

March 2013

Planning Statement

**66 & 66A Goodge Street, Camden, London,
W1T 4NG**

Prepared for:

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1. Introduction and Background

1.1. Introduction

1.1.1. This Planning Statement has been prepared by Savills in support of a full planning application by The Cooper Property Organisation Ltd for the proposed change of use of 66 & 66A Goodge Street, Camden, London, W1T 4NG (the site).

1.1.2. The application seeks flexible permission for the change of use of the ground and lower ground (basement) floors from a vacant former staff library associated with Middlesex Hospital (sui generis use) to allow use for either:

- Retail Use (Class A1); or
- Financial and Professional Services Use (Class A2); or
- Use as a Coffee shop (specifically a mixed Class A1/A3 – sui generis use).

1.1.3. As such, the description of development sought 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).”

1.1.4. The proposed flexible permission will give the site owners the ability to positively market the premises and attract new tenants to occupy the premises with certainty on planning use and without delay. Furthermore, the permission will allow flexibility should tenants change over time.

1.1.5. This application is made under the terms of Schedule 2, Part 3, Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) which allows Local Planning Authorities (LPAs) to grant flexible planning permissions, where alternative uses are specified within the application (as given in Paragraph 1.1.2 above). It allows

“...development consisting of a change of use of a building or other land from a use permitted by planning permission granted on application, to another use which that permission would have specifically authorised when it was granted.”

1.1.6. The GPDO allows such a change of use to occur within a 10 year period.

1.1.7. This application is for the change of use only. Once an occupier has been established their specific requirements in terms of shopfront and other external alterations will be considered and a separate planning application submitted for any works requiring permission.

1.2. Background to the Application Site

- 1.2.1. The application site, both the ground floor and basements of 66 & 66A Goodge Street, were previously the home of the former Middlesex Hospital Library for at least 25 years prior to its closure in 2006. This represented a private, rather than public library, important in distinguishing its sui generis use apart from that of a public library (Class D1). Services from the Middlesex Hospital started to transfer to the nearby University College Hospital on the Euston Road from June 2005 with the Middlesex Hospital site finally closing in December 2005. At this time the private library also moved to the Euston Road site.
- 1.2.2. The ground floor and basement have therefore been largely vacant since January 2006. In December 2010 the premises were temporarily handed over to the main contractor responsible for refurbishing the residential units on the upper floors, ARK Plc, as their site office and storage facility. ARK Plc have since vacated the premises and made the site secure.

1.3. Structure of this Statement

- 1.3.1. This statement describes the application proposals, including background information such as relevant planning history and provides a review of the key national, regional and local planning policy pertinent to the application. Furthermore, the statement identifies and considers the principal planning considerations by evaluating the proposals against the identified planning context.
- 1.3.2. The statement is structured as follows:
- **Section 2:** Provides a description of the characteristics of the site and surrounding area, provides details regarding the planning history associated with the application site and planning policy designations;
 - **Section 3:** Provides full details of the development proposed and how the site would be used under each of the proposed flexible uses. Particular consideration is given to the principle of a coffee shop's mixed Class A1/A3 – sui generis – uses;
 - **Section 4:** Outlines the most relevant and pertinent planning policy framework from national, regional and local levels for the site;
 - **Section 5:** Sets out the policy analysis and justification against the principal policy issues identified in Section 4; and
 - **Section 6:** Sets out the conclusions to the findings and confirms the acceptability of the proposals against the planning policy framework.
- 1.3.3. This statement should be read in conjunction with the accompanying site location plan and architectural drawings prepared by Metropolitan Development Consultancy Limited.

2. Site Description and Planning Policy Designation

2.1. Preface

- 2.1.1. This section provides a description of the site location and surrounding area, site description, provides details regarding the planning history associated with the application site and planning policy designations.

2.2. Site Location

- 2.2.1. The application site falls at the extreme western fringe of the London Borough of Camden and therefore immediately borders the City of Westminster. The Borough boundary follows a route along Cleveland Street, Goodge Street, Charlotte Place and Rathbone Street past the site.
- 2.2.2. The site occupies a corner plot to the north of the traffic controlled junction of Goodge Street, Newman Street, Bemers Mews, Mortimer Street and Cleveland Street in central London. A footway approximately 2m wide borders the site around the junction.
- 2.2.3. The site is situated on the northern side of Goodge Street with Cleveland Street abutting the site to the west. Goodge Place is found to the east of the site.

Aerial photograph showing the site's location



2.3. Site Description

- 2.3.1. The application site comprises the ground floor and basements of both 66 & 66A Goodge Street, covering a total Gross Internal Area (GIA) of approximately 224 sq m (further breakdown is provided in Section 3.3). The building is a red brick with sash windows on the upper floors coming to four storeys in height. The buildings ground floor appearance is painted brick with a boarded up shopfront given the longstanding vacancy of the ground floor and basements. The ground floor is currently boarded up to secure the site and prevent unauthorised access and prevent anti-social behaviour.
- 2.3.2. The ground floor was last used as the library of the former Middlesex Hospital, a sui generis use given its private (not public) nature. It is understood the upper floors (materially unaffected by the proposals) of the property provide flatted residential accommodation. The upper floors are currently accessed via entrances and stairwells off Cleveland Street. The existing layouts demonstrate that the ground floor configuration between the two units is awkwardly split by the staircases to the upper floors. This arrangement is to be reconfigured to allow a single point of access to the residential floors above.
- 2.3.3. The site falls within the Charlotte Street Conservation Area.
- 2.3.4. The site is not listed although numerous Listed Buildings are to be found within the locality, namely no. 56 Goodge Street (Grade II), no.'s 8-14 Goodge Place (Grade II), no.'s 16-22 Cleveland Street (Grade II) and structures within the former Middlesex Hospital site (Grade II*). The application site is not locally listed given that the identification and establishment of locally listed buildings is in early stages of preparation by the London Borough of Camden.

2.4. Surroundings

The application site falls within a commercial parade, which is identified as a 'Commercial Frontage' within the Revised Planning Guidance for Central London: Food, Drink and Entertainment, Specialist and Retail Uses Supplementary Planning Document (October 2007).

- 2.4.1. Neighbouring ground floor uses along Goodge Street, Newman Street, Bemers Mews, Mortimer Street and Cleveland Street provide a variety of food and drink, commercial and retail uses typically with flatted residential accommodation over.
- 2.4.2. The site is next to a planned large and comprehensive redevelopment of the former Middlesex Hospital site, which falls within the jurisdiction of Westminster City Council (WCC). Planning permission was granted on 30 March 2012 (WCC ref. 11/08831) for the comprehensive redevelopment of the site comprising:

"Nine to eleven storey buildings plus two basement levels for mixed use purposes comprising 291 no. residential units (Class C3), office (Class B1), retail (Class A1), financial and professional services (Class A2), restaurant (Class A3) and community/health uses (Class D1); creation of new open space; new vehicular and pedestrian accesses; works to the public highway; basement car and cycle parking; associated works including landscaping, servicing areas and plant; retention and repair of existing chapel, No.10 Mortimer Street and Nassau Street facades."

- 2.4.3. The site has been cleared and it is understood construction works have commenced. It is understood the ground floor uses of the scheme at the corner of Mortimer and Cleveland Street (closest to the application site) are proposed to be flexible commercial uses (Classes A1/A2/A3). The remainder of the development will comprise residential-led mixed uses as given in the description of development above.

2.5. Accessibility

- 2.5.1. The site is located within central London and as such is highly accessible by foot.
- 2.5.2. The site also benefits from favourable public transport connections. The centre of the site (E: 529357, N: 181659) achieves a Public Transport Accessibility Level (PTAL) rating of 6b, which implies excellent access to public transport services from the site.
- 2.5.3. Regular bus services operate along the surrounding streets, including Tottenham Court Road, Mortimer Street, Oxford Street and Regent Street. Goodge Street London Underground Station is located approximately 300m to the north east; Oxford Circus approximately 700m to the south west; and Tottenham Court Road about 700m to the south east. Northern, Victoria Bakerloo and Central lines operate from these stations and the therefore has good accessibility to London Underground services.

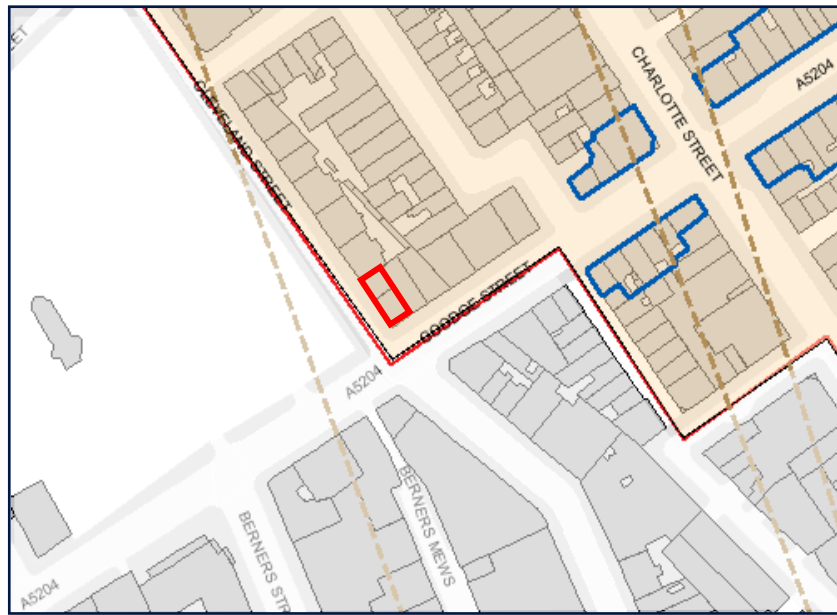
2.6. Planning History

- 2.6.1. A desk based planning history research has revealed an historic application (ref. 28390) for external treatment to the building. This application was withdrawn in 1979 as the proposed works did not require planning permission.
- 2.6.2. More recently, planning permission was granted (LPA ref. 2012/5015/P) for the change of use of the application site from the private staff library to either retail (Class A1) or financial and professional services (Class A2). This permission has therefore established in principle the change of use from the private staff library and the introduction of Class A1 and A2 uses, material to the consideration of this application.

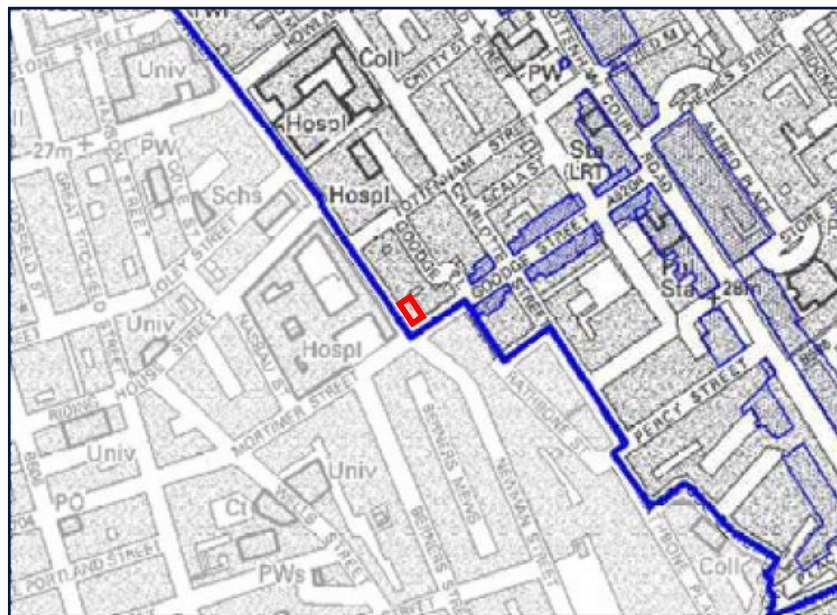
2.7. Policy Designation

- 2.7.1. Within the Local Development Framework Proposals Map (2010), the current development plan proposals map, the site is designated as falling within:
- Charlotte Street Conservation Area; and
 - Central London Area.
- 2.7.2. The site also falls within the Fitzrovia Local Area boundary and commercial frontage, as given in the Revised Planning Guidance for Central London: Food, Drink and Entertainment, Specialist and Retail Uses Supplementary Planning Document (October 2007).
- 2.7.3. The site does not, however, fall within the Goodge Street Neighbourhood Centre boundary or a Central London Frontage, both of which are found a short distance to the north east.

Local Development Framework Proposals Map (2010)



Fitzrovia Central London Frontages and Neighbourhood Centre boundaries (Map 6)



Map showing Commercial Frontages (Map 7)



3. Proposed Development

3.1. Preface

- 3.1.1. This section details the proposed development and gives greater understanding of how the premises would be used under any of the flexible uses sought.

3.2. Description of Proposed Development

- 3.2.1. The application seeks flexible permission for the change of use of the ground and lower ground (basement) floors from a the vacant former staff library associated with Middlesex Hospital (sui generis) to allow use for either:
- Retail Use (Class A1); or
 - Financial and Professional Services Use (Class A2); or
 - Use as a Coffee shop (specifically a Mixed Class A1/A3 – sui generis use).
- 3.2.2. Such flexible permissions are allowed for under the terms of Schedule 2, Part 3, Class E of the GPDO, as discussed in Section 1.1.
- 3.2.3. The change of use does not at this stage include any shopfront or external alterations. The internal alterations required in order facilitate the change of use do not require the benefit of planning permission. Drawings have been provided for the first floor to illustrate the revised stairwell access only – the application does not seek the change of use of the first floor from residential.

3.3. Floorspace

- 3.3.1. A break down of approximate existing / proposed floorspaces of 66 & 66A Goodge Street are provided below:

Existing / proposed floorspace (GIA) (Approximate)	66 Goodge Street	66A Goodge Street	Total
Ground floor (sq m)	42.5	47.5	90.0
Basement (sq m)	81.5	52.5	134.0
Total (sq m)	124.0	100.0	224.0

3.4. Flexible Uses

- 3.4.1. Each of the uses potential utilisation of the floorspace is described below. These are illustrated within the accompanying architectural drawings no.'s 7671/12 and 7671/13.

Retail (Class A1)

- 3.4.2. Operational/trading floorspace at ground floor level with ancillary space within the basement.

Financial and Professional Services (Class A2)

- 3.4.3. Operational/trading floorspace at ground floor level with ancillary space within the basement.

Coffee shop (Mixed Class A1/A3 – sui generis)

- 3.4.4. Operational/trading/seating floorspace at ground floor level with additional seating and ancillary space at basement level. The specific nature of the use is explained in detail below.

Principle of the coffee shop mixed Class A1/A3 – sui generis – uses

- 3.4.5. The primary use sought will be for sale of hot and cold drinks and cold food for consumption on or off the premises. **No hot food will be prepared on or sold from the premises, with no kitchen area proposed and no extraction equipment required for the operations.** As illustrated on the plans, trade and seating will be provided at ground floor and basement levels, with ancillary space also provided within the basement.
- 3.4.6. From Savills experience, it can typically be expected that for a premises of this size, approximately 40-50% of trade will represent takeaway trade of hot and cold drinks and cold food for consumption off the premises.
- 3.4.7. The use class of sandwich shops and coffee shops has been considered in a number of appeal decisions. The principal consideration is the Use Classes Order 1987 (as amended). This defines the uses which fall within Classes A1 and A3. The Order defines Class A1 uses as:

“Class A1 Shop

Use for all or any of the following purposes:

- a. For the retail sale of goods other than hot foods*
- b. The sale of sandwiches or other cold food for consumption off the premises*
- c. For the display of goods for sale”*

NB. Only relevant parts of the Class A1 use to the coffee shop type use are highlighted.

- 3.4.8. The Order defines Class A3 as:

“Use for the sale of food and drink for consumption on the premises”

- 3.4.9. Circular 03/2005 makes reference to sandwich bars and coffee shops in relation to their use class as follows:

“Sandwich bars

34. As indicated above in paragraph 12, in considering where individual uses fall, it is the primary purpose that should be considered. A sandwich bar does not necessarily cease to be in the shops class merely because, for example, it also sells a limited amount of hot drinks, hot soup or food that is heated up. Similarly, it is possible for a few sandwich bar customers to eat on the premises, including at tables within or outside their establishments (e.g. on the forecourt) without involving a material change of use. Provided that this is only an ancillary part of their business, the classification of the business as a sandwich bar would rightly remain in the A1: Shops use class where the retail sales element is the primary purpose.

Coffee Shops

36. Coffee shops will need to be considered on a case by case basis. Whether their primary purpose is as a shop, i.e. premises for the sale of beverages to be taken away, or as a café, where the primary purpose is consumption of beverages on the premises, or indeed whether it is a mix of both uses.”

- 3.4.10. Most coffee shop outlets do not sell any hot food and a significant proportion of the sales of sandwiches, confectionary and drinks are typically for takeaway purposes, there is a significant element of the use which would ordinarily fall within Class A1 (i.e. under the Class A1 definition of Sandwich Shops as set out in the Circular 03/2005).
- 3.4.11. However, they do typically have an element of seating whereby customers can consume food and drink on the premises, thus adding an element of Class A3 use.
- 3.4.12. Circular 03/2005 offers the following guidance on determining which use classes any particular use falls within. At Paragraph 12, the circular states that each case will also be a matter for individual determination by fact and degree. It says that the cause upheld that the first thing to consider in determining whether a material change of use has occurred is the existing primary use of the land. It states that:

12. The Courts have held that the first thing to consider in determining whether a material change of use has occurred (or will occur) is the existing primary use of the land. Each case will always be a matter for individual determination by fact and degree. In particular, local planning authorities will need to take into consideration more than just the amount of floor space occupied by the different uses. For example, in the case of premises which incorporates restaurant use as well as pub or bar use, the local planning authority will need to determine whether the existing primary use of the premises is as a restaurant (A3), or as a drinking establishment (A4), or a mixed use. This will depend on such matters as whether customers come primarily to eat, or drink, or both. It is the main purpose of that use that is to be considered.

- 3.4.13. Consequently, in determining whether coffee shops fall within either Class A1 or A3, or is in fact a mixed use, will be determined by a proportion of different uses which make up the whole.
- 3.4.14. A number of appeal decisions have considered the primary uses of the coffee shop.

- 3.4.15. The appeals have established that primary uses of coffee shops are influenced by a number of factors. Principally:
- The proportion of takeaway food/drink sales from the premises compared with eat in/drink in sales; and
 - The proportion of floorspace taken up by customer seating areas.
- 3.4.16. A number of other early appeal decisions in relation to coffee shop uses concluded that even though significant elements of food and drink were sold for consumption on the premises, they would remain in Class A1 use.
- 3.4.17. More recent decisions relating to Starbucks Coffee and Coffee Republic in Bath and in relation to Caffé Nero at Winchester determine that where the proportion of eat in/takeaway sale is more balanced or even where eat in sales could constitute up to 80% of total sales, a mixed A1/A3 use occurs.
- 3.4.18. The A1/A3 description of the coffee shop use has since been established in a number of other appeal decisions. It is significant to note that the A1 element of the use has been retained within the description of the major branded outlets and this too has been supported through a number of appeal decisions. This is a strong material consideration when assessing the impact coffee shops (i.e. mixed A1/A3 uses) has on retail vitality and viability.
- 3.4.19. The conclusion is reached that a significant element of the use made up by Class A1 makes the premises suitable for location within key shopping and commercial frontages.
- 3.4.20. In summary, the most appropriate classification for the coffee shop use sought is as a sui generis, mixed A1/A3 use. This has been established through numerous appeals relating to branded coffee outlets such as Costa, Caffé Nero and Starbucks. The merits attributed to such uses are material to this application and are considered in the following section.

4. Planning Policy Context

4.1. Preface

- 4.1.1. This section of the statement considers the relevant planning policy framework for the site and surrounding area, having regard to the development proposed and Section 38(6) of the Planning and Compulsory Purchase Act 2004. As noted by Section 38(6), determination must be made in accordance with the development plan unless material considerations indicate otherwise.
- 4.1.2. The statutory development plan comprises the Camden Core Strategy (November 2010) and Camden Development Policies (November 2010). At a local level the Revised Planning Guidance for Central London: Food, Drink and Entertainment, Specialist and Retail Uses Supplementary Planning Document (October 2007) are considered particularly relevant.
- 4.1.3. In addition the National Planning Policy Framework (March 2012) provides guidance at a national level and the London Plan (July 2011) at a Greater London scale.

4.2. National Planning Policy

National Planning Policy Framework (March 2012)

- 4.2.1. Pertinent sections of the NPPF, which are a clear material consideration, are detailed below.

Sustainable development

- 4.2.2. One of the overarching themes of the NPPF is the clear “presumption in favour of sustainable development”, which “should be seen as a golden thread running through both plan-making and decision-taking” functions of the LPA (Paragraph 14). Further it states that “in assessing and determining development proposals, LPA should apply the presumption in favour of sustainable development” (Paragraph 197). The paragraph continues by stating that development proposals, which accord with the development plan should be approved without delay.

Economic growth

- 4.2.3. The thrust of the NPPF, in conjunction with the government’s wider ambitions for economic support, is securing economic growth and the creation of jobs and economic prosperity through the planning system. To this end Paragraph 17 states that planning should “drive and support sustainable economic development”. This is developed further by Paragraph 19, which identifies that planning should operate “to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.”

Town Centres

- 4.2.4. Chapter 2 of the NPPF seeks to ensure the vitality and viability of town centres promoting “competitive town centre environments.”

4.3. Regional Planning Policy

The London Plan (July 2011)

- 4.3.1. A revised London Plan was published in July 2011. The Plan contains the Mayor's objectives for the city. There are a considerable number of policies within the London Plan therefore only those considered to be most pertinent are highlighted below.

Policy 4.7: Retail and town centre development

- 4.3.2. This policy details the strong support for the furthering of retail, commercial, cultural and leisure development in town centres.

Policy 4.8: Supporting a successful and diverse retail sector

- 4.3.3. This policy promotes a diverse retail sector.

4.4. Local Planning Policy

Camden Core Strategy (November 2010)

- 4.4.1. The pertinent policies are contained within the adopted Camden Local Development Framework (adopted November 2010).

Policy CS7: Promoting Camden's centres and shops

- 4.4.2. This policy seeks to promote Camden's centres and shops with the appropriate distribution of retail growth across the Borough, including the specification of a range of frontages and centres. The policy also seeks to protect and enhance existing centres by, amongst other factors "providing for, and maintaining, a range of shops, services, food, drink and entertainment and other suitable uses to provide variety, vibrancy and choice" whilst making sure they do not have a detrimental impact.

Policy CS8: Promoting a successful and inclusive Camden economy

- 4.4.3. This policy seeks to promote Camden's economy by a range of means, including employment generating uses.

Policy CS9: Achieving a successful Central London

- 4.4.4. This policy recognises the important role of Camden as part of London and its opportunities for further growth and development in the future, whilst carefully managing the concentration and impact of uses.

Camden Development Policies (November 2010)

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

- 4.4.5. Policy DP12 aims to prevent harm to the local area by virtue of the character, function, vitality and viability of a centre. Amongst other matters, the effect of non-retail development, the cumulative impact of food, drink and entertainment uses, amenity and traffic considerations.

Policy DP15: Community and leisure uses

- 4.4.6. This policy states that the Council will protect existing community facilities by resisting their loss unless a replacement facility is provided or the specific community facility is no longer required in its current use.

Policy DP26: Managing the impact of development on occupiers and neighbours

- 4.4.7. Policy DP26 seeks to protect the quality of life and amenity by preventing development that would be harmful by virtue of, amongst other matters, privacy, overshadowing, daylight, noise and odour.

Revised Planning Guidance for Central London: Food, Drink and Entertainment, Specialist and Retail Uses Supplementary Planning Document (October 2007)

- 4.4.8. This document ('SPD') seeks to protect the character and function of areas by managing the location and concentration of food, drink and entertainment uses. It is a comprehensive document and although it relates to superseded Unitary Development Plan policies it remains a material consideration; the key considerations of which are given below.
- 4.4.9. The SPD recognises different local areas across the Borough, with the application site falls to the western edge of the Fitzrovia area as it falls within the London Borough of Camden. However, the Fitzrovia area does extend further westwards into the City of Westminster.
- 4.4.10. The SPD recognises the positive contribution food, drink and entertainment uses can provide to areas (Paragraph 6.7). This is recognised at a more local level within Fitzrovia, with "...food, drink, and entertainment uses... considered to be an important part of the mixed use character of Fitzrovia" contributing to the vitality and viability of the area (Paragraph 9.11). However, the SPD also recognises that the character and mixes of the area means it must be sensitive to the impacts of food, drink and entertainment uses including location, clustering, diversification, hours of operation and other amenity considerations.

4.5. Policy Summary

- 4.5.1. There is an extensive policy basis for the application site. Only the most pertinent and relevant have been identified in the sections above. From the planning policy context there are three key issues which need to be addressed. These are:
- The compatibility of the proposed uses with the commercial frontage designations
 - Amenity impacts; and
 - The loss of the existing use in relation to policies on Community Facilities.
- 4.5.2. These matters are now assessed in the following chapter.

5. Policy Analysis and Justification

5.1. Preface

- 5.1.1. This section takes the key planning considerations identified (commercial frontages; amenity; and community facilities) and demonstrates the acceptability of the proposals, and the potential benefits that may arise from the change of use.

5.2. Community Facility Policy

- 5.2.1. Policy DP15 of the Core Strategy seeks to protect community uses. However, it is highly relevant to note that this policy does not apply in this instance as the existing lawful use is a private library (*sui generis*) not a community library or use (a Class D1 use). This is explained in full in Sections 1 and 2.
- 5.2.2. In any event, and even if the policy is considered to apply, the hospital library has been relocated nearby to the University College Hospital on the Euston Road site since 2005 and therefore no net loss of community uses has occurred within the Borough. The proposals are therefore in compliance with Policy DP15 which seeks to protect existing community facilities unless a replacement facility has been provided to meet the needs of the local population or where it is demonstrated the use is no longer required. In this case the former policy criterion has been satisfied.
- 5.2.3. Furthermore, the premises have been vacant for more than 6 years and have not therefore provided a useable facility, however it is classified.
- 5.2.4. These arguments were accepted by the Case Officer of the earlier application (LPA ref. 2012/5015/P). In the Member's Briefing report it was stated:

"Policy DP15 aims to protect and provide community facilities that meet the needs of the Camden's growing population. The lawful use of the application premises is not considered to be a community use as it was not a public library but a private library limited to the former Middlesex Hospital. Even if the existing use were a community use its loss would be justified in accordance with policy DP15(c) as the services of the former Middlesex Hospital library were transferred to University College Hospital on Euston Road in 2005 and therefore continue to meet the needs of the local population."

- 5.2.5. Consequently, it can be concluded that the loss of the vacant private library use is not contrary to any development plan policies, is entirely accepted and there is an extant planning permission allowing its change of use. There are clear benefits to be achieved through the re-use of this under used floor space, which is in a highly sustainable location.

5.3. Commercial Frontages

- 5.3.1. The site falls within a short commercial frontage along northern side of Goodge Street, extending between no.'s 52 and 66 Goodge Street. The site is located to the western end of the commercial frontage with the immediately neighbouring premises at ground floor level being a travel agent (Class A1).
- 5.3.2. Other uses within the frontage include further retail (Class A1), food and drink (Classes A3, A4 and A5) and a Dental Surgery (Class D1).
- 5.3.3. Any of the three flexible uses sought (Class A1; Class A2 or mixed Class A1/A3 – sui generis) would be introducing an active commercial use into the frontage to the benefit of retail vitality and viability within the surrounding locality given the longstanding vacancy of the premises. Occupation of the unit by any of the potential uses would positively support the surrounding area by virtue of introducing activity and footfall along the commercial frontage, Goodge Street and within the surrounding area. Accordingly, the proposed uses are considered to comply with the aims of Policies CS7, CS8, CS9 and DP12 which seek to protect and promote such frontages.
- 5.3.4. The introduction of a Coffee Shop (mixed Class A1/A3 – sui generis) use would not result in the formation of a food, drink and entertainment 'cluster' as detailed within the SPD which describes a cluster as a "grouping of three or more adjacent or opposite uses" (Paragraph 6.17).
- 5.3.5. Para 9.12 of the SPD states that "*planning permission for development of food, drink and entertainment uses may be granted **normally** to a maximum of 25% of total units in each Commercial Frontage*". In this commercial frontage it acknowledged that the 25% guideline for food, drink and entertainment uses is already breached. However, the text clearly allows exceptions and are two key material factors that support the coffee shop use proposed in this regard as follows:
1. There is no loss of retail (Class A1) as a result of the proposed change of use - one of the key aims of the SPD is to restrict the loss of Class A1 uses, in fact the coffee shop will introduce an element of Class A1 use to the frontage through sales of sandwiches and drinks for take-away; and
 2. The specific nature of the coffee shop use is material as it is a) a quasi retail use, b) does not involve any activity which could have an adverse impact upon residential amenity (see detailed comments in Section 5.4 below).
- 5.3.6. The fact that the SPD allows for exceptions to the 25% food and drink threshold is material, as is the nature of the use. The aim of the threshold is to prevent concentrations of uses that would have an adverse impact upon amenity. The coffee shop element of the proposals will clearly not have an adverse impact in this respect and importantly will enhance the vitality of the frontage.
- 5.3.7. The merits of coffee shop uses have been discussed and supported through a large number of appeal decisions. Appendix 1 of this statement provides a summary of the key appeal decisions that have supported coffee shops in commercial frontages. The key conclusions from the appeal decisions, which are materially in favour of the use are also relevant as follows:

- Coffee shops generate high levels of patronage, commensurate with other A1 uses that are typically located within primary frontages;
- They have become an established user, which typically locate within commercial frontages;
- They are attractors to an area in their own right;
- The A1 element of the use is beneficial to retail vitality and viability;
- The encouragement for greater flexibility and diversity of uses within Planning Policy Statement (PPS) 4: Planning for Sustainable Economic Growth (December 2009), and recently the NPPF has been recognised as material in recent decisions; and
- Even when adopted planning policies would not allow any further loss of Class A1 uses, Inspectors have been comfortable in allowing mixed A1/A3 coffee shop because of their characteristics and positive impact that they can have on retail frontages.

5.3.8. Paragraph 9.15 of the SPD identifies that new or extended food and drink uses should have a maximum gross floor area of 100m², with exceptions made where larger uses do not have harmful impacts on residential amenity or undermine the character of the area. The proposed floorspace accessible to customers exceeds this guideline. However, the SPD allows exceptions to the guideline figure where it can be demonstrated there would be no harmful impacts or undermining of the character area. As will be discussed below, there are no adverse amenity issues arising from any of the proposed flexible uses, including that of the coffee shop. The character of the area is already mixed and therefore there will be no adverse impact upon the existing character.

5.3.9. As such, all the proposed uses, which have the potential to bring longstanding vacant premises back into beneficial use, are considered to contribute to the vitality and viability of the commercial frontage. The proposals therefore adhere to the principles outlined within Policies CS7, CS8, CS9, DP12 and the provisions of the SPD.

5.4. Amenity

5.4.1. Consideration must be given to the amenity of the surrounding area and considering residential accommodation over the application site.

5.4.2. Retail (Class A1) and Financial and Professional Service (Class A2) uses have limited amenity implications given their typical hours of operation and activities undertaken. Such uses strongly accord to the characteristics expected and promoted within a commercial frontage and are not considered to be harmful to the amenity of the surrounding area. The Case Officer's recent assessment (LPA ref. 2012/5015/P) confirmed that A1 and A2 uses are "unlikely to harm the amenities of neighbouring residential properties and the local area", in accordance with Policy DP26.

5.4.3. This will also be the case for the coffee shop use (mixed Class A1/A3). It is important to note the material differences that exist when compared to other food and drink uses. For example, coffee shop uses do not attract the negative amenity implications associated with other food, drink and entertainment uses such as odour, late night activity and live music. Moreover, the coffee shop will not have a kitchen, will not undertake cooking activities on

site (except items such as paninis) and typically open during normal shop trading hours. Therefore it is considered the amenity impacts of a coffee shop are akin to those of other retail (Class A1) uses, including sandwich shops.

- 5.4.4. Reasonable control through conditions on the hours of operation of any of the flexible uses is accepted; with operating hours along the lines of 0700 to 2000 hours considered reasonable and appropriate in this location and context. Similarly conditions can be added to ensure that no primary cooking takes place on site.
- 5.4.5. All three proposed uses are therefore considered to be in accordance with Policy DP26 which seeks to protect neighbouring amenity.

6. Conclusions

6.1. Summary and Conclusions

- 6.1.1. This application seeks permission for the flexible change of use of longstanding vacant ground floor and basements across two units in a vibrant area of central London. It is anticipated subsequent applications will be submitted for shopfront works and any associated external alterations requiring planning permission for any of the flexible uses when occupiers are established.
- 6.1.2. Importantly, the proposals involve no loss of retail (Class A1) uses through this application; and any of the proposed uses will provide a benefit for retail vitality and viability. The current lawful use of the site represents a sui generis use given the previous use as a private library. Therefore, unless the private library use was to be reintroduced (which is highly unlikely as the use was replaced elsewhere some six years ago), an application for change of use will always be required. This situation is considered highly restrictive upon future occupation, hence the application for flexible permissions which will improve the prospects of occupation of the site. The proposed flexible uses represent the most appropriate range of uses for the location and position within a commercial frontage, and should therefore be seen favourably as representing the 'best case' option.
- 6.1.3. Material to the assessment of this application is the extant permission for the change of use from the staff library to Classes A1 or A2 (LPA ref. 2012/5015/P).
- 6.1.4. The flexible permission is sought in order to bring the vacant unit back into use. The flexibility accords with recent central Government guidance in order to promote economic activity within town centres and encourage the occupation of vacant units. Without such a change of use away from the sui generis private library use it is unlikely this premises would otherwise be occupied.
- 6.1.5. The access to the residential uses on the upper floors of the property will be maintained by a reorganised staircase but will otherwise be unaffected. The internal alterations to not require the benefit of planning permission but will bring about a benefit through a more efficient layout of the ground floor, providing a more attractive commercial floorspace for prospective users.
- 6.1.6. The proposals are considered in compliance with the prevailing planning policy context identified within this statement.
- 6.1.7. In summary, the application has the potential to deliver numerous benefits through:
- Creating useable ground floor space and removing the currently restrictive sui generis use class;
 - Bring a long term vacant unit back into use, benefiting the vitality and viability of the commercial frontage and surrounding area through active use (but without compromising neighbouring amenity);

- Facilitate new shopfront in due course with benefits to the Charlotte Street Conservation Area given the current degrading appearance;
- Uses will add vibrancy to frontage compared with existing lawful use;
- Gain in active floorspace at ground floor level for all uses proposed; and
- The potential introduction of a Coffee shop (Mixed Class A1/A3) which is materially different to A3, A4 or A5 Classes where amenity considerations can be adequately controlled by condition.

6.1.8. It has been demonstrated that the introduction of either of the flexible uses would be of benefit to vitality and viability within the commercial frontage given the significant merits associated with the uses, particularly above the existing vacant unit. In view of the above material considerations, planning permission is justified and ought to be granted.

6.2. Conditions

6.2.1. In order to ensure the acceptability of the proposals planning conditions may be considered appropriate, subject to meeting the necessary tests. Conditions along the lines of the following have been used by other LPAs and Inspectors in the past and would therefore be acceptable in this case:

- 1. In the event of the coffee shop use (mixed Class A1/A3) being implemented, the premises shall not be used other than as a coffee shop serving coffee, other hot and cold drinks, sandwiches and similar light refreshments for consumption on or off the premises; and
- 2. In the event of the coffee shop use (mixed Class A1/A3) being implemented, no primary cooking of unprepared food shall be carried out within the premises. Only reheated or cold food that has been prepared elsewhere shall be served within the premises.

Appendix 1

Significant Appeal History - Merits of Coffee Shop Uses

The concept of mixed A1/A3 use for coffee shops has been established through a number of appeal decisions. Relevant appeal decisions are discussed in turn below. Copies of the full decisions are available on request.

Caffé Nero – High Street, Winchester

The decision notice relates to an enforcement appeal regarding Caffé Nero within Winchester High Street. This highlights an Inspectors views on the benefits of coffee shops within primary shopping areas. A summary of the Inspectors conclusions follows:

- At Paragraph 9 the Inspector accepts evidence that coffee shop uses attract significant flows of customers throughout the day. The Inspector states that he would have been very surprised if a wholly A1 use occupying the same floor space would attract so many more customers that it would be in a different league to the coffee shop use. He stated that it would be very likely that many A1 uses will attract significantly fewer customers;
- The Inspector accepted survey evidence that revealed that a significant number of customers are attracted to the town centre by the presence of high quality coffee shop;
- At Paragraph 15 the Inspector concludes that the coffee shop use in question would have no adverse effect on the vitality or viability of the shopping centre. It is stated that it would maintain pedestrian flows, accepts that it is a use which needs to be located at ground floor level within a primary shopping area and compliments the retail frontage of the primary shopping areas drawing people in to them; and
- In the Winchester case, the proposal would have exceeded the percentage threshold of non-A1 uses as set out within the local plan policy, yet the Inspector felt that there were material considerations which allowed him to allow the appeal.

Caffé Nero – 112 High Street, Sevenoaks

As with the Caffé Nero premises in Winchester, the Local Plan Policy in Sevenoaks restricted changes of use from Class A1 to non-A1 uses. In fact the Policy within Sevenoaks was more restrictive as no changes of uses from A1 were permitted within the primary frontages.

Evidence was presented to the Inspector to demonstrate that the use generates a considerable amount of activity within the High Street and that the coffee shop helped attract visitors to the town centre.

The Inspector accepted that shops and services within the town centre feed off each other and the use, such as the high quality coffee shop which generated a large number of customers would, in her opinion, not undermine the retail function of the primary shopping area.

The Inspector concluded that:

“Although the mixed Class A1/A3 does not fully accord with the relevant development plan policies to which I have been referred, the mixed use of the appeal premises would not have an adverse effect on the retail function of the town centre.” (Paragraph 14)

The Inspector set out three conditions at page 4 of the appeal decision which are discussed within the concluding chapter of this report.

Starbucks Coffee – 63 South Molton Street, London

WCC were concerned about the loss of retail shopping floor space within the South Molton Street Shopping area. In particular they were concerned about the loss of specialist shops.

The Inspector concluded at Paragraph 14 that the proposal for a mixed A1/A3 coffee shop would not harm the vitality and viability of the shopping centre in which the appeal premises were located and consequently allowed the appeal.

66-68 High Street, Staines

In this case, the adopted Spelthorne Borough Local Plan required that the prime retail frontage must be maintained to a length of at least 80% A1 use. Prior to the application being made, the prime retail frontage was below 75%.

The inspector accepted evidence put forward through a patronage survey that the proposed use would be likely to attract significant customer flows throughout the day and generate an overall level of customer activities similar to, or greater than, an A1 use of the site. The customer survey presented also indicated that the use would be likely to perform a complementary function to the town centre shopping facility as well as attracting people to the town centre in its own right. At Paragraph 8, the Inspector stated that he had no reason to disagree with these findings.

At Paragraph 10 the Inspector held that the proposed mixed use did not fully accord with the relevant development plan policy but, taking into account the particular characteristics of the use proposed, it was concluded that the use would not harm the vitality and viability of the town centre and therefore would not undermine its retail function. The appeal was therefore allowed.

Caffé Nero – Royal George Buildings, Market Place, Rugby

This was an enforcement case against an existing Caffé Nero use.

In this case, the use was considered to be a mixed class A1/A3 use; however, the policies within the local plan required that ground floor uses within the primary retail frontages should be exclusively used for Class A1 purposes.

The Inspector accepted evidence that strong customer patronage of the unlawful coffee shop use was a material consideration in favour of the proposal, particularly as the customer flow exceeded that of neighbouring shops. In fact, at Paragraph 13, the Inspector gave weight to the consideration that if

the Caffé Nero use were to close, there is no guarantee that any replacement use would attract as many customers as the existing Caffé Nero use.

The appeal was subsequently allowed, contrary to development plan policies seeking to prevent the introduction of non-A1 uses within the primary frontages.

Caffé Nero – 2-4 High Street, Harpenden

In this appeal, the Inspector considered a retrospective permission for the coffee shop use within a primary retail frontage.

Whilst the policy sought to retain 90% of the retail frontage within Class A1 use, the proposal would have resulted in only 25% of the frontage being retained for such purposes. The appeal was allowed.

The material considerations that the Inspector took into account are detailed throughout the decision letter.

At Paragraph 18, the Inspector recognises that the coffee shop has a large amount of day time users and relies upon a relatively high turnover of customers rather than the more traditional café/restaurant when the primary purpose is to sit for longer and have a meal. As such, the Inspector recognised that coffee shops can attract a relatively high level of daytime custom, commensurate with any number of A1 uses.

Similarly, at Paragraph 20, the Inspector recognised that the appeal use compared favourably with the amount of activity generated by other nearby uses, including A1 uses.

At Paragraph 24, the Inspector recognised the Council's concerns about preponderance of A3, A4 and A5 uses and the potential to cause an imbalance within the centre and thus harm vitality and viability. However, the Inspector recognised that the coffee shop was a mixed, daytime use, which complements the centre's retail function.

This is considered highly relevant given the distinction that is made between the Class A1/A3 use and other Class A uses.

Subject to appropriate conditions, the Inspector was satisfied that the material considerations outweighed the restrictive policy.

Costa Coffee – Loughton, 230 High Road, Loughton

Whilst the proposal was compliant with policy, the Inspector made some positive comments about the coffee shop and its suitability for primary frontage locations.

At Paragraph 6 the Inspector accepted that the A1/A3 use type is an appropriate classification, given that the development would not function primarily as a café/restaurant with merely ancillary retail sales. At Paragraph 7, the Inspector recognised the substantial differences between the A1/A3 use and existing A3 type establishments, particularly as the more traditional uses did not keep normal shop hours and had dining areas at the front.

Costa Coffee – 80-82 High Street, Maldon

In this appeal, the proposal was in conflict with the relevant Local Plan policy which only permitted changes that resulted in A1 or D1 (a) uses. At Paragraph 7 the Inspector confirms that there was a conflict between the provisions of the adopted Local Plan and those of more recent PPS4, and that the latter should be given greater weight. Accordingly, as per the provisions of PPS4, policies should encourage a diverse range of complementary evening and night-time uses that appeal to a wide range of age and social groups, making provision, where appropriate, for leisure, cultural and tourism activities such as cinemas, theatres, restaurants, public houses, bars, nightclubs and cafés.

Accordingly, at Paragraph 8 the Inspector confirms that the proposals would add to consumer choice by increasing the range of town centre activities and would maintain activity within the town centre where retail outlets appear to close early.

Likewise, at Paragraph 9 the Inspector confirms that market considerations cannot be an overriding consideration when recent government advice indicates that there should be greater variety in an overall town centre 'offer' to cater for as wide a cross-section of the community as possible. The appeal was subsequently allowed.

19-23 High Street, Pinner

In this case, the key issue was the effect of the proposal on the vitality and viability of the district centre.

Whilst the Inspector accepted that the 25% non A1 threshold had been breached by 7.4%, the Inspector considered the merits of the use in the round and allowed the appeal.

The Inspector found (in Paragraph 12) that in generating high levels of activity throughout the normal shopping day that the coffee shop use is beneficial to the vitality of the primary shopping frontage despite the loss of some retail floor space.

At Paragraph 14, the Inspector recognised a small but significant shift in planning policy in the form of the new PPS4 (replacing PPS6: Planning for Town Centres (March 2005)), which gives a generally more flexible approach and states that primary frontages are 'likely' to have a high proportion of retail uses rather than 'should' contain a high proportion of retail uses.

47 High Street, Keynsham

The Inspector considered that the main issue in this case was the impact of the proposal on the vitality and viability of the town centre.

In relation to the proposed use, the Inspector found at Paragraph 5 that the proposal was for a mixed A1/A3 use as the scheme would comprise substantial elements of both a shop and café, and that take away and merchandise sales would be more than incidental to the A3 use.

Although the relevant Local Plan Policy did not allow for the loss of any A1 use within the town centre, the Inspector gave weight to PPS4 which states that authorities should set flexible policies for their centres which can respond to changing circumstances. It was confirmed that 70% of units within the primary shopping frontage would remain in A1 use if the appeal was allowed.

At Paragraph 12, the Inspector considered that the use would generate a reasonable footfall equivalent to other A1 uses, and gave consideration to the fact that the unit had remained vacant for a considerable time despite marketing.

At Paragraph 13, the Inspector concluded that despite the conflict with Local Plan policy, that in view of the material considerations, the stance of PPS4 that the proposal would not undermine the retail function of the primary shopping frontage, nor lead to a fragmentation of retail uses and would not have a harmful effect on the centre vitality and viability. The appeal was allowed.

71 London Road, Headington

In this appeal, the Inspector considered an enforcement notice for the change of use from a retail use to an A1/A3 coffee shop use within a primary retail frontage.

The relevant Local Plan policy sought to retain 65% of units within the shopping frontage in A1 use, whilst the proposed use took this to 64.6%. The appeal was allowed.

The Inspector took the view that other material considerations were sufficient to outweigh this marginal policy breach. In particular, A1 sales amounted to nearly 50% of the total sales, there was no local concentration of coffee shops, footfall surveys showed the use attracted more customers than A1 shops and customer surveys showed that the use encouraged combined trips and pedestrian activity.

As outlined at Paragraph 18, the Inspector found that having regard to the above material considerations, that there would not be an adverse impact on the vitality and viability of the retail function of the district centre and as such, the underlying principle of the policy would not be compromised. He considered that cumulatively, the material considerations justified a departure from the exact wording of the policy.

Caffé Nero – Sheep Street, Skipton

A recent decision has been issued allowing a Caffé Nero retrospectively within a primary shopping frontage in Skipton. This is the first relevant decision issued since the NPPF was published.

The policy set out within the Craven District Local Plan stated that the Council would resist any proposals for the change of use at ground floor level within the core retail area.

The Inspector accepted that it was contrary to the Development Plan Policy to allow a change of use, but indicated that there were other material considerations which allowed a decision to the contrary. In allowing the appeal, the Inspector gave weight to the following material considerations:

- That at the heart of the NPPF there is a presumption in favour of sustainable development – Policy R3 was found to not be in accordance with the NPPF due to its restrictive nature and failure to define primary and secondary frontages;
- The coffee shop attracted a large number of users and compared well to other Class A1 uses in terms of patronage; and
- The use had not caused any harm to the vitality of Skipton Town Centre or its core retail area.

The Inspector was therefore satisfied that the use as a coffee shop could be retained within the core area despite Development Plan policies which sought to prevent any changes of use whatsoever. The policy was found to carry diminished weight on the basis that it did not promote sustainable development in line with the NPPF.

Costa Coffee – Gloucester Road, Bristol

This decision was issued post publication of the NPPF. The Inspector allowed a Costa Coffee Use to continue in a primary frontage in a District Centre of Bristol. The previous use was either Class A2 or B1 Use.

The Inspector concluded that the mixed A1/A3 scheme introduced a significant element of A1 retail activity, at around 30% of the business which strengthened the retail function of the primary shopping area of the town centre (Paragraph 9).

The planning application attracted a large volume of objections on the basis that the use was a branded operation and that the local area was made up predominantly of independent traders. At Paragraph 18, the Inspector took into account the fact that there were a large number of objections but he concluded that objections against the Costa brand did not outweigh making a land use decision other than in accordance with the development plan.

The Inspector took into account the evidence presented as part of the Allegra Strategies report which shows that coffee shops attract people to the high street and improve their vitality.

Costa Coffee – Whiteladies Road, Bristol

An Inspector allowed the continued use of a Costa Coffee within a primary retail frontage within a District Centre of Bristol.

The appeal was considered in conjunction with the appeal at Gloucester Road (above). The Inspector acknowledged that the use contributed to footfall in the area, that the replacement of a newsagents with a coffee shop would not be harmful to the retail function of the parade and that, as there was other vacant retail units in the area, no other retailers had been kept out of the area as a result of the coffee shop opening.

Summary

The assessment of recent appeal decisions has identified that, whilst the proposed use is a mixed use of A1/A3, there are recognised material considerations in favour of allowing such uses within primary retail frontages. These include:

- Branded coffee shops generate high levels of patronage, commensurate with other A1 uses that are typically located within primary frontages;
- They have become an established user, which typically locate within prime frontages;
- They are attractors in their own right;
- The A1 element of the use is beneficial to retail vitality and viability; and

- The encouragement for greater flexibility and diversity of uses within PPS4 and recently the NPPF has been recognised as material in recent decisions.

Even when adopted planning policies would not allow any further loss of Class A1 uses, Inspectors have been comfortable in allowing mixed A1/A3 coffee shop because of their characteristics and positive impact that they can have on retail frontages.