

**alan wipperman & co.**  
**property town planning telecommunications**

**60 THEOBALDS ROAD LONDON WC1**  
**PLANNING APPLICATION STATEMENT.**

This statement is made in support of the planning application submitted on behalf of Mr Altan trading as Café Capital at the above address. It is submitted without prejudice to the current use rights under Class A1 of the Use Classes Order which Mr Altan enjoys and is in response to the proposed enforcement action and refusal for planning permission for change of use to Class A3. This statement forms part of the planning application.

The Statement has been submitted by Alan Wipperman BA MRICS MRTPI C Dip AF having regard to the national planning policy guidance, development policies in the Camden Unitary Development Plan, and any other planning policy matters as well as other relevant material considerations and matters of acknowledged importance.

**THE PROPERTY AND THE PLANNING UNIT.**

The subject property of this application is shown below in the photograph and identified edged red on the ownership and location plan attached to the TP1 form and is **60 Theobalds Road London WC1X 8SF, ground floor and basement.**



The property comprises approximately 38 sq metres gross internal area to the ground floor and 40 sq metres to the basement. The property has direct frontage onto Theobalds Road. There is a light well to the rear. There is no rear service provision and pedestrian only access into the premises.

The residential properties on four floors over the ground floor and basement have separate street entrances and are known as No. 56 and 58 Theobalds Road.

Therefore the planning unit is the existing retail use shop at ground and basement and this is also the property ownership unit. Notices have been served on the freeholder and long leaseholder accordingly but not on the residential occupiers, as these are separate property and planning units.

The property and the planning unit is shown edged red on the title plan extract which also serves as the planning application location plan.

## **BACKGROUND.**

The property is located on the north side of Theobalds Road near the junction with Grays Inn Road and in an area of mixed use. Most ground floor premises are in Class A1 use with some Class A2 and A3 uses, or have office use at ground floor such as the barrister's chambers opposite.

The upper parts of older properties are either in residential or office use. The subject property, No. 60, has residential flats over the retail ground floor and basement.

The property is located in the Bloomsbury Conservation Area but is understood not to be listed and no demolition is proposed and so listed building permission has not been sought.

## **PLANNING HISTORY.**

The property was previously used as a flower shop within Class A1 retail use until the lease was acquired by Mr Altan in November 2000 who then opened a take away sandwich shop and snack bar also serving hot drinks and hot food as an ancillary activity. He also provided some seating for customers who wished to consume their food and drinks on the premises, and then began providing some hot food options such as bacon, sausages etc. at breakfast time and lasagne and pizza at lunch time.

The equipment for providing the foods and drinks comprise small equipment such as two microwave ovens, a grill, a cooker/hob unit, toaster, coffee/tea making equipment located at the rear of the shop. There are no deep fat fryers or barbecues or rotisseries. There is a refrigerated drinks cabinet and the display counter is also refrigerated.

Given the number of customers entering and leaving the premises with cold food take away, the amount of hot food and drinks purchased, and also purchased and consumed on the premises, was and is in small proportion to the total number of customers purchasing food and drinks. The number consuming foods and drinks on the premises is likewise a small proportion of the total number of customers during the day. Consequently this use is ancillary to the main use and de minimus and is not subject to the requirement to obtain planning permission as it does not give rise to a material change to the existing Class A1 use. (This is in accordance with planning appeal decisions in such matters, for example the appeal decision in respect of an enforcement notice on an A1 use in the nearby Grays Inn Road WC1 (Ref: APP/X5210/C/86/45453).

However, following the serving of an Abatement Notice by Camden Council under the Environmental Protection Act 1990 Section 80 on the 21 May 2002, some 18 months after opening, and then the subsequent threat of Enforcement Action an application for change of use to Class A3 and installation of ventilation flue was made to the Council, No. PSX/0204145 on the 8<sup>th</sup> February 2002. This application was made for the ground floor only. The flue was proposed to be in a different location and routing, a more visually intrusive position, and more noticeable as the flue had a proposed cross-section of 400 x 400 mm.

The application was eventually reported to Committee on the 12<sup>th</sup> July 2003 with a recommendation for refusal. It was resolved on behalf of the Council by the General Purposes (Development Control) Sub-Committee on the 12<sup>th</sup> July 2003, that the application be refused because of the detrimental effect on the amenities of nearby residential occupiers by reason of noise, smells, rubbish, and business activity associated with the use contrary to policies RE2, EN1, EN6, and DS6 in the Unitary Development Plan. It was also refused because it was considered that the rear flue would harm the character and appearance of the Conservation Area, contrary to policies EN13 and EN31.

In the Report to the Committee consideration was given to the presence of Class A3 and other non-retail uses in the vicinity of the subject premises and the Committee was advised that:

***"...the majority of small scale units are in use for A1 (retail) purposes, it is considered that the loss of a retail unit here is not detrimental to the mixed use character and function of the area. As a consequence it would not be appropriate to recommend refusal on the grounds of non-compliance with Policy SH10."***

Accordingly as the proposed Class A3 use is not considered inappropriate *and is in accordance with the development plan, such that the presumption in favour of development should apply*, the Applicant has decided to re-submit an amended planning application for the current use under Class A3 together with the installation of a smaller ventilation flue. These revised proposals have been the subject of discussion and a site meeting with the Council's Enforcement Officer and having addressed concerns raised in the Committee Report the redesign is now re-submitted.

In the Applicant's view these revised proposals will meet the perceived concerns that the present level of cooking activity is causing odour nuisance to the nearby occupiers.

*However this application is made without prejudice to the existing use rights under Class A1.*

#### THE CURRENT USE.



Existing and proposed counter layout and seating for 22 covers.



Existing filter hood to be replaced by 2.0m x 1.0m canopy.

This application is therefore intended to remove any doubt about the nature of the current use and to formally extend the use to the provision of hot and cold food to customers on and off premises at the current use levels. This will allow this small business to trade with confidence and certainty that the activities will not attract further enforcement action in the future.

The current use and proposed use provides for some 22 covers to the ground floor trading area of the unit. The serving and display counter remains where it is presently located and the basement ancillary areas remain as they are with rear internal staircase access. The existing chimney breast will also be removed.

The gross internal floor space is approximately 38 sq. metres to the ground floor area and 40 sq. metres to basement ancillary use area.

Storage of rubbish is within the premises temporarily and then rubbish is collected regularly for disposal under a contract with the London Borough of Camden Environment Department.

The proposed (and existing) use of internal is shown on drawing no. 621/1/C together with the external flue routing and design.

## THE PROPOSALS & DESIGN STATEMENT.

The drawings also show the proposals. It is now proposed to provide a canopy hood over the cooking area of 2.0 x 1.0 metres (as shown) at the rear of the ground floor within the premises and this will be served by an internal boxed flue from the hood to the rear external window.

The rear external window cannot be readily seen by anyone in the street as it is part of an enclosed light well nor easily by others save by looking down as this view is obscured. (See A-A on the drawing).

The flue will then be taken up the brickwork away from the windows of the residential occupiers over and around the subject property in the position as shown thus minimising the visual impact and especially to the occupiers of flats over. This had been a matter of concern and a material consideration in the refusal of the previous planning application.

The duct size is now proposed to be 200 x 300mm and not 400 x 400mm and so can sit between the brickwork return and the soil vent pipe as shown in cross section. Visibility to the residential occupiers is thus minimised and confirmed as shown on the drawing. Insofar as there is visibility the colour will be a dull grey and is in any event not untypical building services installation as may well be expected in and on mixed use buildings in Inner London. (See C-C on the drawing).

The ductwork will sit between the brickwork and the svp.



Design has thus taken account of the planning issue of visual amenity and the flue has been designed both in terms of size and position to minimise and blend in with the building on a better routing than previously submitted. This should address the material considerations and matters of acknowledged importance as covered below.

The proposed installation has also been designed to minimise noise and vibration to accord with concerns of noise and odour control. The Applicant has taken advice and following site surveys the flue not only meets visual amenity criteria but it has also been confirmed that the installation can be provided with an accelerator to ensure that at eaves height there will be effective dispersal and the noise levels arising are acceptable.

### Odour Control:

The cooking area is at the rear of the ground floor and the proposed canopy will cover the main cooking area which reflects the small scale of this operation, the canopy requirement being 2.0m x 1.0m. Melair Limited propose the installation of an inline centrifugal fan unit with attenuator to provide for 18 air changes per hour within the ground floor area. In take of air will be mainly from the ventilated shopfront and proposed new frame window.

This is detailed in the report by Melair heating and Ventilating Limited dated 16<sup>th</sup> September 2003 as attached to and forming part of this application.

#### **Noise:**

Having previously advised as to the noise levels in a report dated 19<sup>th</sup> June 2002, Contrasound Limited have reported on the revised installation noise levels and these are again found to be within the acceptable limits, and so accord with the Council's policies on noise.

The original report and quotation update are enclosed and form part of this application. The background noise levels were found to be  $L_{A90,1hr}$  of 50dBA and so the specific noise level of 40dBA at 1.5 metres should not be exceeded is confirmed in their quotation of the 25 September 2003 with acoustically clad bend.

Consequently the revised application should meet the technical requirements of the Council's policies in respect of harmful effects of Class A3 uses in Policy SH18 and DS6 referred to below and the noise level should not exceed background noise levels nor cause disturbance to the closer windows of residents nearby.

This part of this Planning Statement meets the recommendations of Planning Policy Guidance Note 1 Annex A, with regard to the explanation of the design principles of the proposals.

#### **Vibration:**

Anti-vibration couplings are proposed for the flue installation for the entire run as shown and specified on the drawing.

#### **PLANNING POLICIES.**

This Statement has regard to national and local planning policy and other material considerations and confirms the following:

- (i) The revised proposed installation and change of use is now in accordance with the development plan and so the presumption in favour of development applies (Section 54a of the 1990 Town and Country Planning Act (As Amended)).
- (ii) The proposals meet the technical criteria and standards in the Unitary Development Plan and so accord with the Plan, or insofar as these are not entirely satisfied there is no demonstrable harm arising.
- (iii) There is now no demonstrable harm to any matter of acknowledged importance.
- (iv) There are positive planning gains from the proposals including provision of suitable odour emission control and noise/vibration control and the amelioration of any odour nuisance. There is improved residential amenity for occupiers over the subject property by the introduction of controlled and conditioned use (as opposed to the uncertainty for the Applicant and the Occupiers from de minimus activities associated with the main use), limitations of the extent and intensity of use.

Consequently this application can be recommended for approval by Officers of the Council and approved by the appropriate Committee without giving rise to any policy concerns or creation of any planning issues of precedent.

#### **PLANNING POLICY GUIDANCE NOTE 1.**

The design statement has been submitted and accords with PPG1 Annex A.

Paragraph 40 of PPG1 requires decision makers to assess:

**"whether the proposed development would cause demonstrable harm to interests of acknowledged importance"**

and that a planning application should be determined in accordance with the Plan unless material considerations indicate otherwise. Planning conditions can be used where there are clear land-use planning justification for doing so.

The proposed change of use in this application in this location is in accordance with the Plan. This has been confirmed in the report to the Planning Committee in respect of the previous application. Planning issues of visual and residential amenity have been addressed in this revised application and there are now no adverse material considerations to be taken into account.

#### **PLANNING POLICY GUIDANCE NOTE 4.**

This states that:

**"Uncertainty over planning matters can be a source of insecurity and expense and, especially in the case of small firms, may threaten their growth or existence."**

This is precisely why this application is being re-submitted. It is a matter of fact and degree in this case as to whether there has been a breach of planning control and to take enforcement action would be expensive and potentially ruinous for this small business.

**"Consideration should always be given, however, to whether specific problems associated with a development proposal might reasonably be overcome by granting permission subject to conditions. Examples might be where it is desirable to control times of operation or to prevent weekend working in order to protect amenity."**

The applicant is seeking permission for the current activity and is quite willing to accept reasonable conditions which should control the nature of the use if the Council feel these would allow the permission to be granted. Some suggested conditions are appended.

This application also reflects the exploration and discussion with the Council and reasonably overcomes the Council's concerns subject to appropriate conditions and so fully meets the intentions of PPG4.

#### **PLANNING POLICY GUIDANCE NOTE 15.**

The property is located in the Bloomsbury Conservation Area and this has been cited as a reason for refusal on the previous application on rounds of demonstrable harm to visual amenity with regard to the rear flue.

However the buildings around the flue are not listed and it has only limited indeed immediate impact. It is in a mixed use central area, and one that is lively and prosperous. Flues and other plant and equipment are not uncommon in such areas on listed and non-listed buildings and can be expected to be seen, more so on the rear of buildings or in light wells or other obscured locations.

In this case the flue size and routing has now been changed and is of minimal visual intrusion and wholly in accord with what might reasonably be expected to be seen in such locations. PPG15 states:

**"While conservation (whether by preservation or enhancement) of their character or appearance must be a major consideration, this cannot realistically take the form of preventing all new development: the emphasis will generally need to be on controlled and positive management of change. Policies will need to be designed to allow the area to remain alive and prosperous, and to avoid unnecessarily detailed controls over businesses and householders"**

The revised proposals now fully meet the reasonable interpretations and intentions of PPG15 with regard to area vitality.



#### **PLANNING POLICY GUIDANCE NOTE 18.**

Since the previous application was refused the Council have now explored whether the business can be allowed to continue in its present form and although the Council requires a Class A3 use to be obtained to clarify the nature of the existing use with a flue ducting system; their officer has indicated that a reduced flue cross section together with noise and odour controls would mean that the application could be considered more favourably, especially when combined with appropriate planning conditions.

These proposals therefore seek approval to current levels of activity and so approval would accord with intentions of Paragraph 15 of the Note.

#### **PLANNING POLICY GUIDANCE NOTE 23.**

With the installation of the proposed duct at the higher than eaves level and given the ventilation and air change rate the existing use would be highly unlikely to give rise to any environmental pollution as has been perceived by residents in the past.

The amount of cooking will remain at a low level and the extraction facilities will disperse the odour.

As required by PPG23, the applicant has obtained specialist advice and the installation has been designed to meet the Council's technical requirements in respect of noise and odour control. The Heating & Ventilating Engineers and Noise Consultants advise there will be adequate air change and dispersal and yet the ambient noise levels will still be below background noise levels and the noise levels close to windows will likewise be acceptable.

Anti-vibration mountings and couplings have also been specified such that vibration is minimised.

PPG23 advises:

**" A number of measures can be introduced to control the source of, or limit exposure to, noise. Such measures should be proportionate and reasonable.."**

This has been considered and undertaken consequently compliance with PPG23 has been achieved insofar as this may be required under the Planning Acts and it is anticipated that the proposals should meet the requirements of the Council's Environmental Health Team. Should there be any concerns arising in the matter then these can be discussed.

#### **PLANNING POLICY GUIDANCE NOTE 24.**

PPG24 Annex 4 sets out conditions which can be used where development may be noise sensitive and the applicant is happy to accept appropriate conditions as set out in the Annex, in particular conditions 1 and 2 if considered appropriate by the local planning authority.

PPG24 suggests the following condition formats both of which would be simple and be acceptable to the Applicant:

**"No [specified machinery] shall be operated on the premises before [time in the morning] on weekdays and [time in the morning] on Saturdays nor after [time in the evening] on weekdays and [time in the evening] on Saturdays, nor at any time on Sundays, Bank Holidays or Public Holidays.**

**Notwithstanding the provisions of Article 3 of the Town and Country Planning General Development Order 1988, no further plant or machinery shall be erected on the site under or in accordance with Part 8 of Schedule 2 to that Order without planning permission from the local planning authority".**

## **NATIONAL PLANNING POLICY SUMMARY.**

These proposals fully meet the objectives and criteria of national planning policy and as these are material considerations and are satisfied the application can be approved subject to local planning policies and other material considerations.

## **CIRCULAR 11/95.**

In addition to the Guidance Notes planning permission conditions suggested in PPG 24 and Circular 11/95 set out suggested conditions for permissions. Appropriate and acceptable conditions could be:

**"Hours of use (restaurants etc)**

**The use hereby permitted shall not be open to customers outside the following times [ ]. "**

The Circular makes clear that:

**"Other matters are subject to control under separate legislation, yet also of concern to the planning system. A condition which duplicates the effect of other controls will normally be unnecessary, and one whose requirements conflict with those of other controls will be ultra vires because it is unreasonable".**

Some of the concerns of Council Officers are better controlled by other legislation and remedies for problems arising from odour nuisance for example can be covered under the Control of Pollution legislation.

## **LOCAL PLAN POLICY - THE CAMDEN UDP POLICY.**

The Camden UDP was adopted on the 2<sup>nd</sup> March 2000. It is the statutory local plan for the area and the Officer's Report to Committee has already given consideration to the relevant policies by which the application should be assessed.

These are as follows:

**"EN1 The Council will seek to ensure that developments will not have an adverse impact on the amenity of the surrounding area and the quality of the wider environment in the short and long term. In particular, the Council will need to be satisfied that developments, whether buildings or changes of use, protect or improve the physical environment, including the Borough's living and working conditions, and its visual amenity."**

This is a general policy and applicable to more significant developments and proposals for plant and equipment would generally be unlikely to improve the visual amenity although certainly would improve living and working conditions.

The real planning issue is there demonstrable harm arising that would require the presumption in favour of development to be set aside and this cannot be so for the many reasons given above. The revised siting and size is discreet and appropriate and does not have an adverse impact such that it now meets the criteria of this policy.

**"EN6 When considering proposals for, or which include, ventilation ducts and/or air handling equipment the Council will need to be satisfied that such equipment can be operated without causing injury to local amenity in terms of their appearance, location, noise and smell. In assessing the noise impact the Council will have regard to the noise levels set out in Development Standard DS6 (chapter 16)."**

The previous application did not fully address the Council's concerns although some of these appear to be perceived rather than demonstrable. This new application has had regard to the Council's criteria especially as set out in Policy DS6 and advice from Heating and Ventilating



Engineers and Noise Consultants has been taken and incorporated into the application. The proposals now meet the criteria set out in this Policy.

Furthermore the previous reasons for refusal were noise, smells, rubbish and business activity. In the case of the former two concerns these have been addressed and in the case of the latter these can apply to any Class A1 use, and in exactly in the same way to a Class A1 sandwich bar. Given that conditions can be imposed with regard to hours of operation and noise there can be no demonstrable harm arising from a conditioned and controlled change of use.

**"EN31 The Council will seek to ensure that development in conservation areas preserves or enhances their special character or appearance, and is of high quality in terms of design, materials and execution. Applicants be expected to provide sufficient information about the proposed development and its immediate setting to enable the Council to assess the potential effect of the proposal on the character or appearance of the conservation area."**

As with Policy ENV1 the siting of the ductwork has been revised to take account of the visual amenity and character of the Conservation Area. The duct size has been reduced and the material chosen is galvanised stainless steel which will weather to a dull matt grey in accordance with the preferred colour advice from the Council's Officer on site. There will not be demonstrable harm and as has been noted in PPG15 unnecessary and detailed controls should not be applied in Conservation Areas with commercial activities. The proposed siting is appropriate and meets the policy criteria.

This approach is further strengthened since the Council indicate the following:

**"SSH1 The Council will seek to sustain and enhance shopping and local service provision by promoting the vitality and viability of town centres and encouraging the provision of a wide range of shops and services that are well-located and accessible."**

There are many intensive employment buildings in the immediate area and there is heavy demand for easily and quickly obtained and cheaper foods and drinks. There is no over-supply of A3 uses and therefore this proposed use is well located and accords with Policy SH10 and SH18.

**"SH10 Outside designated shopping centres, a change of use from a use within Class A1 to a non-retail use will not normally be permitted except where the following criteria are satisfied:**

**(a) the proposal would not be detrimental to the character and function of the area; and**

**(b) the proposal would not be detrimental to local amenity, environment and transport conditions.**

**Within the Central London Area, reference should also be made to the area descriptions given in chapter 14."**

This proposal now accords with this Policy as it has been confirmed in the previous application report that the use is acceptable and for many reasons given above meets criteria (a) and (b).

**"SH18 When considering applications for planning permission for A3 use, the Council will take into account the need for and, where appropriate and necessary, impose conditions to control:**

**(a) the hours of operation;**

**(b) the arrangements to be made to overcome potential loss of amenity and noise disturbance (including the siting, appearance and operational noise levels of ventilation handling equipment);**

**(c) the provision of tables, chairs, litter bins and advertisements on retail forecourts and on the highway; and**

**(d) the storage and disposal of refuse and customer litter.**

In addition, the Council will take into account the number and distribution of A3 uses and their relationship with other uses and will seek to avoid a cumulatively harmful effect upon loss of retail outlets,

traffic, parking and local residential amenity".

The prevalence of the A3 use in the area has been addressed and satisfied already. The need for conditions in respect of criteria (a), (b), (c) and (d) are not objected to and some conditions are proposed as part of the application by way of assistance following advice from Circular 11/95 referred to above. Furthermore:

**"The Council recognises the high level of demand in Camden for uses falling within Class A3 (for example, restaurants, cafes, wine bars, clubs, licensed premises and hot food takeaways). It also recognises the important contribution that such uses can make towards local leisure and employment provision and towards increasing the attractiveness of shopping centres outside normal business hours".**

However, although the property is open early for breakfasts it is not proposed to open late and the hours of operation are offered as conditions upon the use.

**"To this end, the Council will also encourage adequate operational arrangements and facilities to be provided, in consultation with the Council's Environmental and Consumer Protection Service, to ensure that environmental problems and disturbance (for example, through noise, environmental impact, smell and litter) are kept to a minimum. The applicant will normally be expected to supply evidence of the type, siting, appearance and operational noise levels of ventilation handling equipment."**

This information has been provided with the application and any further information as may be required can be provided or issues arising discussed. Given that the Council requires appropriate measures for noise levels to be reduced this has been done and meets the requirements set out below:

**"The Council considers that for new developments involving noisy plant/equipment or other uses, design measures should be taken to ensure that noise levels predicted at a point one metre external to sensitive facades are at least 5dB(A) less than the existing background measurement (LA90) when the equipment is in operation. Where it is anticipated that equipment will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses in the noise (bangs, clicks, clatters, thumps), special attention should be given to reducing the noise levels from plant and equipment at any sensitive façade to at least 10dB(A) below the LA90 level."**

#### **SUMMARY OF LOCAL PLAN POLICY AND CRITERIA.**

In summary the proposed use and the ductwork to be installed as re-sited and revised now meet the policy criteria of the Unitary Development Plan as they do not give rise to any demonstrable harm (or detrimental effect) to any matter of acknowledged importance, in respect of noise, smells, rubbish or business activity, nor do they harm the character and appearance of the Bloomsbury Conservation Area or visual amenity given the mixed use nature of this part of Central London.

The proposals of this new small business add to the services and vitality of the locality, and appropriately conditioned can be properly controlled insofar as this is appropriate under planning legislation.

The technical reports submitted show the proposals meet the criteria of policies EN6 and DS6 and with proposed conditions can now be approved.

#### **SUMMARY & COMPLIANCE STATEMENT**

Following exploration and discussion with the Council's Enforcement Officer as recommended by PPG18 the revised proposals should now meet the reasonable requirements of the Council in respect of matters of acknowledged importance as the proposals accord with the policies of the development plan so that the presumption in favour of development applies, accord with national planning policy guidance in respect of PPG1, PPG4, PPG15, PPG18, PPG23 and PPG24 and with

the proposed conditions acceptable to the applicant as set out below would allow a properly conditioned Class A3 use to take place and bring certainty for this small business.

I would therefore respectfully request the Council Officers to recommend this revised application and for the Members to approve it.

Alan Wipperman BA MRICS MRTPI C Dip AF

6 October 2003

## **APPENDIX 1**

### **SUGGESTED PROPOSED CONDITIONS ACCEPTABLE TO THE APPLICANT:**

#### **1 Hours of Use:**

The use hereby permitted shall not be open to customers outside the following times Monday to Friday 6.30am to 6.00 pm and on Saturday 6.30am to 5.00pm, and will remain closed to customers on Sundays. (The use may commence earlier and finish later before and after opening).

#### **2 Extent of Use:**

The internal seating shall not exceed 22 covers and shall only be provided at ground floor level.

#### **3 Commencement of Use:**

The A3 use shall not commence until the plant and equipment proposed and are installed as shown in drawing 162/1/C in accordance with the recommendations of the reports provided and are fully operational. At all times when hot food is being prepared the equipment shall be operated and maintained in good working order.

#### **4 Equipment:**

Notwithstanding the provisions of Article 3 of the Town and Country Planning General Development Order 1988, no further catering plant or machinery shall be installed on the premises without the prior written permission from the local planning authority.