

Delegated Report		Analysis sheet	Expiry Date:	03/10/2019
		N/A	Consultation Expiry Date:	07/09/2019
Officer			Application Number(s)	
Obote Hope			2019/3748/P	
Application Address			Drawing Numbers	
74 Fortune Green Road London NW6 1DS			See draft decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Change of use of ground floor retail unit (Class A1) to residential (Class C3) comprising a 1 bedroom self-contained flat.				
Recommendation(s):		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				
Adjoining Occupiers:	No. of responses	00	No. of objections	00
	No. electronic	00		
Summary of consultation responses:	Site notice displayed from 14/08/2019 until 07/09/2019			
CAAC/Local groups* comments: <small>*Please Specify</small>	<p><u>Fortune Green and West Hampstead Neighbourhood Forum</u> object as follows:</p> <ul style="list-style-type: none"> • The proposal would be contrary to policies 12 and 15 of the NDP which requires to maintain it as a commercial area and to retain the streetscape; • Should preserve existing commercial ground floor premises in designated centres to maintain vitality and provide employment; • Conversion to residential would be significantly detrimental to the streetscape; • The proposal also shows no detail of the proposed facade of the building; • The proposal would result in the loss of employment floorspace and harm the vitality of centre; 			

Site Description

The application site is a three-storey terrace property located on the east side of Fortune Green Road just north of the junction with Achilles/Ajax Road. The property is mixed use consisting of retail unit on the ground floor with maisonette on the first and second floors. However, the upper floors were recently granted planning permission for 3 x self-contained flats, consisting of 2 x 1 bed and 1 x studio flats.

The application site is within a designated Neighbourhood Centre (Fortune Green and West Hampstead). The application site is also within a Local Flood Risk Zone and a Neighbourhood Planning Area (Fortune Green and West Hampstead). It is not listed or within a conservation area.

Relevant History

2018/2812/P – Planning permission for erection of a mansard roof extension with front and rear dormers to provide ancillary residential floor space (Class C3). **Granted** on 17/09/2018.

2018/4600/P – Planning permission for the excavation of the existing cellar for a new basement extension under the footprint of the building, installation of new shopfront and alterations to the rear fenestration. **Granted** subject to s106 legal agreement on 11/04/2019.

2018/4601/P – Planning permission for Infill of existing void at first and second floor level associated with sub-division of existing maisonette to form 3 x self-contained flats consisting of 2 x 1 bed and 1 x studio flats.

Relevant policies

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

Camden Local Plan 2017

TC2 Camden's centres and other shopping areas

TC3 Shops outside centres

T1 Prioritising walking, cycling and public transport

T2 Parking and car-free development

A1 Managing the impact of development

D1 Design

D3 Shopfronts

CC3 Water and flooding

Fortune Green and West Hampstead Neighbourhood Plan 2015

Policy 15- Fortune Green Road Neighbourhood Centre

Camden Planning Guidance

Town centre and retail (2018)

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

Assessment

1.0 Proposal

1.1 The application seeks Prior Approval under Schedule 2, Part 3, Class M of the GPDO (2015) for change of use of the ground floor from retail unit (Class A1) to a self-contained residential dwelling (Class C3).

1.2 The resulting unit proposed would be a 1 bedroom, 1 person dwelling that would occupy the whole of the ground floor as well as retaining the rear courtyard as amenity space.

2.0 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 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:

- transport and highways impacts of the development,
- contamination risks in relation to the building,
- flooding risks in relation to the building,
- whether it is undesirable for the building to change to a use falling within Class C3 (dwellings) 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), 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,
- the design or external appearance of the building,

2.4 Paragraph W (GDPO 2018) sets out the procedure for applications for prior approval under Part 3 and 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.

Assessment under Part 3, Class M of the GPDO Compliance with Paragraph M.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) on 20th March 2013, 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;
- 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;
- c) the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres;
- 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;

- 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;
- 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);
- 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.

2.5 Proposal complies with a): Records show that the ground floor unit has remained in a retail use (A1) since prior to 2013. The existing business occupying the retail unit has been in situ and operational since at least 2008, with records indicating that a bookshop has previously occupied the site.

2.6 Proposal complies with b): The application unit has remained within the A1 use class for a number of decades, which was not subject to a previous change of use under this Part of the GPDO.

2.7 Proposal complies with c): The cumulative floor space of the existing building changing use under Class M does not exceed 150 square metres;

2.8 Proposal complies with d): The proposed flat would have a gross internal area of approximately 50sqm. The application site including the curtilage has a total area of 57sqm. The development (together with any previous development under Class M) would not result in more than 150 square metres of floor space in the building having changed use under Class M;

2.9 Proposal complies with e): the development would not result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

2.10 Proposal complies with f): the development does not involve any demolition;

2.11 Proposal complies with g): 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 SSSI, safety hazard area or explosive storage area. In addition, the application site does not contain or adjoin any listed buildings or scheduled monument.

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

Compliance with Paragraph M.2

2.13 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'

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

3.0 Transport and highways impacts of the development,

3.1 The application site is located within a highly accessible location with a PTAL level of 4. It is also located within the Fortune Green controlled parking zones (CA-P (a)) which operates between 08:30 – 18:30 Monday – Friday and CA-P (c) in operation between 10:00 -12:00.

Construction impacts

3.2 Given the modest level of building operations proposed, in this instance the operational development aspect of the proposed development would not be 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 new flat would be expected to become 'car-free' and to provide adequate storage for cycles.

Transport impacts

3.3 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 would need to 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 within the already oversubscribed CPZ, would promote more sustainable modes of transport, and would avoid increases to local problems of air quality and congestion.

Cycle parking

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

4.0 Contamination risks in relation to the building

4.1 The Council's records indicate that the site is at risk of land contamination; this is particularly due to its location within 100m of numerous garages that would likely exhibit significant elevated contamination levels with potential to cause harm. Whilst this concern remains, the proposed development as a change of use would not include any ground excavations and so there is no greater risk of exposure to ground contaminants. However, the rear yard will become a residential amenity space with potential of soft landscaping so there may be some risk. Furthermore, soils in Camden typically contain elevated levels of certain heavy metals. Therefore, assuming soft landscaping is part of the proposal in accordance with the risk based approach under Part 2A of EPA 1990, a condition requiring contaminated land investigations is recommended to ensure the proposed development is suitable for its proposed use.

4.2 In addition to land contamination, the pollution team 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.

4.3 These issues could reasonably be dealt with via pre-commencement conditions and therefore contamination does not form a reason for refusal.

5.0 Flooding risks in relation to the building

5.1 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 primarily due to the existing levels of stressed placed upon the local drainage network.

5.2 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:

- incorporating water efficient features and equipment and capturing, retaining and re-using surface water and grey water on-site;
- 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
- 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

5.3 In this instance, the proposed development would involve the creation of new residential unit, 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 wastewater. Despite this, there are no existing or proposed basements within the unit and there is negligible change in floor area. With this in mind, the main areas of outstanding concern relate to the following:

5.4 There should be 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.

5.5 There should be 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.

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

6.0 Impact of change of use on adequate provision of Class A1 retail services and on the sustainability of a key shopping area

6.1 The key issue is whether it is undesirable for the building to change to a Class C3 use due to the impact of the **adequate provision of retail services (criteria (d)(i) cited above)** and, where the building is located in a key shopping area, on the **sustainability of that shopping area (criteria (d)(ii) cited above)**. The site is within the designated Fortune Green Neighbourhood Centre. Policy in the NPPF and in the Development Plan gives a helpful guide on how the council should assess both adequate mix of uses in a key shopping area (and therefore an adequate provision of retail services), and the viability and sustainability of the shopping area.

6.2 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 the 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.

6.3 The proposed loss of a retail unit would contribute to an under-provision of retail units in the area and create an over-concentration of non-retail uses within the designated frontage. This would in turn harm the

long-term sustainability of the Fortune Green Neighbourhood Centre. The change in use would therefore be contrary to NPPF chapter 7, paragraph 85 (2019); London Borough of Camden Local Plan policy TC2 (2017) and policy 15 of the Fortune Green and West Hampstead Neighbourhood Plan (2015), and to the prior approval criteria in the GPDO.

6.4 The centre's designated frontage (Nos. 56-94 Fortune Green Road) consists of 19 units at the time of the Officer's site visit (06/05/2016), the current uses were as follows:

No	Business	Lawful Use
56 - 58	The Oren	B1
60	Financial and Professional	A2 part residential
62	Holistic Health	D1
64	Cromwell Security Services	A1
66	Tring	A2
68	Hampstead Dry Cleaners	A1
70	Bijou	B1
72	Prestige Beauty Clinic	A1
74	Retail	A1
76	London Habitat	A2
78	Tilast Studio	A1
80	The Medical Centre	D1
82	The Garden Room	A5
84	Regal Lets and Sales	A2
86	Ben and Dan Accounting	A2
88	Crystalise Hair and Beauty	A1
90	Bombay Nights	A3
92	Plum It All DIY and Hardware Centre	A1
94	Micco Pizza	A5

6.5 Of the 19 commercial units, 7 are in A1 retail use and 12 in non-retail use. The proposal would mean only 6 units remain in retail use, in a block that has not yet been lost to residential uses on the ground floor.

6.6 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) aim to ensure new developments do not cause harm to the character, function, vitality and viability of a centre, particularly its shopping function. In other words, they seek to protect a centre's sustainability and protect its retail provision. Policy TC2 of the Local Plan confirms 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". It notes in the supporting text that there is particular pressure for conversion to residential in Neighbourhood Centres, and the importance of adequate retail uses to ensure the centre can maintain long term sustainability by adapting to market conditions.

6.7 Appendix 4 of the Local Plan sets out a minimum proportion of premises in retail 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. The Local Plan also notes that Neighbourhood centres 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. The proposed change of use would further reduce the already threatened retail provision to only 31%, far below the 50% target. The further decline of retail premises would harm the adequate provision of retail services in the shopping area, and would also harm the sustainability of that shopping area by further reducing the retail function and footfall into the centre.

6.8 The purpose of the policy aim to retain a strong element of convenience shopping for local residents in Camden's neighbourhood centres is to support the function, character or success of that centre provided for by the existing uses. Furthermore, the Local Plan notes the importance of adequate retail uses to ensure the centre can maintain long-term sustainability by adapting to market conditions - permanent residential use is unlikely to return to retail again in future. The retail provision is therefore crucial for ensuring long-term sustainability and the ongoing viability of the shopping area. This same point is also emphasised in Policy 15 of

the Fortune Green and West Hampstead Neighbourhood Plan which states that development in the Neighbourhood Centre (including change of use) shall preserve or and enhance the character of the neighbourhood centre and provide for a diverse range of shops, businesses and economic activity.

6.9 Overall, there is already an under provision of retail uses and an overconcentration of non-retail uses within the centre, and the proposed change would further exacerbate this. The loss of the retail unit within this context would further reduce an already low retail offer in the Centre, which would in turn harm 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 harm the adequate provision of services in the shopping area, and also harm the sustainability of the shopping are. Prior approval should therefore be refused on this basis.

7.0 Design or external appearance of the building

7.1 The proposal does not involve any changes to the design or external appearance of the application building. The only building operations necessary to convert the building are internal works. Therefore, prior approval is not required in this respect. It is worth noting that, if the change of use was allowed, future occupiers of the new residential unit may want to alter the traditional shopfront, which may or may not have an impact on the character of the shopping parade and area.

8.0 Conclusion

8.1 To conclude, it would be undesirable for the building to change to a use falling within Class C3 (dwellinghouses) as the loss of the Class A1 retail unit would have a detrimental impact on the adequate provision of services in the area and the sustainability of a key shopping area, ie. the Fortune Green Neighbourhood Centre. Prior approval is therefore refused on this basis. The proposal does not involve any changes to the design or external appearance of the application building.