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# Appeal Decision

Site visit made on 11 November 2013

**by J L Cheesley BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14 November 2013**

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**Appeal Ref: APP/X5210/A/13/2201008**  
**66 and 66A Goodge Street, London W1T 4NG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Marcus Cooper, The Cooper Property Organisation Ltd against the decision of the Council of the London Borough of Camden.
  - The application Ref 2013/1603/P, dated 19 March 2013, was refused by notice dated 12 June 2013.
  - The development proposed is change of use of the ground floors and lower ground floors (basement) from private library (sui generis) for either Retail Use (Class A1); or Financial and Professional Services Use (Class A2); or for use as a Coffee Shop (mixed Class A1/A3–sui generis).
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## Costs

1. An application for costs has been made by Mr Marcus Cooper, The Cooper Property Organisation Ltd against the Council of the London Borough of Camden. This application is the subject of a separate decision.

## Decision

2. The appeal is dismissed.

## Conservation Area

3. The appeal site lies within the Charlotte Street Conservation Area. The *Planning (Listed Buildings and Conservation Areas) Act 1990* imposes duties requiring special regard to be had to the desirability: at Section 72(1), of preserving or enhancing the character or appearance of a Conservation Area.
4. The Council has not raised concern with regard to the effect of the proposal on the appearance of the Conservation Area. The proposal is for a change of use only. Any alterations to the frontages requiring planning permission would need to be the subject of a separate planning application. Thus, I consider that the proposal would preserve the appearance of the Conservation Area.

## Main Issues

5. The Council has not raised concern with regard to the proposals for either Retail Use (Class A1); or Financial and Professional Services Use (Class A2) and
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has granted planning permission for these uses (Ref 2012/5015/P). Thus, I consider the main issues to be:

the effect of the proposed coffee shop on the mixed use character of the surrounding area; and

the effect of the proposed coffee shop on the living conditions of occupiers of adjacent and nearby residential properties, with particular reference to noise and disturbance.

## **Reasons**

6. The appeal site lies within Fitzrovia in the Central London Area and within a commercial frontage in the London Borough of Camden Revised Planning Guidance for Central London (Food, Drink and Entertainment, Specialist and Retail Uses) Supplementary Planning Document (2007). This guidance states that within such a commercial frontage, food, drink and entertainment uses may be granted normally to a maximum of 25% of total units for each frontage. If such uses are allowed to dominate, this may harm the overall mix of uses.
7. The appeal property is within an area of mixed use, including a number of residential properties above commercial premises. There is an abundance of food and drink establishments in the immediate vicinity. I accept that a coffee shop would have a significant level of A1 retail use and note that there would be no kitchen and no need for extraction units. Nevertheless, the proposal would provide seating for customers to consume food and drink on the premises. In my opinion, this would unacceptably increase the predominance of food, drink and entertainment uses, which would be to the detriment of the mixed-use character of the area.
8. Residents living in the surrounding area must currently experience a high level of background noise from existing activities and traffic. If I were to allow the appeal, I consider it would be reasonable and necessary to impose a condition regarding hours of opening to ensure that the proposed use as a coffee shop would not exacerbate the existing situation. Therefore, I consider the Council's second reason for refusal could be overcome by the imposition of such a condition. Under these circumstances, the proposal would accord with Policies DP26 and DP28 in the Camden Development Policies 2010-2025 with regard to residential amenity. In this particular instance, I consider that these policies are broadly in accordance with the National Planning Policy Framework as far as they meet the Framework's core principles; particularly that planning should be seeking a good standard of amenity for all existing occupants of land and buildings. However, in the light of the harm I have identified above, this matter does not justify allowing the appeal.
9. In reaching my conclusion, I have had regard to all other matters raised including appeal decisions for other properties. I have considered the proposal before me on its individual merits within the context of the surrounding area.
10. I have been referred to changes to permitted development rights with regard to temporary flexible use. In order to take advantage of these changes, the planning permission Ref 2012/5015/P would need to be implemented first and

then there would only be a temporary change of use for a maximum area of 150m<sup>2</sup>. Thus, I do not consider this to be a comparable fall back position.

11. For the reasons stated above, whilst the living conditions of nearby residents would not be unduly affected with the imposition of a suitable opening hours condition, I consider that the proposed use as a coffee shop would have an unacceptably adverse effect on the mixed use character of the surrounding area. Therefore, the proposal would be contrary to Policies CS5, CS7 and CS9 in the Camden Core Strategy 2010 and Policy DP12 in the Camden Development Policies 2010-2025 where they seek to protect the character of an area; seek to protect small shops outside centres; and seek to consider the cumulative impact of food and drink establishments. In this particular instance, I consider that these policies are broadly in accordance with the Framework as far as they meet the Framework's core principles; particularly that planning should be taking account of the different roles and character of an area.

*J L Cheesley*

INSPECTOR