

Delegated Report		Analysis sheet		Expiry Date:	16/12/2020
		N/A / attached		Consultation Expiry Date:	27/12/2020
Officer			Application Number(s)		
Sofie Fieldsend			2020/5224/P		
Application Address			Drawing Numbers		
111 King's Cross Road London WC1X 9LR			Refer to Draft Decision Notice		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Change of use of basement and ground floor from financial services (Class A2) to restaurant (Class A3) and associated alterations including the installation of extraction system to rear					
Recommendation(s):		Prior Approval Required - Approval Refused			
Application Type:		GPDO Prior Approval Determination			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	00	No. of responses	00	No. of objections	00
Summary of consultation responses:	<u>A site notice was displayed on 02/12/2020 and expired on 26/12/2020.</u> <u>A press notice was advertised on 03/12/2020 and expired on 27/12/2020.</u> No objections or comments were received.					
CAAC/Local groups comments:	Bloomsbury CAAC were consulted and no response was received.					
Site Description						
<p>The application site is a three storey, plus mansard, mid-terrace house on the east side of Kings Cross Road which is located in the Bloomsbury Conservation area. The building is not designated as making a positive contribution to its character and is not listed.</p> <p>The building is vacant on ground floor, but previously had Class A2 (Accountants/Financial services), and has Class C3 residential on the upper floors.</p> <p>The site is bordered by Acton Street and Kings Cross Road. It is one of a curved terrace of six nineteenth century premises, all of which back on to the open roofed railway tunnel behind. Given this location, the rears of the terrace properties are prominently visible in views, short and long, from Acton Street and Frederick Street Garden.</p>						
Relevant History						
2019/0887/P - Change of use of basement and ground floor from financial services (Class A2) to restaurant (Class A3) and associated alterations including the installation of extraction system to rear.- Prior Approval required, approval refused 15/04/2019						
Reasons for refusal: <ol style="list-style-type: none"> 1) The siting, size and design of the proposed extraction unit to be provided in association with the change of use would have a detrimental impact on the character and appearance of the host property and Bloomsbury Conservation Area. It would thus fail to comply with Schedule 2, Part 3, Class C, Condition C.2(1)(g) 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 2019 (chapters 12 and 16). 2) In the absence of a satisfactory waste strategy in terms of adequate storage and handling of waste, the proposed change of use would be likely to have a detrimental impact on local amenity. It would thus fail 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 2019 (chapters 8, 11 and 12). 						

Relevant policies

National Planning Policy Framework 2019

Waste - chapters 8, 11, 12

Appearance - chapters 12, 16

London Plan 2016

London Plan intend to publish (2019)

Camden Local Plan 2017

- G1 Delivery and location of growth
- A1 Managing the impact of development
- A4 Noise and vibration
- D1 Design
- D2 Heritage
- CC1 Climate change mitigation
- CC2 Adapting to climate change
- CC5 Waste
- T1 Prioritising walking, cycling and public transport
- T2 Parking and car-free development
- T3 Transport Infrastructure
- T4 Sustainable movement of goods and materials
- TC2 Camden's centres and other shopping areas
- TC4 Town centre uses

Camden Planning Guidance

- CPG Design (2019)
- CPG Energy efficiency and adaptation (2019)
- CPG Amenity (2018)
- CPG Transport (2019)
- CPG Town Centres (March 2018)

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

Bloomsbury Conservation Area Appraisal and Management Strategy (2011)

Assessment

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 financial services (Class A2) to a restaurant (Class A3). Within the application form and submission documents, the applicant describes the development as a change of use from financial services (A2) 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 A2 (financial services) 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 may be provided by a building falling within Class A1 or Class A2 (as appropriate) 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;
- (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 floorspace of the existing building changing use under Class C exceeds 150 square metres;

Proposal complies- The cumulative floorspace of the existing building changing use does not exceed 150 square metres; it would amount to approximately 75.5sqm.

- (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. The developer has to apply to the local planning authority for a determination as to whether prior approval of the authority is required for the following issues-

- (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 or Class A2 (as appropriate) 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).

The Council considers that in all cases prior approval is required to assess these issues.

(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 use itself 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. The applicant has submitted a noise report for the extraction flue proposed to the rear of the site, Environmental health officers assessed this document and found it to comply with the noise standards within the Camden Local Plan if the mitigation measures suggested were installed. If the proposal was acceptable, conditions would be attached restricting noise levels and ensuring the machinery was mounted on anti-vibration isolators. It is not considered that the proposal would have an adverse impact on the amenity of adjoining residential occupiers subject to the above conditions.

(b) odour impacts of the development

3.7. The commencement of primary cooking within the unit would necessitate the installation of extraction equipment. Details of the proposed extraction equipment and odour attenuation measures were submitted as part of this application. The extraction unit would be located on the rear elevation and discharge 1m above the roof.

3.8. The application is part of a terrace of three storey buildings with residential use at first floor level and above across all of the buildings. Environmental health officers assessed the proposal and found the odour report and location of the flue 1m above the roof satisfactory in terms of odour. If the proposal was acceptable, a condition would be attached securing a maintenance/cleaning schedule.

3.9. Due to the height of the flue and the odour report demonstrating that neighbouring properties would not be adversely impacted by odour emissions, it is acceptable in this instance.

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

3.10. The proposed ground floor plan indicates that three 240L bins would be located at the rear of the building in a bin enclosure. The bins are to be labelled for food waste, general refuse and recycling. Paragraph 5.4 of their planning statement briefly outlines that the bins are proposed to be wheeled to the street at the front and presented for collection. They propose that an arrangement can be set up with Veolia, the Council's waste collector, but no details of this have been provided such as how often they will be collected and if they entered into discussions with them.

3.11 The Environmental Services Officer assessed the proposal and determined that insufficient detail had been provided in relation to the waste and refuse storage and collection. No waste strategy was provided to outline how much waste would be generated and how often the waste would be collected.

The bin store would be located at the rear of the building and the only way the refuse can be collected is bringing the bins through the restaurant. Therefore, it is considered problematic for waste and recycling collection as the bins would need to be taken through the ground floor unit to Kings Cross Road. In addition the commercial bins cannot be presented out on the street for collection, as this would add to street clutter and Veolia would only collect sacks from the front door. Also no plans have been provided showing that a footway of 2.3m would be maintained for pedestrian comfort when the waste is out for collection. Without further information, it is considered that the waste storage and collection process would harmfully impact on local amenity.

3.12. Therefore, due to insufficient detail and in absence of a waste strategy, prior approval should be refused on this basis. This application does not overcome the previous reason for refusal.

3.13 Thames Water has advised that, with regard to 'waste water network' and 'sewage treatment works' infrastructure capacity, they would not have any objection to the above planning application, based on the information provided. Thames Water also advises that, with regard to water network and water treatment infrastructure capacity, they would not have any objection.

3.14 Thames Water have provided the following waste and water comments which would have been attached as informatives if the development was acceptable:

- As per Building regulations part H paragraph 2.21, Drainage serving kitchens in commercial hot food premises should be fitted with a grease separator complying with BS EN 1825-2:2004 and designed in accordance with BS EN 1825-2:2002 or other effective means of grease removal. Thames Water further recommend, in line with best practice for the disposal of Fats, Oils and Grease, the collection of waste oil by a contractor, particularly to recycle for the production of bio diesel. Failure to implement these recommendations may result in this and other properties suffering blocked drains, sewage flooding and pollution to local watercourses. Please refer to our website for further information : www.thameswater.co.uk/help
- As required by Building regulations part H paragraph 2.36, Thames Water requests that the Applicant should incorporate within their proposal, protection to the property to prevent sewage flooding, by installing a positive pumped device (or equivalent reflecting technological advances), on the assumption that the sewerage network may surcharge to ground level during storm conditions. If as part of the basement development there is a proposal to discharge ground water to the public network, this would require a Groundwater Risk Management Permit from Thames Water. Any discharge made without a permit is deemed illegal and may result in prosecution under the provisions of the Water Industry Act 1991. We would expect the developer to demonstrate what measures will be undertaken to minimise groundwater discharges into the public sewer. Permit enquiries should be directed to Thames Water's Risk Management Team by telephoning 02035779483 or by emailing wwriskmanagement@thameswater.co.uk. Application forms should be completed on line via www.thameswater.co.uk. Please refer to the Wholesale; Business customers; Groundwater discharges section.
- If you are planning on using mains water for construction purposes, it's important you let Thames Water know before you start using it, to avoid potential fines for improper usage. More information and how to apply can be found online at thameswater.co.uk/buildingwater.
- Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.

(d) impacts of hours of opening of the development

3.15. Within the documentation, it is specified that the proposed opening hours of the restaurant would be 11:00am- 00:00am (midnight) Monday to Saturday and 11am-11:20pm Sunday.

3.16. The application site is within a frontage that comprises A1, A2, A3, A4 and A5 uses. It is noted that a number of the units in close proximity are open to midnight. However, the restaurants and pubs do close at/before 11:30pm on Sundays. Neighbouring examples include No.105 (The Racketeer

Pub) at 11:30pm, No.119 (Sen Viet) at 11pm and No.139 (Itadaki) at 10pm.

3.17. In light of the operating times of the neighbouring restaurant, it is considered that the hours of operation for this unit would be appropriate Monday - Sunday and a condition would be attached restricting the operating hours to these proposed hours if the development was acceptable to avoid increased noise and disturbance to the adjoining residential occupiers along the terrace which could give rise to anti-social behaviour.

3.18. 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/A4 uses within the vicinity.

(e) transport and highways impacts of the development

3.19. Due to the very good level of public transport accessibility level (PTAL level 6B) 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. However, it is noted that cycles could be stored in the rear yard and customers would be able to park bicycles on nearby on the public highway. 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 or Class A2 (as appropriate) 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.

3.20. 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. Although the unit is within a Central London Area, it is not identified as being in any designated shopping centre nor a primary or secondary frontage. The unit has also a lawful use as Class A2 rather than A1 use. There are no local plan policies to protect such A2 uses and the unit is not located in a key shopping area.

3.21. As such, the proposed change of use to Class A3 (restaurants and cafes) is considered acceptable and would not have a detrimental impact on the sustainability and vitality of the Central London 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.

3.22. 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.

3.23. 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 run the full height of the building to terminate 1m above the roof. Its wide diameter (0.5m), stainless steel finish and high level design that projects forward of the mansard roof combine to make the flue particularly prominent and intrusive in street views. It is noted that the termination point of the extraction unit above roof level is wider than that refused under planning ref. 2019/0887/P.

3.24 The site is bordered by Acton Street and Kings Cross Road. It is one of a curved terrace of six nineteenth century premises, all of which back on to the open roofed railway tunnel behind. Given this location, the rear of these terrace properties is prominently visible in views, short and long, from Acton Street and Frederick Street Garden. Consequently, the proposed flue would harm the character and appearance of the Bloomsbury conservation area, as well as the host building, and it is difficult to conceive of any potential mitigation.

3.25 Thus the scheme should be refused prior approval on the basis that the design, siting and scale of the flue is unacceptable in this highly prominent and open location and is considered to neither preserve or enhance the character and appearance of the host property, terrace or wider Bloomsbury Conservation Area. This application does not overcome the previous reason for refusal.

3.26 Special attention has been paid to the desirability of preserving or enhancing the character and 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.

3.27 As described in paragraph 3.11 of this report, the waste and recycling would be located at the rear of the building, and would not be visible from public views. The siting of the proposed waste facilities is considered acceptable in this application subject to a bin enclosure.

4. CONCLUSION

4.1. Prior approval should be refused for the following reasons:

(i) The siting, size and design of the proposed extraction flue to be provided in association with the change of use would have a detrimental impact on the character and appearance of the host property and Bloomsbury Conservation Area. It would thus fail to comply with Schedule 2, Part 3, Class C, Condition C.2(1)(g) 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 2019 (chapters 12 and 16).

(ii) In the absence of a satisfactory waste strategy in terms of adequate storage and handling of waste, the proposed change of use would be likely to have a detrimental impact on local amenity. It would thus fail 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 2019 (chapters 8, 11 and 12).

RECOMMENDATION: REFUSE PRIOR APPROVAL