the ground floor unit of No. 308 Kentish Town Road would exacerbate this further by reducing the percentage of A1 units to 47.37% which would be less than half of the ground floor units being in retail use. The full retail survey completed by the case officer can be found in Appendix 1.
- 3.19. Notwithstanding this, the proposed change would still result in a row of 3x consecutive non-retail uses (2x A2 units followed by 1x A3 unit) along the primary frontage. This grouping of non-retail uses would be contrary to the requirements of CPG Town Centres, and would lead to a diminished retail offer within the Centre. Whilst the Council's policies do not discourage a mix of uses that make a positive contribution to its character, function, vitality and viability of a Centre, there is requirement for these uses to be evenly distributed across the frontage. This narrowing of service provision would result in the frontage becoming less varied and becoming less attractive in terms of its shopping function.
- 3.20. As such, the proposed change of use to Class A3 (restaurants and cafes) is considered unacceptable due to the loss of the retail unit and the consequent detrimental impact on the sustainability and vitality of the Kentish Town Town Centre. Prior approval is therefore refused on this basis.

**(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. Plans and elevations were provided on the design and siting of any proposed extraction or ventilation system or refuse storage. The proposed extraction flue would be located at the rear of the building and would not be viewed from the street scene of Kentish Town Road. Furthermore, at the rear of the building, there is a high boundary wall between the site and Falkland Place in which the proposed extraction flue cannot be visible from Falkland Place and therefore would not be visible from the adjoining Kentish Town Conservation Area. As described in paragraph 3.11 of this report, the waste and recycling would be located at the rear of the building, and not visible from public views. Therefore the design and siting of the proposed flue and waste facilities is considered acceptable in this application.

#### **4. CONCLUSION**

4.1. Prior approval is refused for the following reasons:

- (i) The proposed change of use would have a detrimental impact on the sustainability and vitality of the Kentish Town Town Centre, which is a key shopping area, thereby failing to comply with Schedule 2, Part 3, Class C, Condition C.2(1)(f)(ii) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and would be contrary to the aims of the National Planning Policy Framework, including chapter 2 and para 17.
- (ii) The proposed change of use would fail to provide adequate facilities for the storage and handling of waste thereby failing to comply with Schedule 2, Part 3, Class C, Condition C.2(1)(c) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and would be contrary to the aims of the National Planning Policy Framework, including chapters 8, 11, 13 and para 7.
- (iii) The proposed change of use, by reason of the odour impacts of the development which would harm surrounding uses and occupiers, would fail to comply with Schedule 2, Part 3, Class C, Condition C.2(1)(b) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and would be contrary to the aims of the National Planning Policy Framework, including chapters 8 and 11 and para 7.
- (iv) The proposed change of use, by reason of the noise impacts of the development which would harm surrounding uses and occupiers, would fail to comply with Schedule 2, Part 3, Class C, Condition C.2(1)(a) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and would be contrary to the aims of the National Planning Policy Framework, including chapters 8 and 11 and para 7.

**RECOMMENDATION: REFUSE PRIOR APPROVAL**



### Appendix 1 – Officer’s Retail Survey

Unit	No.	Occupier	Use class	Lawful use?
1	(Kentish Town Road) 292-294	The Assembly Rooms	A4	Yes
2	296	Saint Espresso and Kitchen	A1 (café)	Yes
3	298-302	Neighbour and Jukes	A3	Yes
<i>Break of frontage at junction with Leverton Place</i>				
4	304	Martyn Gerrard	A2	Yes
5	306	Winkworth	A2	Yes
6	308	Applicant site (Vacant)	A1 to A3	-
7	310	Zappeo Dry Cleaners	A1	Yes
8	312	Advanced Lettings and Sales	A2	Yes
9	314	Tips 'n' Toes	A1	Yes
10	316-318	Keatons	A2	Yes
11	320	Delicious by Franco	A3	Yes
12	322	Vacant	A1	Yes
13	324	George’s Barber Room	A1	Yes
14	(Fortess Road) 2	Clapton Craft	A1	Yes
15	2a	Waxcat	Sui Generis	No- last known as A2
16	4	Mail Boxes Etc.	A1	Yes
17	6	Ace Sports	A1	Yes
18	8	Kami	A3	Yes
19	10	Bike House	A1	Yes
<b>Existing (x units):</b>		<b>Proposed (x units):</b>		
Total: 19		Total: 19		
A1 – 10		A1 – 9		
A2 – 5		A2 – 5		
A3 – 3		A3 – 4		
A4-1		A4- 1		
D1 - 2		D1 - 2		
<i>Existing A1 (10/19) 52.63%</i>		<i>Existing A1 (9/19) 47.37%</i>		

Completed 17/07/2018

N.B. There were no extant permissions for unimplemented changes of use at the time of writing.