

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	17/01/2013
		N/A / attached	<b>Consultation Expiry Date:</b>	26/12/2012
<b>Officer</b>			<b>Application Number(s)</b>	
Paul Gardiner			2012/5895/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
257 - 258 Tottenham Court Road London W1T 7RE			See decision notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
Change of use of part ground floor from retail (Class A1) to restaurant and takeaway (Class A3 and A5) and change of use from office (Class B1) to mini cab office (Sui Generis) and installation of extract duct on rear elevation within enclosed courtyard.				
<b>Recommendation(s):</b>		Refuse Planning Permission		
<b>Application Type:</b>		Full Planning Permission		

<b>Conditions or Reasons for Refusal:</b>	Refer to Draft Decision Notice					
<b>Informatives:</b>						
<b>Consultations</b>						
<b>Adjoining Occupiers:</b>	No. notified	<b>67</b>	No. of responses	<b>11</b>	No. of objections	<b>11</b>
<b>Summary of consultation responses:</b>	<p>A site notice was displayed from 05/12/2012 to 26/12/2012.</p> <p>The occupiers of 8 Gower Street, 48, 77, 104, 111, 112 Bedford Court Mansions, 14 Adeline Place, and 117 Bedford Avenue objected to the proposal, in summary their grounds are:</p> <ul style="list-style-type: none"> <li>• The type of uses and late night operation proposed would produce additional deliveries and waste collection, and would attract intoxicated individuals and groups, resulting in increased generation of noise and disturbance. The proposed uses would also attract individuals' intent on victimisation and opportunistic crime. As such the proposal would have a significant adverse impact on the amenity and security of surrounding residential occupiers.</li> <li>• The minicab office would result in increased traffic generation, car parking congestion and a further loss of resident's car parking spaces due to an existing inability to enforce car parking restrictions.</li> <li>• An additional restaurant/takeaway/cafe would further exacerbate adverse impacts arising from an existing overconcentration of eating and drinking establishments.</li> <li>• The loss of retail frontage would unacceptably alter the existing retail character of the area, which is protected by planning policy. An approval would create an unacceptable precedent for changes of use in this area.</li> <li>• The proposed uses are inconsistent with the retail and residential character and function of the surrounding area, and would harm the character of the adjoining Bloomsbury Conservation Area.</li> <li>• Existing unauthorised uses are operating on the application site outside of planning and licensing control. The existing uses result in a poor appearance, noise nuisance, anti-social behaviour, encroachment of the pedestrian footpath and littering. Enforcement action has been ineffective in controlling these existing breaches.</li> </ul>					
<b>CAAC/Local groups* comments:</b> <small>*Please Specify</small>	<p><b>Councillor Harrison</b> objects to the proposal. In summary, his concerns are:</p> <ul style="list-style-type: none"> <li>• The loss of specialist retail is contrary to Policy CS7 and would cause harm to the character and function of this centre.</li> <li>• The provision of a minicab office and restaurant would have a harmful impact to residents in close proximity.</li> </ul> <p><b>Bloomsbury Association</b> objects to the proposal. In summary, their concerns are:</p> <ul style="list-style-type: none"> <li>• The application contains such conflicts and inconsistencies in the details provided that it may be overturned on judicial review or prove unenforceable.</li> <li>• The application is incorrect in statements that it contains about the</li> </ul>					

uses that exist and are proposed and their respective areas. It is vague as to the extent of the proposed use at basement and externally at street level.

- The application seeks to legitimise an A3/A5 café use by claiming that it is an existing A1 use for which no recognition of change of use is made.
- Impact on residential amenity through undeclared and unenforceable 24/7 use, particularly in catering for clubbers and minicabs in the early hours and the noise generated from customers at night.
- Loss of prime retail frontage (Use Class A1) on Tottenham Court Road, which is a street designated as a Central London Frontage under Policy CS7 of the LDF.
- Impact on the viability of adjacent A1 uses and establishment of a precedent in terms of future use of the building on redevelopment.
- The proposal is in contravention of LDF Policies, DP12 and DP30 and Planning Guidance for Central London.
- The proposal adversely affects the environment of Bedford Avenue, a primarily residential street, and the adjacent Bedford Court Mansions in particular.
- Impact on crime and security, again in catering for clubbers and minicab use late at night.
- Increased traffic generation, primarily minicabs and the impact of illegal minicab parking on the availability of public and residents' parking.
- Noise from early morning deliveries and waste collection.
- The impact of the proposal on the Bloomsbury Conservation Area.
- Errors of fact in supporting statements.

## Site Description

The application relates to a ground floor retail unit in a six storey plus basement purpose built building located at the corner of Tottenham Court Road and Bedford Avenue. The building comprises an electronics shop (Class A1) and a coffee shop (Class A1) on the ground floor and offices on the floors above. The basement is accessed from the coffee shop and is used for storage. There is also an internal lift from the basement to the electronics shop. The site is not in a conservation area but it is within Central London Frontage.

## Relevant History

### Application Site:

2012/4191/P - Change of use of basement and part ground floor from retail shop (Class A1) and offices (Class B1a) to restaurant/hot food takeaway and mini-cab office (Sui Generis). **Withdrawn 12/10/2012.**

Withdrawal due to incorrect ownership details (certificate B), and limited information.

2011/0933/P - Change of use of part of ground floor level from retail (Class A1) to hot-food takeaway (Class A5), alterations to shop front on Bedford Avenue and installation of extract duct on rear elevation within enclosed courtyard. **Refused 21/09/2011** (officer recommendation for approval overturned at Committee).

### Reason:

1. The proposed development, on account of its proximity to residential properties and an existing local concentration of food and drink uses, would have a harmful cumulative impact on residential amenity by reason of the excessive noise and disturbance generated by customers using the premises, particularly late at night, contrary to policies CS5 (Managing the impact of growth and development) and CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policies DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

2010/4161/P - change the use of approximately 75sqm part of the electronic shop (Class A1) to takeaway (Class A5) on the ground floor level including alterations to shopfront and use of basement level ancillary to the proposed restaurant/takeaway. **Refused 27/10/2010.**

### Reasons:

1. The proposed change of use would cause harm to the character, function, vitality and viability of the specialist retail frontage on Tottenham Court Road, which forms part of the Central London Area, by reason of the loss of retail floor space (Class A1) within the frontage of which the unit forms part, contrary to policy R7A (Protection of shopping frontages and local shops - Central London Frontages, Town Centres and King's Cross) of London Borough of Camden Replacement Unitary Development Plan 2006, policy CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) the London Borough of Camden Local Development Framework Development Policies.

2. In the absence of an acoustic assessment carried out by a qualified acoustician in accordance with the Council's noise standards the existing flue when in operation may cause unacceptable noise disturbance to the nearest residential properties, contrary to policies SD6 (Amenity for occupiers and neighbours), SD7 (Light, noise and vibration pollution), SD8A (Disturbance from plant and machinery) and Appendix 1 of the London Borough of Camden Replacement Unitary Development Plan 2006,

policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy, and policies DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses), DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise and vibration) of the London Borough of Camden Local Development Framework Development Policies.

An appeal was lodged on 18/02/2011 which was dismissed on 22/06/2011. The Inspector upheld both the council's reasons for refusal.

The Inspector also considered that the proposed change of use would introduce a use in closer proximity to residential and hotel premises, initiating a change in the retail function, and extending activity and potential noise nuisance into the evening.

EN11/0066 - Enforcement complaints were received on 28/01/11 and 22/03/11 alleging an unauthorised change of use of the property from a Class A1 retail shop to a Class A3 café and a mini-cab operator with associated advertisements and alterations to the shopfront. Following an investigation no breach of planning control was found. **Request closed 12/12/2012.**

EN11/0344 – A further enforcement complaint was received 7/04/2011 alleging an unauthorised change of use to a mini-cab operator with associated advertisements. Following an investigation no breach of planning control was found. **Request closed 20/04/2012.**

#### Neighbouring sites:

#### **256 Tottenham Court Road**

2010/4434/P - change of use of the ground floor from A1 (retail) to dual-use retail and restaurant (Class A1/A3). **Refused 02/11/2010.**

#### Reason:

1. The proposed change of use would cause harm to the character, function, vitality and viability of the specialist retail frontage on Tottenham Court Road, which forms part of the Central London Area, by reason of the loss of retail floor space (Class A1) within the frontage of which the unit forms part.

An appeal was lodged on 04/04/11 and was dismissed on 12/07/11. The Inspector upheld the council's reasons for refusal.

### **Relevant policies**

#### **National Planning Policy Framework 2012**

#### **London Plan 2011**

#### **LDF Core Strategy**

CS2 Growth Areas

CS5 Managing the impact of growth and development

CS7 Promoting Camden's centres and shops

CS11 Promoting sustainable and efficient travel

CS14 Promoting high quality places and conserving our heritage

CS18 Dealing with our waste and encouraging recycling

#### **Development Policies**

DP12 – Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses

DP16 – Transport implications of development

DP19 – Managing the impact of parking

DP21 – Development connecting to the highway network  
DP24 – Securing high quality design  
DP26 – Managing the impact of development on occupiers and neighbours  
DP28 – Noise and vibration  
DP30 - Shopfronts

### **Camden Planning Guidance (2006) and (2011)**

### **Revised Planning Guidance for Central London - Food, Drink and Entertainment, Specialist and Retail Uses' (2007)**

## **Assessment**

### **Proposal**

Planning permission is sought for a change of use of basement and ground floor levels from retail (A1) to part retail (A1), and part restaurant/takeaway (A3/A5). Permission is also sought at basement level to provide for a part change of use from ancillary storage space associated with the ground floor retail unit (A1), to minicab office (sui generis).

The proposed change of use would subdivide the existing ground floor retail unit and coffee shop (approx 187sqm), to create a new takeaway and restaurant (102sqm), with the remaining 85sqm retained as a retail unit and coffee shop.

The new restaurant/takeaway would front Tottenham Court Road, occupying two of the three arched sections present on this façade. The retail unit would utilise the remaining northern-most arched section. Although not indicated on the elevations submitted for consideration, a new entrance door would be inserted to allow for separate access to the altered retail unit. The existing entrance located in the middle-arched section would be utilised by the new restaurant/takeaway.

The proposed change of use would subdivide the existing basement ancillary storage and offices, with the creation of a kitchen serving the restaurant/takeaway above. A new minicab office would be located at this level, accessed via the existing coffee shop entrance on Bedford Avenue.

New extract fan ducting associated with the basement kitchen would be located along the rear elevation of the site. The rear elevation is enclosed by no.1 Bedford Avenue and no.15 Morwell Street.

The application form submitted with this application indicates that the hours of operation for the proposed restaurant/takeway use would be between 12pm and 11pm Monday to Saturday and closed on Sundays and Bank Holidays.

The current application is similar to that considered and refused under 2010/4161/P, differing only by an increase in floor space of the proposed restaurant/takeaway from 75sqm to 102sqm and the provision of a minicab office at basement level.

The most recent planning application on the site (2011/0933/P) sought permission for a 33sqm takeaway, accessed from Bedford Avenue.

The main issues for consideration are:

- Land use
- Design and appearance
- Neighbouring amenity
- Transport impact

## Land Use

The proposal would result in the loss of more than half of the existing electronics retail unit on the ground floor level and the loss of ancillary storage space within the basement.

The application site lies within the designated Tottenham Court Road/Charing Cross Road Central London Frontage. The explanatory text to policy CS7, notes that Tottenham Court Road is well-known for its concentration of furniture and electrical goods stores. Within this area, policy CS7 seeks to promote and preserve its specialist retail character by managing the level of shop and food, drink and entertainment uses. CS7 requires that any introduction of these forms of development is to be managed in line with the approach set out in 'Planning Guidance for Central London supplementary planning document.'

The SPG notes that Central London Frontages have an important retail function, and that planning permission will not be granted for a loss of retail floorspace where it will damage its character and function. The Tottenham Court Road/New Oxford Street Central London Frontage in particular is noted for containing two significant concentrations of specialist retail uses (furniture and electronics), which the Council does not wish to see diminished. In this location, the SPG states that changes of use from retail to non-retail uses will not be granted permission except in exceptional circumstances.

The SPG notes that the introduction of additional food, drink and entertainment uses may be appropriate, where no more than 25% of shops in each frontage would be in such use, and where no more than two such premises are located consecutively in a frontage. The proposal would not contravene either of these requirements.

However, the SPG is designed to provide guidance as to a maximum level of food, drink and entertainment use in a frontage whilst seeking to maintain the specialist retail character of the area. The guidance does not override the requirements of policy DP12 that seeks to protect the character, function, vitality and viability of a centre. The 25% limit for food, drink and entertainment uses within a frontage, is not in this sense prescriptive and significant justification for the diminution of the specialist trading of Tottenham Court Road is required.

The application site has been the subject of a number of recent planning applications seeking to change its use from retail (A1) to restaurant and takeaway (A3 and A5) to a greater or lesser degree.

The most recent planning application (2011/0933/P) sought permission for a partial change of use to provide for a takeaway (A5). The takeaway would have taken up to 33sqm of the original retail unit and would have been accessed via the Bedford Avenue frontage. The officer's report considered that the small size of the proposed unit and the location of its proposed frontage would not be likely to harm the viability of the existing electronics shop, or undermine the character, function, vitality and viability of the Central London Frontage. The application was, however, refused due an unacceptable impact to the residential amenity of surrounding occupiers.

Of more relevance to the current application, planning permission was sought for a partial change of use to provide for a restaurant (A3) and takeaway (A5) (2010/4161/P). The restaurant/takeaway would have taken 75sqm of the original retail unit, along with the basement, and would have been accessed via the Tottenham Court Road frontage.

Despite being in accordance with the general SPG guidelines for the provision of additional food, drink and entertainment uses as noted above, the officer considered that no justification of exceptional circumstances had been demonstrated under policy DP12. The officer found that the proposed change of use would cause harm to the character, function, vitality and viability of the specialist retail frontage on Tottenham Court Road, by reason of the loss of retail floor space (Class A1). The application was refused accordingly and dismissed at appeal (APP/X5210/A/11/2145076). The Inspector, considering the merits of the appeal noted that:

“In my judgement the specialist retail function of Tottenham Court Road has significance extending beyond the confines of the Borough, and the Council is justified in confining the granting of permission to special circumstances.”

The Inspector did not accept that exceptional circumstances had been demonstrated, sufficient to provide justification for the change of use. The Inspector concluded that the proposal would be likely to have an adverse effect on the specialist retail function of Tottenham Court Road, contrary to policies CS7 and DP12. The Inspector’s approach is consistent with a subsequent appeal decision (APP/X5210/A/11/2149991) regarding a proposed change of use from retail (A1) to restaurant (A3) within the directly adjacent property, no.256 Tottenham Court Road.

The Inspector in this case acknowledged trading difficulties as a result of the increase in internet sales, but considered that this would not outweigh the harm that the loss of the retail unit would cause to the specialist retail function and unique character, and thus, the viability and vitality of this part of the Central London Frontage.

The current application differs from that refused and dismissed under 2010/4161/P, by an increase in the level of restaurant/takeaway floor space from 75sqm to 102sqm, and an expansion of the proposed restaurant frontage along Tottenham Court Road. The current application also seeks a new non-retail use at basement level, with the introduction of a minicab office (sui generis).

The applicants have sought to demonstrate exceptional circumstances based on a difficult trading position. The applicants have submitted details that indicate a long-term decline in profits.

Justification on these grounds would need to be accompanied by adequate marketing information resulting in no alternative retail interest in the site. Marketing information should be a period of two years and provide clear evidence of how the property has been marketed; what actions have been taken to disseminate information on it; what price it has been offered at; how long it has been marketed for, and; a summary of marketing responses.

The applicant has not demonstrated a lack of demand for existing retail premises and in this context, has failed to provide adequate justification for the loss of retail floor space in this location. The current proposal would result in a greater loss of retail floor space than considered previously, and would have a correspondingly greater impact on the function of the Central London Frontage.

The proposal would result in the loss of retail floor space within the Tottenham Court Road/Charing Cross Road Central London Frontage and would be likely to have an adverse effect on its recognised specialist retail function. The proposal is therefore unacceptable in principle and is recommended for refusal on this basis.

The proposed change of use would cause unacceptable harm to the character, function, vitality and viability of the specialist retail frontage on Tottenham Court Road, which forms part of the Central London Area, by reason of the loss of retail floor space (Class A1) within the frontage of which the unit forms part, contrary to policy CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) the London Borough of Camden Local Development Framework Development Policies.

**Design and Appearance:** The proposed alterations to the shopfront are relatively minor; they would involve the replacement of one of the aluminium framed glass panels with a matching glass door. The proposed door would have level access from the pavement and would therefore be suitable for wheelchair users. The proposed alterations to the shopfront are not considered to harm the character and appearance of the building or the local area.

The proposed extract duct is to be located to the rear of the property within an enclosed courtyard and would not be visible from the street. Given the location of the proposed ducting in this discreet

location the proposal is not considered to harm the character and appearance of the building or the surrounding area. Overall, the proposal is considered to be acceptable in design terms.

**Amenity:** Careful consideration must also be given to the impact of new food and drink uses on the amenity of nearby residential properties in terms of noise and disturbance from plant and the operation of restaurant/takeaway, in accordance with policies CS5, DP12, DP26 and DP28.

The applicant has submitted a noise survey report seeking to demonstrate that the noise generated by the operation of the takeaway will not adversely affect the residential amenity of surrounding occupiers. However, this report appears to relate to an earlier application (ref 2011/0933/P), referring at paragraph 2.6, to a proposal for "...33sqm of the retail shop to be converted to take away for hot food..." No consideration is given within the noise survey report to the increased scale of the current proposal and it does not address the impact of the additional restaurant and minicab uses.

The proposed extract duct would be located on the rear elevation of the building within an enclosed courtyard, and surrounded by adjoining commercial premises. The duct would terminate 1.0m above the roof of the building. An acoustic plant noise report was submitted and accepted previously under application reference 2011/0933/P. However, the noise survey report submitted fails to address the potential impact of plant noise generated by the current proposal. The scale of the proposal has significantly increased from the earlier application, from 33sqm to 102sqm and a new restaurant use is sought. The increased scale of the operation is likely to result in a need for a more powerful extract system and a correspondingly greater noise impact. As such the earlier plant noise report is no longer relevant.

The proposal fails to sufficiently consider or address the potential noise nuisance impact of the current proposal. In the absence of an updated and accurate acoustic and noise survey report, carried out by a qualified acoustician in accordance with the Council's noise standards, the extract duct when in operation may cause unacceptable noise disturbance to the nearest residential properties. Furthermore, the proposal fails to adequately demonstrate that the introduction of a restaurant and minicab office will not result in a harmful cumulative impact on residential amenity by reason of the excessive noise and disturbance generated by customers using the premises, particularly late at night. The proposal is therefore contrary to policies CS5 (Managing the impact of growth and development) and CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policies DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

In the event that a permission were granted, further details of refuse storage, management and the control over the operating hours and noise levels from plant would be conditioned to protect the amenities of the area.

**Impact on Transportation:** The site is located on the east side of Tottenham Court Road, on the corner with Bedford Avenue. The site has a PTAL score of 6b, the highest achievable, indicating that it is highly accessible by public transport. Tottenham Court Road station is located to the south of the site, whilst a large number of bus services are available opposite the site and in the local area.

The site is located within Controlled Parking Zone CA-C, which operates 24 hours a day Monday to Sunday. There is limited pay and display parking on Bedford Avenue and in the immediate vicinity of the site.

The Council's Transport Officers note that minicab firms generally have an element of "walk-in" trade (i.e. customers can walk into the office and book a cab), which can lead to minicab drivers waiting in nearby streets for customers. This not only causes an unacceptable impact on the safety and operation of the public highway but also causes disturbance for local residents. Minicab firms operating in this manner can reduce the supply of parking, which is difficult to control as the minicab

drivers tend to wait in the vehicles before they are called to collect customers from the office and can therefore park without a parking permit. The impact on on-street parking would be contrary to Policy DP21 and in particular part f:

“The Council will expect works affecting highways to avoid harm to on-street parking conditions or require detrimental amendment to Controlled Parking Zones

Officers further consider that this type of operation (where the cab drivers return to the office between jobs) is impractical and encourages unnecessary vehicle mileage, which is completely opposed to Camden and London Plan policies which are focused on increasing sustainable travel and reducing traffic.

It is noted that the concerns raised by the Council's Transport Officer's relate predominately to the management of the proposed minicab office. It is considered that should the application be acceptable in all other regards, any potential impact from the operation of the minicab office could be adequately control by the imposition of conditions controlling its management, and restricting the erection of any external advertising relating to the use.

**Conclusion:** The proposed change of use would result in unacceptable loss of valuable retail space in a specialist Central London Frontage which is considered to have an important London wide and national retail role. Inadequate information has been provided to demonstrate that the proposed use would not harm the amenities of the nearest residential properties.

**Recommendation:** Refuse permission.

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