

13 Heath Street - 2019/3094/P



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.

1. Existing front elevation



2. View of existing roof-light from neighbouring property



3. Image of the rear of the site prior to use as a Yoga Studio



3. Rear doorway fitted with blind



4. Skylight fitted with blind



5. Rooflight with reflective glazing



Delegated Report (Members' Briefing)		Analysis sheet N/A	Expiry Date: 09/08/2019	Consultation Expiry Date: 22/09/2019
Officer Patrick Marfleet			Application Number(s) 2019/3094/P	
Application Address 13 Heath Street London NW3 6TP			Drawing Numbers See draft decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Change of use of basement and ground floors from retail use (Class A1) to yoga studio (Class D2) including alteration of a window to a door on rear side elevation and replacement rooflight (retrospective).				
Recommendation(s):	Grant conditional planning permission			
Application Type:	Full Planning Permission			
Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				
Consultations				
Adjoining Occupiers:	No. of responses	06	No. of objections	06
Summary of consultation responses:	<p>Site notice: displayed from 23/08/2019 - 16/09/2019 Press notice: displayed from 29/08/2019 - 22/09/2019</p> <p>Six objections were received from neighbouring residents including the occupants of 27 and 28 Church Row.</p> <ol style="list-style-type: none"> Class D2 is too broad as it includes assembly and leisure, cinemas, music and concert halls, swimming pools, skating rinks, gymnasium or area for indoor or outdoor sports and recreations and the use must be restricted to the application stated sole usage of yoga. The revised DAS states that the proposed use will not result in any noise pollution stating that, "Yoga by its very nature is a physical, mental, spiritual exercise that generates no noise". This is simply not the case. It is clear from the audio clip (which has been sent you under separate cover) that the level and acoustic features of noise from yoga is sufficient to affect neighbouring amenity. The roof lantern windows, and the newly installed door have clear glazing meaning that residents of 27 Church Row can see straight into the yoga studio area and vice versa. This raises significant privacy and overlooking concerns. In addition, the new door is often left open allowing full views into, and out of, the yoga studio area from/towards surrounding windows. 			

4. The light spillage from the replacement rooflight is causing a harmful impact on the amenity of the occupiers of neighbouring properties. This impact is contrary to Policy A1 of the Local Plan.
5. Should permission be granted an Operational Management Plan should be secured which would contain relevant information such as the proposed opening hours and the number of classes running daily. We would also suggest that it includes a dedicated contact for neighbours so that matters of nuisance could be dealt with as quickly as possible.
6. The submitted DAS incorrectly states the property as being in A3 use. The A3 use ceased more than 10 years ago and the established use is now A1 – retail.
7. Policy D13 of the new London Plan clearly requires that noise and other potential nuisances are managed and that appropriate mitigation measures are secured, including via planning obligations as necessary. Part E is clear that development proposals should not be permitted unless they have clearly demonstrated how noise and other nuisances will be mitigated and managed. In this case, the appropriate mitigation measures are simple and would involve ensuring that the roof lantern and door and window facing our client's property are sealed shut and that black-out blinds are incorporated to avoid detrimental light spillage after dark.

Officer comment

1. *A condition has been added to the decision notice preventing the use of the site for any use within Class D2 apart from a yoga studio.*
- 2-4. *The amenity impact of the proposals is discussed in paragraph 2.4 of this report*
5. *Given the minor scale and nature of the proposed change of use an Operational Management is considered to be an onerous obligation to secure. The hours of opening for the studio will be secured by condition, along with a condition requiring no noise to be audible from neighbouring premises.*
6. *The development description and report state that the existing unit was in retail use prior to it becoming a yoga studio.*
7. *The applicant has installed blinds and reflective glass treatment at the site to prevent light spill from the rooflight, see paragraph 2.4 for further discussion on this.*

CAAC comments:

The **Heath and Hampstead Society** raise the following objection:

1. This application is the result of the removal of acoustic separation required by a planning approval by Camden on the 31st Oct 2005. We are shocked that a Notice has not been issued by Camden to ensure that such acoustic separation must be replaced immediately to prevent the considerable noise nuisance suffered by the very near habitable rooms. It is essential that noise from the commercial premises and from associated extraction and cooling machinery be restricted in time. Doors, windows and roof-lights being given the same, or higher, stringent requirements as required by the 2005 approval.

Officer Comment

1. *The current proposals seek permission to use the ground and lower*

ground floors of the site as yoga studio and do not include the installation of any cooling/extract equipment. The amenity impacts of the proposals are discussed in full in paragraph 2.4.

The **Church Row Association** raised the following objection:

1. The old rear skylight was completely covered by an opaque soundproof cladding when it was a restaurant. Bright studio lights now shine out of 13 Heath Streets windows and skylights onto neighbouring residential accommodation. Furthermore, due to the enclosed nature of the rear courtyard, sound from the studio echoes up the walls into residents' bedrooms. Should retrospective approval be granted the applicant must be required to modify the windows with some sort of opaque material to the glazing of the rear windows, door and skylight so that light pollution is eliminated.
2. The applicant is seeking to have the Premises use changed from retail (A3). For Hampstead Village to remain a thriving retail centre it needs to retain its shops and permission should not be granted.
3. Should a change of use be granted it is not appropriate to grant such a wide and mixed range of potential uses under Class D2, many of which are wholly inappropriate for a primarily residential location, and the use should be restricted to the applicants stated sole usage of "Yoga" and specifically not "Dance" and not "Music".
4. The applicant is asking for retrospective planning approval for changes which remove the sound proofing. Residents have documented and supplied to Camden Council evidence of unacceptable noise levels. Should retrospective approval be granted the applicant must be required to install sound proofing measures to protect surrounding residents from noise nuisance from the Premises and to ensure that the Premises operate at "below the established background noise level..."

Officer comment

1. *The rear rooflight and new doorway have been fitted with blinds and reflective glazing to protect privacy and prevent light spill to neighbouring properties at night.*
2. *The proposed change of use is discussed in paragraph 2.2 below.*
3. *A condition has been added to the decision notice restricting the use of the site for any use within Class D2 apart from a yoga studio.*
4. *No external plant is proposed as part of the current proposals. A noise condition has been added to the permission which requires that no music be audible within any adjoining premises or on the adjoining highway.*

Site Description

The application site relates to a ground/lower ground floor commercial unit located within a four storey terraced property. The unit is located in a secondary shopping frontage and was previously in retail use (Class A1) but is now occupied by a Yoga Studio (Class D2).

The site is located in the Hampstead Conservation Area, it is not listed but is identified as making a positive contribution to the character of the area.

Relevant History

Application site

2005/2816/P - Retention of all existing roof plant and roof lantern enclosure on rear extension. **Approved 31/10/2005.**

9200007 - Change of Use from (Class A1) to a restaurant (Class A3). **Permission granted under appeal reference T/APP/X5210/A/92/207472/P4**

EN19/0406 - New roof to rear extension and possible change of use of basement into gym. **Open enforcement case.**

Relevant policies

National Planning Policy Framework (2019)

The London Plan (2016)

Intend to Publish London Plan (2019)

Camden Local Plan 2017

D1 (Design)

D2 (Heritage)

A1 (Managing the impact of development)

A4 (Noise)

TC4 (Town centre uses)

Hampstead Neighbourhood Plan (2018)

Policy EC1: Healthy retail mix

Policy EC2: Contributing positively to the retail environment

Policy DH1: Design

Policy DH2: Conservation areas and listed buildings

Camden Planning Guidance

CPG Design

CPG Amenity

CPG Town centres and retail

Hampstead Conservation Area statement (2001)

Assessment

1.0 PROPOSAL

1.1 Retrospective planning permission is sought for the change of use of the ground and lower ground floors from retail use (Class A1) to a yoga studio (Class D2). Permission is also sought for the replacement of a rooflight above the existing single storey rear extension and alterations to an existing window to create a new doorway to the rear of site.

Revisions

1.2 During the course of the application the applicant has submitted amended plans to show the replacement rooflight to be fitted with reflective glazing and internal blinds. The new doorway has also

been fitted with blinds, evidence of this has been submitted by the applicant and can be seen in the site photographs above.

2.1 ASSESSMENT

The material considerations for this application are summarised as follows:

- Land use
- Design and Conservation;
- Amenity of neighbouring residential occupants;

2.2 Land use

2.2.1 Policy TC4 of the Local Plan seeks to ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. Further, with regard to the Hampstead Town Centre Area, Appendix 4 of the Local Plan seeks to retain at least 50% of units in a secondary shopping frontage in retail use (Class A1). Furthermore, Policies EC1 and EC2 of the Hampstead Neighbourhood Plan seek to protect the vitality and vibrancy of Hampstead Town Centre by preserving small shop and retail premises that enhance the character and vibrancy of the area.

2.2.2 As mentioned, above the application site is located within a secondary shopping frontage where the Council would seek to retain a minimum of 50% of units in the frontage in A1 retail use. The current use of the 8 units in the frontage are included below:

26CR/ 13a Heath St - Estate agent A2

13 – (application site) currently in D2 yoga use, but lawfully A1

11 – Dry Cleaner A1

9 – Estate Agent A2

7 – Clothes Shop A1

5 – Clothes shop A1

3 – Restaurant A3

1 – Estate agent A2

2.2.3 Given the above, there are 4 units (50%) in the frontage that are currently in lawful A1 use. Therefore, the change of use of the existing site to a yoga studio (Class D2) would bring the total percentage of retail units below the 50% minimum which is contrary to the above guidance.

2.2.5 However, Paragraphs 9.31 – 9.33 of the Local Plan identify Class D2 leisure uses as providing a key role in Camden's centres alongside other food, drink and entertainment uses, with the preferred location for such uses being secondary shopping frontages. Therefore, a leisure use such as a yoga studio, whilst not a retail use, is considered to be beneficial to the vitality of the high street and would support its function as a retail destination by attracting people to the site and the wider area on a daily basis. This is considered particularly important given the growing concern over the health of our high streets, both nationally and locally, which is an issue that has been exacerbated by the current health crisis.

2.2.6 The applicant has also submitted written correspondence from a local estate agent which demonstrates that efforts were made to market and let the property as a retail unit between June 2016 and February 2019. However, the failure to secure a new permanent retail occupier during this period has led to other uses being sought.

2.2.7 Given the above, the use of the site as a yoga studio is considered to be an appropriate secondary frontage use that would not harm the over-arching character, function, vitality and viability of the Hampstead Town Centre.

2.3. Design and Conservation

2.3.1 Local Plan Policies D1 (Design) and D2 (Heritage) are aimed at achieving the highest standard of design in all developments. Policy D1 requires development to be of the highest architectural and urban design quality, which improves the function, appearance and character of the area. Policy D2 states that the Council will preserve, and where appropriate, enhance Camden's rich and diverse heritage assets and their settings, including conservation areas and listed buildings.

2.3.2 The proposed external alterations at the site are limited to the replacement rooflight at ground floor level and the lowering of a window cill to create a doorway. The size and scale of the proposed alterations are considered minor and would not have a significant impact on the original character of the host building. Furthermore, the proposed alterations would be screened from public view, given their location to the rear of the site at lower ground floor level and would not cause harm to the character and appearance of the surrounding conservation area as a result. Officers also note that the unsightly plant/extract equipment and metal cladding associated with the previous restaurant use at the site has been removed, which is welcomed in design and heritage terms.

2.2.3 Special attention has been paid to the desirability of preserving or enhancing the character or appearance of the conservation area under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Enterprise and Regulatory Reform Act 2013.

2.4 Amenity of neighbouring residential occupants

2.4.1 Policies A1 and A4 seek to protect the amenity of Camden's residents by ensuring the impact of development is fully considered. It seeks to ensure that development protects the quality of life of occupiers and neighbours by only granting permission for development that would not harm the amenity of neighbouring residents. This includes privacy, overlooking, outlook and implications on daylight and sunlight. CPG (Amenity) provides specific guidance with regards to privacy, overlooking and outlook.

2.4.2 Officers note that concerns have been raised from neighbouring residents with regard to the impact the proposed studio would have on their amenity in terms of light spill, increased noise and loss of privacy.

2.4.3 Following officer advice, the applicant has submitted amended plans to indicate that the new doorway and rooflight would be fitted with internal blinds to help prevent light emanating from the site during the evening and harming neighbouring amenity, which is considered acceptable. Photographs of the blinds in situ have also been provided by the applicant. The applicant has also confirmed that an LED light initially fitted within the rooflight recess has been removed, which is welcomed.

2.4.4 With regard to noise, Paragraph 6.102 of the Local Plan states that noise and vibration from entertainment and leisure premises can alter the noise environment through audio devices, amplified and unamplified music, footfall, congregations of people, plant and equipment, deliveries and transport and can be particularly evident when the background noise level is quieter. A yoga studio by its very nature is not considered to be an intensive noise generating use, particularly when compared with other health and fitness uses such as a gym, which this application does not permit. Furthermore, all visitors/deliveries to the site would enter via the front entrance on Heath Street, away from the more noise sensitive neighbouring windows to the rear.

2.4.5 Conditions have been added to the decision notice which control the hours of operation and stipulate that no music shall be played on the premises in such a way as to be audible within any adjoining premises or on the adjoining highway. Officers note that requests have been made from neighbours to impose a condition that would ensure the rooflight is permanently fixed shut and the door only opened for access purposes. However, this is considered to be an onerous and

unreasonable requirement, particularly as the rooflight would help to provide natural ventilation when required, which is preferred to mechanical ventilation in terms of sustainability, noise and aesthetics.

2.4.6 In terms of loss of privacy, it was clear when visiting the neighbouring site to the rear on Church Row that any views from the rooflight to neighbouring rear windows (and vice versa) would be at oblique angles and would not cause significant harm to the amenity of neighbouring residents in terms of increased overlooking. Notwithstanding this, the applicant has fitted the roof light and door with blinds to further prevent any views in/out of the studio. The glazing of the roof light has also been covered in a reflective coating to further protect the privacy of neighbouring properties.

2.4.7 As such, the proposals are not considered to result in undue harm to neighbouring amenity by way of noise disturbance, loss of privacy or excessive light spill.

3.0 Recommendation

3.1 Grant conditional planning permission

DISCLAIMER

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 17th August 2020, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'

Application ref: 2019/3094/P
Contact: Patrick Marfleet
Tel: 020 7974 1222
Email: Patrick.Marfleet@camden.gov.uk
Date: 13 August 2020

Telephone: 020 7974 **OfficerPhone**
Derek Lofty & Associates
The Lodge Studio
Cophthorne Road
Croxley Green
Rickmansworth
WD3 4AQ

DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Full Planning Permission Granted

Address:
13 Heath Street
London
NW3 6TP

DECISION

Proposal:

Change of use of basement and ground floors from retail use (Class A1) to yoga studio (Class D2) including alteration of a window to a door on rear side elevation and replacement rooflight (retrospective).

Drawing Nos: 9715-100 A, 9715-102, 9715-101 B

The Council has considered your application and decided to grant permission subject to the following condition(s):

Condition(s) and Reason(s):

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans: 9715-100 A, 9715-102, 9715-101 B

Reason: For the avoidance of doubt and in the interest of proper planning.

- 2 No music shall be played on the premises in such a way as to be audible within any adjoining premises or on the adjoining highway.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

- 3 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 or the Town and Country Planning (General Permitted Development) Order 2015 (or any statutory instruments revoking and re-enacting those orders with or without modification), the site shall only be used as a yoga studio and for no other purposes whatsoever.

Reason: To ensure that the future occupation of the building does not reduce its employment generating potential or adversely affect the adjoining premises or immediate area by reason of noise, traffic congestion and excessive on-street parking pressure, in accordance with policies G1, A1, A4, E1, E2, C2, C3 and T1 of the London Borough of Camden Local Plan 2017.

- 4 The use hereby permitted shall not operate outside the following times 07:00 to 21:00 Monday to Friday and 08:00 to 18:00 Saturdays, Sundays and Bank Holidays.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).
- 2 Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Council's Noise and Licensing Enforcement Team, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (Tel. No. 020 7974 4444 or search for 'environmental health' on the Camden website or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.
- 3 All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at <https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319> or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)

Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be

heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.

- 4 This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team London Borough of Camden 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444) . Licences and authorisations need to be sought in advance of proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106 agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.

DRAFT

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Director of Economy, Regeneration and Investment

DECISION