

Delegated Report		Analysis sheet		Expiry Date:		01/05/2019			
		N/A / attached		Consultation Expiry Date:		13/04/2019			
Officer				Application Number(s)					
John Diver				2019/1239/P					
Application Address				Drawing Numbers					
387 Kentish Town Road London NW5 2TJ				Refer to draft decision.					
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature			
Proposal(s)									
Change of use of the ground floor unit from retail (Class A1) to form a 2bed 4person dwelling (Class C3) together with building operations including replacement of shopfront with glazed screens and new front entrance door as well as the replacement of existing single storey rear extensions to include new windows and rooflights.									
Recommendation:		Prior approval required – prior approval refused							
Application Type:		GPDO Prior Approval Class M change of use of A1 to C3							
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice							
Informatives:									
Consultations									
Summary of consultation:		A site notice was erected near to the application site on the 20 March 2019 (expiring 13 April 2019)							
Adjoining Occupiers:				No. of responses		00	No. of objections		00
Summary of consultation responses:		No responses were received							
Kentish Town Neighbourhood Forum		<p>A letter of objection was received from the Kentish Town Neighbourhood Forum. Their comments can be summarised as follows:</p> <ol style="list-style-type: none"> <i>Policy SW2 of the Neighbourhood Plan states that applicants should submit: a) an up to date marketing report; and b) Contemporary financial viability assessment that there is no reasonable prospect that A1 retail use is viable; Neither report has been submitted. Hair Today has only been closed for a few months. The shop is in a good position for footfall, being next door to the Bull & Gate and not far from Kentish Town tube station. There is every prospect that A1 Retail use is viable. Object to loss of retail within designated frontage.</i> <i>Object to building operations including replacement of shopfront</i> 							

Site Description

The application site relates to a ground floor unit within a 3 storey, end of terrace property. The property fronts Kentish Town road, close to the junction with Highgate Road. The rear of the property abuts the sidings to the National Rail cutting. The site is located within the Kentish Town centre, within a designated 'secondary' retail frontage.

Relevant History

The following planning history for the site is of relevance:

2018/0204/P: Planning permission was Granted Subject to a Section 106 Legal Agreement on the 12/09/2018 for the '*Erection of rear extension to ground floor shop (A1); replacement of front and rear windows with timber framed replacements; erection of mansard roof extension with rear dormer window to facilitate change of use of first and second floors from beauty salon (sui generis) to 1 x 3 bed flat (C3)*'

This permission was subject to a legal agreement to secure the following obligations:

- *Car-free development for all new flats*

34902: Planning permission was granted on the 06/12/1982 for the '*Use of the first and second floors as a beauty salon*'

22575: Planning permission was granted on the 14/07/1976 for the '*Retention of a joinery store*'

6870: Planning permission was granted on the 14/05/1969 for the '*The erection of a joinery assembly shop building at the rear of 387a Kentish Town Road, Camden.*'

7578: Planning permission was granted on the 17/09/1969 for the '*The installation of a new shopfront*'

F11/1/G/23837: Planning permission was granted on the 27/03/1963 for the '*To form a new means of access at the rear of No. 387, Kentish Town Road, St. Pancras, to the highway in York Mew*'

F11/1/G/3835: Planning permission was granted on the 03/07/1935 for the '*To erect a single-storey addition at the rear of the existing shop*'

Relevant policies

Part 2A of the Environmental Protection Act 1990

Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012

National Planning Policy Framework (2019)

Chapter 2: Achieving sustainable development

Chapter 4. Decision-making

Chapter 5. Delivering a sufficient supply of homes

Chapter 7. Ensuring the vitality of town centres

Chapter 8. Promoting healthy and safe communities

Chapter 9. Promoting sustainable transport

Chapter 14. Meeting the challenge of climate change, flooding and coastal change

Chapter 16. Conserving and enhancing the historic environment

The Town and Country Planning (General Permitted Development) Order 2015: Part 3, Class M

Assessment

1. Proposal

1.1. The application seeks Prior Approval permission under Schedule 2, Part 3, Class M of the GPDO (2015) for change of use of the ground floor from hairdressers (Class A1) to a self-contained residential dwelling (Class C3). As well as the change of use, some external alterations are proposed to facilitate the conversion. These would include:

- Replacement of shopfront with glazed screens and new front entrance door;
- Re-building of existing rear extensions to include new windows; and
- Installation of rooflights to the rear.

1.2. The resulting unit proposed would be a 2 bedroom, 4 person dwelling which would occupy the whole of the ground floor as well as the retained areas of rear courtyard.

2. Prior approval procedure

2.1. The town and country planning (General Permitted Development) (Amendment) (England) Order (GPDO) 2015, Schedule 2, Part 3, Class M allows for the change of use of a building from a use falling within Class A1 (shops), to a use falling within Class C3 (dwellings) of that Schedule, subject to a prior approval process as well as conditions. Class M(b) also allows for building operations reasonably necessary to convert the building.

2.2. Developments that accord to sub-paragraph M.1 (a) – (g) are permitted by this class, subject to a number of conditions listed within sub-paragraph M.2 (1) [(a)-(e)]. Development is also subject to a subsequent conditions in sub-paragraph M.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 and to apply time limits for implementation. According to the above sub-sections, this application seeks to establish whether prior approval is required as to the following:

(a) transport and highways impacts of the development,

(b) contamination risks in relation to the building,

(c) flooding risks in relation to the building,

(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the 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 Class A2 (financial and professional services) of that Schedule or, as the case may be, a building used as a launderette, 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

(e) the design or external appearance of the building,

2.3. 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. 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. Assessment under Part 3, Class M of the GPDO

Compliance with Paragraph M.1

3.1. Development is not permitted by Class M if-

- (a) the building was not used for one of the uses referred to in Class M(a)—**
(i) on 20th March 2013, or
(ii) 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;

3.2. Proposal complies: Records show that the ground floor unit has remained in a retail use (A1) since prior to 2013. The existing business occupying the unit (Hair Today) has been in situ and operational since at least 2008, with records indicating that a hairdressers may have been located here since the nineteen eighties.

- (b) permission to use the building for a use falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order has been granted only by this Part;**

3.3. Proposal complies: The application unit has remained in an A1 use class for a number of decades and was not subject to a previous change of use under this Part of the GPDO.

- (c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres;**

3.4. Proposal complies: The proposed flat would have a gross internal area of approximately 74sqm. The application site, including the curtilage has a total area of 107sqm.

- (d) the development (together with any previous development under Class M) would result in more than 150 square metres of floor space in the building having changed use under Class M;**

3.5. Proposal complies: As set out under para.3.3, the application unit was not previously subject to a change of use under this Part. While upper floors have permission for conversion from beauty salon to dwellings, this was granted under a full planning application meaning that clause (d) is not contravened.

- (e) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;**

3.6. Proposal complies: Whilst the development would include the demolition and replacement of existing lean to rear extensions, the footprint of those structures as well as their external heights are shown to be replicated in proposed plans.

- (f) the development consists of demolition (other than partial demolition which is reasonably necessary to convert the building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order); or**

3.7. Proposal complies: Though some demolition is proposed, this would involve minor demolition of existing poor quality rear extensions and their replacement. This would be considered reasonably necessary to convert the building to the proposed use and would not contravene this clause.

(g) the building is—

- (i) on article 2(3) land;**
- (ii) in a site of special scientific interest;**
- (iii) in a safety hazard area;**
- (iv) in a military explosives storage area;**
- (v) a listed building; or**
- (vi) a scheduled monument.**

3.8. Proposal complies: The application site is not within a conservation area or land otherwise designated under the definitions of article 2(3) land. The site is not an SSI, safety hazard area or explosive storage area. In addition, the application site does not contain or adjoin any listed buildings or scheduled monument.

3.9. In light of the above, the proposal would accord with paragraph M.1, falling within the remit of development permitted subject to prior approval under paragraph M.2.

Compliance with Paragraph M.2

3.10. Where the development proposed is development under Class M(a) together with development under Class M(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) transport and highways impacts of the development,

(b) contamination risks in relation to the building,

(c) flooding risks in relation to the building,

(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the 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 Class A2 (financial and professional services) of that Schedule or, as the case may be, a building used as a launderette, 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,

(e) the design or external appearance of the building, and the provisions of paragraph W (prior approval) of this Part apply in relation to that application'

3.11. Assessment against the above clauses will be set out below in turn:

(a) transport and highways impacts of the development,

3.12. The application site is located within a highly accessible location with a PTAL level of 5. It is also located within the East Kentish Town controlled parking zone (CA-M) which operates between 08:30-18:30 Monday – Friday.

Construction impacts

3.13. Given the modest level of building operations proposed, in this instance the operational development aspect of the proposed development would not be considered likely to result in detrimental impacts upon the highways network. However, in order to ensure that the development promotes sustainable modes of transport and mitigates against a potential worsening of local traffic, parking, and air quality conditions, the development would be expected to remain 'car-free' and to provide adequate storage for cycles.

Transport impacts

3.14. The submitted statement confirms that no off street parking is proposed and that the area is well served with car club schemes should future occupiers need to make use of a private vehicle from time to time. Were the scheme otherwise acceptable, the proposed unit could have reasonably be secured as a 'car-free' dwelling via a section 106 legal agreement, in a similar way to the approved flats to upper floors (see planning history). This would ensure that new residents could not apply for parking permits with the already oversubscribed CPZ, would promote more sustainable modes of transport and would avoid increases to local issues of air quality and congestion. Given that no such agreement is in place, new occupiers would be eligible to apply for new parking permits without restriction, transport impacts would form a reason for refusal. Were the development otherwise acceptable this could have been overcome via a legal agreement.

3.15. It is noted that in response to the above concerns being set out to the applicants, a unilateral agreement was submitted to the Council on the 25 April 2019 seeking to secure the proposed unit as car-free. While the attempt to address the above concern is welcomed, the Council would only accept the use of a bi-lateral agreement in such matters. In addition, the unilateral agreement issued was not executed, meaning that it would hold no legal weight and could not be enforceable, failing against the tests set out in the CIL regulations. Given the limited timeframe for a decision, the execution of the agreement, even if it were acceptable, could not be completed prior to a determination. As such the submission of this agreement has not addressed the above concern and the reason is maintained. Should an appeal be subsequently made, the Council will arrange for a draft bi-lateral legal agreement to be issued so as to narrow down the scope of objection.

Cycle parking

3.16. Though no cycle parking spaces have been shown on proposed plans, the submitted Supporting Statement does make reference to the storage of cycles within the rear garden. Given that the unit would maintain sole access to the remaining rear courtyard, this solution would be acceptable and could reasonably be conditioned.

(b) contamination risks in relation to the building

3.17. The Council's records indicate that the site is at risk of land contamination, this is in particular due to its location adjacent to the mainland railway cutting as well as a close by vehicular garage / car wash. Whilst this concern remains, the proposed development would not include any ground excavations and so there is no greater risk of exposure to ground contaminants.

3.18. In addition to land contamination, the supporting statement also acknowledges that as a result of the age and construction of the property, asbestos containing materials (ACMs) may have been used in construction and/or maintenance of the building. In light of this, it is recommended that an

asbestos survey is undertaken so that any ACMs present can be managed accordingly to protect future occupiers or construction/demolition workers. This issue could reasonably be dealt with via a pre-commencement condition and therefore does not form a reason for refusal.

(c) flooding risks in relation to the building,

3.19. The application site is located with The Environment Agency's Flood Zone 1 indicating that there is a low probability of flooding occurring from sea or rivers. The area is, however, at risk of surface water flooding, with both the Environment Agency's Flood Map for Surface Water as well as Camden's 'Strategic Flood Risk Assessment' (2014) showing the site as being at risk. This is primarily due to the existing levels of stress placed upon the local drainage network.

3.20. In situations where a site is known to have a particular drainage issue or elevated flood risk, policy CC3 (Water) of the adopted Local Plan would require development to not place additional strain on existing drainage infrastructure. It also requires that the development is designed to cope with being flooded. Specifically, the Council's policy requires developments to reduce their water consumption, the pressure on the combined sewer network and the risk of flooding by:

- a) incorporating water efficient features and equipment and capturing, retaining and re-using surface water and grey water on-site;*
- b) limiting the amount and rate of run-off and waste water entering the combined storm water and sewer network through the methods outlined in part a) and other sustainable urban drainage methods to reduce the risk of flooding; and*
- c) reducing the pressure placed on the combined storm water and sewer network from foul water and surface water run-off and ensuring developments in the areas identified... as being at risk of surface water flooding are designed to cope with the potential flooding*

3.21. In this instance the proposed development would involve the creation of new residential units, which typically have a much higher water use than commercial uses, resulting in increased impact on the sewer system due to the generation of more waste water. Despite this, there are no existing or proposed basements within the unit and there is a negligible change in floor area. With this in mind, the main areas of outstanding concern relate to the following:

- That there is no net increase in water consumption from present use through selection of suitable water efficiency measures – or at least targeting no more than 110 litres/person/day (including 5 litres/p/d for external use) by means of:
 - Efficient water fittings
 - Feasibility study for greywater recycling or rainwater harvesting
 - Feasibility for green and/or blue roof(s) to be incorporated in designs
 - Calculations to show existing and future water consumption and savings, with / without the proposed measures.
- Designs to incorporate flood-resistance measures including the new entrance doors and all other potential water entry points.
- Internal measures for coping in case of water ingress.

3.22. Given the scale of development proposed the above could reasonably be secured by condition. Flooding risk does therefore not form a reason for refusal.

(d) whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the 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 Class A2 (financial and professional services) of that Schedule or, as the case may be, a building used as a launderette, 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,

3.23. Para.85 of the NPPF (2019) states that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Paragraph 85(b) states that as a result LPA should define the extent of town centres and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre.

3.24. Across the Borough a number of designated retail centres, including Kentish Town are shown within the adopted Policies Map (2017). For Kentish Town, these are also designated within the Neighbourhood Plan (2016). As set out in para.9.1 of the Local Plan, Camden's centres are a focus for activity and community life and provide character and identity to local areas and the borough as a whole. Designated town centres such as Kentish Town perform an important role as key shopping centres and are also places of employment, leisure, and services. To help protect this role, the London Plan states that when considering proposals for prior approval of changes from retail to residential and other associated works, account should be taken of their impact on design, the economic health of the centre, provision of essential local services and the character of the local area (para.4.42B) as supported by policies 2.15 and 4.7.

3.25. Within designated centres, the Council's primary objective (as demonstrated in Policy TC2 'Camden's centres and other shopping areas' of the London Borough of Camden Local Plan and adopted SPD 'Town Centres and Retail' (2018)) is to ensure that new developments do not cause harm to the character, function, vitality and viability of a centre, particularly its shopping function. Policy TC2 sets out that: *"In order to protect the retail and town centre function of our centres the Council will only permit conversion of retail and other town centre uses to residential use on the protected frontages where it does not harm the role and character of the centre, including maintaining the supply of shop premises in centres across the borough"*. Appendix 4 of the Local Plan sets out a minimum proportion of premises in A1 retail (shop) use as well as maximum proportions for food, drink and entertainment uses for each individual centre, in support of policy TC2. The aforementioned SPD sets out the methodology for calculating the extent of any given frontage. Both the Local Plan and Neighbourhood Plan are up to date, in line with the NPPF and were examined in public prior to adoption, including their evidence bases.

3.26. As noted above, policy TC2 notes that the conversion of commercial units to form dwellings with protected frontages will be resisted where it would harm the supply of shop premises in the centre or harm its role and character. The Local Plan also notes that for secondary frontages within the Kentish Town Centre, the Council will resist change of use that result in less than 50% of ground floor premises being in retail use; or more than 3 consecutive non-retail uses. In addition, policies SW2 (Protection of secondary shopping frontages) and SW3 (Consecutive secondary shopping frontage) of the KT Neighbourhood Plan furthers this to state that a minimum of 60% of units should be retained as retail and no greater than two consecutive non-A1 retail units within a secondary frontage should be permitted, unless marketing and viability evidence is submitted.

3.27. In this instance, the application unit is within a frontage that includes a total of five units. During the site visit, the existing uses for this frontage were recorded and are summarised below:

No.	Business	Lawful Use	Extant change of use?
387	Hair Today	A1	No (though permission for upper floors)
385	Fish & Kebab	A5	No (though permission for slight reduction of GF unit under ref. 2014/3286/P)
383	Mem's Cafe	A3	No
381	Kentish Delight	A5	No
379	Express	A1	No

Table One: Retail survey undertaken April 2019

3.28. The application unit is located within a relatively short frontage of only five units and marks the very beginning of the Western side to the designated centre along Kentish Town road. The proposed conversion would result in a further reduction to the frontage to only four units, meaning its attraction for visitors and residents as a designation for shopping would be diminished. The unit is located in a highly prominent corner and plays a key role in demarking the beginning of the town centre and the character of the frontage as a commercial parade. The proposed conversion would mean that this highly prominent unit would be removed from any publicly accessible commercial use in its entirety, forming a dead frontage with no activity. This would be considered to harm the vitality and character of the frontage, and the centre as a whole.

3.29. In addition, out of the five commercial units, at present only two (40%) of units remain in retail use. This falls short of the targets for the frontage set out in both the Local Plan (50%) as well as the Neighbourhood Plan (60%). The proposed change of use would result in a further loss of retail, meaning that this would drop to only 20%, far below policy targets. In addition, at present there is a row of three consecutive non-retail units which would increase to four should the change of use be permitted. Again this would fall significantly short of both the Local Plan (no more than 3) as well as the Neighbourhood Plan (no more than 2) policy thresholds for consecutive non-retail units within this designated frontage.

3.30. As there is already considered to be an under provision of retail uses and an overconcentration of non-retail uses within the frontage, the proposed change is considered to lead to an exacerbation of this concentration. The loss of the retail unit within this context would act to further reduce the retail offer of the Centre, to the detriment of its viability, vitality, function and character. As such it is considered that it would be undesirable for the unit to change to a use falling within Class C3 (dwellings) because loss of the ground floor unit for any commercial use would have a detrimental impact on the designated Kentish Town town centre. Prior approval is therefore refused on this basis.

(e) the design or external appearance of the building and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

3.31. The proposed external alterations would remain minor in nature and would not act to detrimentally alter the appearance of the property. Although the replacement shopfront would include repositioning an entrance door, the overall level of glazing would remain consistent and the areas of glazing would be broken up with vertical glazing bars and fanlights. To the rear, the existing poor quality lean-to extensions would be replaced with more robust replacement. The external alterations do not therefore form a reason for refusal.

4. CONCLUSION

4.1. Prior approval is refused for the following reasons:

- (1) The proposed loss of a retail unit would result in an under-provision of retail and an overconcentration of non-retail uses within the designated frontage, to the detriment of the long-term vitality and viability of the Kentish Town town centre. The works would therefore remain contrary to National Planning Policy Framework chapter 7, paragraph 85 (2019); London Borough of Camden Local Plan policy TC2 (2017) and Kentish Town Neighbourhood Plan policies SW2 and SW3 (2016).
- (2) The proposed change of use, in the absence of a Section 106 legal agreement to secure the residential unit as car-free, would contribute unacceptably to parking stress and traffic congestion in the surrounding area and would not promote the use of sustainable transport contrary to the National Planning Policy Framework chapter 9, paragraphs 102, 108 and 110.

5. RECOMMENDATION: REFUSE PRIOR APPROVAL

6. CONDITIONS

6.1. In the event of an appeal, it would be requested that the following conditions are applied to any subsequent decision:

1	Cycle Parking	<p>Before the development commences, details of secure and covered cycle storage area for 2 cycles within the rear courtyard shall be submitted to and approved by the local planning authority. The approved facility shall thereafter be provided in its entirety prior to the first occupation of any of the new units, and permanently retained thereafter.</p> <p>Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the London Borough of Camden Local Plan 2017 and NPPF 2019 paragraph 110.</p>
2	Asbestos survey	<p>The developer must either submit evidence that site buildings were built post 2000 or provide an intrusive pre-demolition and refurbishment asbestos survey in accordance with HSG264 supported by and appropriate mitigation scheme to control risks to future occupiers. The scheme must be written by a suitably qualified person and submitted to the Local Planning Authority (LPA) for approval before commencement. The scheme as submitted shall demonstrably identify potential sources of asbestos contamination and detail removal or mitigation appropriate for the proposed end use. Detailed working methods are not required but the scheme of mitigation shall be independently verified to the satisfaction of the LPA prior to occupation.</p> <p>Reason To protect future users / occupiers of the development from the possible contamination arising in connection with the buildings on the site in accordance with policy A1 of the London Borough of Camden Local Plan 2017 and NPPF 2019 paragraph 178</p>
3	Water and flooding	<p>Prior to commencement of development, full details to demonstrate:</p> <ul style="list-style-type: none">a. the proposed internal water efficiency and/or water recycling equipment to ensure that the development will pose no additional strain on adjoining sites or the existing drainage infrastructure; andb. the proposed internal measures to ensure the development has been designed to resist and cope with potential flooding; <p>Should be submitted to the Local Planning Authority and approved in writing.</p> <p>Reason: To reduce the rate of surface water run-off from the buildings and limit the impact on the storm-water drainage system in accordance with policies CC2 and CC3 of the London Borough of Camden Local Plan Policies and NPPF 2019 paragraph 157</p>