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|--|----------------------------|---|-------------------------------------|----------------------------------|-----------|-------------------|-----------|
| <b>Delegated Report</b>  |                            | <b>Analysis sheet</b>   |                                     | <b>Expiry Date:</b>              |           | <b>27/04/2012</b> |           |
|  |                            | N/A / attached  |                                     | <b>Consultation Expiry Date:</b> |           | <b>05/04/2012</b> |           |
| <b>Officer</b>   |                            |   |                                     | <b>Application Number(s)</b>     |           |                   |           |
| Rob Tulloch  |                            |   |                                     | 2012/1020/P                      |           |                   |           |
| <b>Application Address</b>   |                            |   |                                     | <b>Drawing Numbers</b>           |           |                   |           |
| 49 Endell Street<br>London<br>WC2H 9AJ   |                            |   |                                     | 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 basement and part ground floor from retail use (Class A1) to restaurant use (Class C3) and installation of a new shopfront. |                            |   |                                     |                                  |           |                   |           |
| <b>Recommendation(s):</b>  |                            | <b>Refuse Planning Permission and Warning of Enforcement Action</b>   |                                     |                                  |           |                   |           |
| <b>Application Type:</b>   |                            | <b>Full Planning Application</b>  |                                     |                                  |           |                   |           |
| <b>Conditions:</b>   |                            | <b>Refer to Draft Decision Notice</b>   |                                     |                                  |           |                   |           |
| <b>Informatives:</b>   |                            |   |                                     |                                  |           |                   |           |
| <b>Consultations</b>   |                            |   |                                     |                                  |           |                   |           |
| <b>Adjoining Occupiers:</b>  |                            | No. notified  | <b>19</b>                           | No. of responses                 | <b>05</b> | No. of objections | <b>04</b> |
| <b>Summary of consultation responses:</b>  |                            | Site notice 07/03/2012 – 28/03/2012<br>Press advert 15/03/2012 – 05/04/2012<br><br>Flat 1, 49 Endell Street objects: <ul style="list-style-type: none"> <li>Two previous applications have been refused and circumstances remain unchanged</li> <li>The application would result in a super-sized restaurant</li> <li>Although it is proposed to retain an A1 use at the front, the A3 use at the rear would be harmful to amenity as their windows are above it.</li> <li>No details of proposed kitchen have been submitted</li> <li>The highway is already congested with unauthorised tables and chairs, heaters, umbrellas, and cabinets</li> <li>The Victorian/Edwardian design of the shopfront would be contrary to the Art Deco style of the building</li> <li>The residential entrance would become part of the restaurant and impede access to the flats above.</li> </ul> |                                     |                                  |           |                   |           |
|  |                            | Flat 2, 49 Endell Street objects: <ul style="list-style-type: none"> <li>The only reason the unit has remained empty is there has never been any serious intention to let it out</li> <li>It is not currently vacant, but being used as storage space for the restaurant</li> <li>The existing restaurant is already popular and does not need expanding as it will harm amenity and detract from Covent Garden's eclecticism</li> </ul>  |                                     |                                  |           |                   |           |

|                            |  |
|----------------------------|--|
|                            | <ul style="list-style-type: none"> <li>• The proposed Victorian frontage is at odds with the Art Deco character of the building</li> <li>• Who would ensure that the A1 unit was operational</li> <li>• The change of use of no. 53 Endell Street should not set a precedent and a change to an A2 is less harmful to residential amenity</li> </ul> <p>Flat 3, 49 Endell Street objects:</p> <ul style="list-style-type: none"> <li>• Two previous applications have been refused and nothing has changed since</li> <li>• The proposal to retain an A1 use at the front is purely cosmetic</li> <li>• There are current noise problems from the existing restaurant, the proposal will increase this disturbance</li> <li>• The applicant already put out more tables and chairs on the highway than they have permission for</li> <li>• The proposed shopfront is harmful to the Art Deco character of the building</li> </ul> <p>Flat 3, 45 Shorts Gardens objects:</p> <ul style="list-style-type: none"> <li>• Fish is not sustainable</li> <li>• The highway is already congested with tables, umbrellas, heaters and kitchen furniture</li> <li>• Potential noise from construction</li> </ul> <p>Flat 3, 45-47 Endell Street supports the application</p> |
| CAAC/Local group comments: | <p><b>Covent Garden CAAC</b> comment that the new shopfront should be clearly differentiated from the shopfront next door.</p> <p><b>Covent Garden Community Association</b> object that no kitchen extract has been proposed, the loss of A1 would be detrimental to the area, and the proposed A3 use would be detrimental to residential amenity and the special character of Covent Garden</p>   |

## Site Description

The site is a four storey plus basement building on the west side of Endell Street, near the junction with Shorts Gardens. The lawful use of the ground and basement floors is retail (Class A1), but these floors are currently being used in association with the neighbouring restaurant at no. 47 Endell Street. The upper floors are in residential use. The site lies within the Central London Area and the Covent Garden Local Area and falls within designated commercial and shopping frontages. The site is also within the Seven Dials (Covent Garden) Conservation Area and the adjoining terrace to the north west is grade II listed.

## Relevant History

### 47 Endell Street

2009/3361/P Change of use of the ground floor of number 49 from retail shop (Class A1) to restaurant (Class A3) as an extension to the existing restaurant at number 47 plus associated internal alterations and the installation of a new shopfront. Refused 06/11/2009.

Reason: The loss of the existing Class A1 retail use on the ground and basement floors and replacement with an enlarged double A3 unit, would result in an over-concentration of food, drink and entertainment uses and would be harmful to the special retail character of the Covent Garden Area and the wider conservation area contrary to Policies B7 (Conservation Areas) R2 (General impact of retail and entertainment uses), R3 (Assessment of food and drink uses and licensed entertainment) and R7 (Protection of shopping frontages and local

shops) of the London Borough of Camden Unitary Development Plan 2006.

Appeal dismissed 07/09/2010

33799 Use of the basement to provide extra seating accommodation to the ground floor fish restaurant. Determined planning permission not required.

There have been a number of applications for the placing of tables and chairs on the highway.

#### **49 Endell Street**

2007/3331/P: Change of use of ground and basement floors from retail use (Class A1) to restaurant/cafe use (Class A3). Refused 08/11/2007.

Reason 1: The loss of the existing Class A1 retail use on the ground and basement floors would be detrimental to the special retail character of the designated Covent Garden Area and the wider Conservation Area contrary to Policies B7 (Conservation Areas) and R7 (Protection of shops) of the London Borough of Camden Unitary Development Plan 2006 and to Supplementary Planning Guidance for Central London 2004 that seeks to protect retail frontage in the Covent Garden Area.

Reason 2: The proposed Class A3 restaurant use would be detrimental to local residential amenity and the special character of the Covent Garden Area having regard to the combined excessive size of floorspace in 47 and 49 Endell Street and the existing accumulation of food, drink and entertainment uses within the designated commercial frontage and the local area generally, which would add to noise and disturbance late into the night, contrary to Policies R2 (General impact of retail and entertainment uses), R3 (Assessment of food and drink uses and licensed entertainment) and B7 (Conservation areas) of the London Borough of Camden Unitary Development Plan 2006 and to Supplementary Guidance for Central London 2004 that seeks to limit food, drink and entertainment uses in the Covent Garden Area.

20311 Use of the ground floor and basement of 49 Endell Street as a wholesale & retail shop, and the installation thereof of a new shop front. Granted 01/05/1975.

19289 The change of use of the basement and ground floor at the above address from market warehouse to wholesale and retail use, and for the installation of a shopfront. Granted 27/01/1975

#### **53 Endell Street**

2011/3424/P Change of use of basement and ground floor from a shop (Class A1) to Financial and Professional Services (Class A2). Granted 07/09/2011

#### **Enforcement**

EN12/0482 & EN12/0605 Excavation of basement of 47 Endell Street and creation of link to no.47.

#### **Relevant policies**

##### **LDF Core Strategy and Development Policies**

CS5 Managing the impact of growth and development

CS7 Promoting Camden's centres and shops

CS14 Promoting high quality places and conserving our heritage

DP10 Helping and promoting small and independent shops

DP12 Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses  
DP24 Securing high quality design  
DP25 Conserving Camden's heritage  
DP26 Managing the impact of development on occupiers and neighbours  
DP30 Shopfronts

**Camden Planning Guidance 2011**  
**Seven Dials Conservation Area Statement**  
**NPPF 2012**

**Assessment**

**1 Proposal**

- 1.1 Consent is sought for the change of use of the rear area of the ground floor and all of the basement of no. 49 Endell Street from A1 (retail) to A3 (restaurant). The restaurant use would be in association with the neighbouring restaurant use at no. 47 Endell Street. It is proposed to create a link to the two premises at basement level with the rear ground floor of no. 49 accessed via stairs leading from the basement. Some works have already taken place with part of the basement wall dividing the two premises having been removed and both the basement and ground floors of the application site being used as ancillary storage and office space for the neighbouring restaurant.
- 1.2 Two previous applications for a change of use of no. 49 to restaurant use were refused on 08/11/2007 (2007/3331/P) and 06/11/2009 (2009/3361/P). The latter was also dismissed at appeal (see history section). The difference between the proposed scheme and the refused applications is that the proposal seeks to retain a retail element at the front of the ground floor to avoid harm to the frontage and the conservation area.
- 1.3 The application has been revised to increase the A1 floorspace and to separate it from the proposed A3 use at the rear of the ground floor. The main issues are:
- Land use
  - Design
  - Amenity
  - Enforcement

**2 Land use**

- 2.1 The lawful use of the ground and basement floors of no. 49 Endell Street is A1 (retail). It is proposed to retain approximately 16sqm of A1 floorspace at the front of the ground floor and convert the rear of the ground floor and the whole of the basement to an A3 use in conjunction with the existing restaurant at no. 47 Endell Street. The retained retail area would be entirely separate from the restaurant use with no internal access to it.
- 2.2 The site lies within the Central London Area and forms part of a Commercial Frontage within the Covent Garden Local Area. The Revised Planning Guidance for Central London describes Covent Garden as being characterised by an intricate mix of uses that are generally small in scale. Whilst recognising the cultural importance of the area, the guidance seeks to protect its unique status through the development plan and the associated planning guidance.

*Loss of retail*

- 2.3 The commercial frontage comprises 11 units (nos. 47-69), but only three, excluding the application site, are in retail use. Policies CS7 and DP12 seek to protect the character and role of each of Camden's centres; and resist the loss of shops where this would cause harm to the character and function of a centre or shopping provision in the local area.

- 2.4 CPG5 further adds that where a planning application proposes the loss of a shop in retail use, the Council will consider whether there is a realistic prospect of such use continuing and may require the submission of evidence to show that there is no realistic prospect of demand to use a site for continued retail use.
- 2.5 The applicant has submitted a letter from the owners of the property describing how the previous tenants have not stayed for the full length of their leases, but this does not demonstrate that there is no demand for retail units in this area. There are no vacant shops, other than the application site, in the frontage and the Council's annual monitoring report states that although vacancy rates in Camden's shopping streets have increased from 5% to 7% in the last 5 years, out of the 13 main shopping areas in Camden, Covent Garden and Hatton Garden have seen decreased vacancy rates.
- 2.6 It is acknowledged that the proposal would allow for the retention of a retail presence at the front of the site, however this retail function would be relatively small at 16sqm with no storage or w.c. facilities proposed. It has not been demonstrated that a unit of this size would be viable, nor that there is demand for such a small unit in the area. Furthermore, it has not been demonstrated that if there is no demand for the existing larger retail unit, there would be demand for a smaller unit. If permission were granted for a small retail unit at the front, there would be no way for the Council to ensure that the proposed retail use would be retained and therefore there is concern that the change of use of the remainder of the unit to a restaurant could be implemented to the detriment of the function, vitality, viability and character of the area.
- 2.7 As such, as the applicant has not demonstrated that there is no demand for a continued retail use, demand for a reduced retail presence, or that the proposed smaller unit would be viable, the loss of retail floorspace would harm the character, function, viability and vitality of the area and be contrary to policies CS7 and DP12.

*Proposed restaurant use*

- 2.8 Policies CS7 and DP12 state that that the Council will make sure that food, drink and entertainment uses do not have a harmful impact on residents and the local area. The commercial frontage comprises 11 units, three of which are already in restaurant use. The guidance for Central London recommends that food, drink and entertainment uses should not exceed 25% of the total number of units in each commercial frontage in Covent Garden. This number has already been exceeded and the extension of an existing A3 use would further add to the cumulative impact of the existing restaurants in the frontage.
- 2.9 The fish and chip shop at no. 47 Endell Street has a floorspace of approximately 98sqm. No. 47 has a floorspace of 42sqm in the basement and 42sqm at first floor. The loss of 16sqm at ground floor level would lead to an extended restaurant with a floorspace of approximately 166sqm. The guidance for Central London states that to provide protection for residential amenity and to protect the particular character of the area, all new or expanded uses should be small scale, generally with a maximum gross floor area of 100sqm, and exceptions will only be made where it can be demonstrated that larger uses will not create harmful impacts or undermine the character of the area.
- 2.10 As the proposed restaurant floorspace would be well in excess of 100sqm and the existing use at no. 47 already generates complaints about its impact on amenity, the extended restaurant use would be considered to further harm the amenity of adjoining occupiers and the character of the area.
- 2.11 As such the proposal to enlarge the restaurant is considered to harm the character of the area and would not comply with policies CS7 and DP12 of the LDF and Camden Planning Guidance.

- 2.12 A previous application (2009/3361/P) was refused by the Council on 08/07/2009, this sought the change of use of the entire basement and ground floors of the application site to a restaurant use in association with the existing restaurant at no. 47 Endell Street. The delegated report stated that "The expansion into number 49 would create an enlarged unit with a floor area of approximately 170m<sup>2</sup>. This would create an overly large unit in an area where smaller units are protected and would be contrary to the guidance."
- 2.13 An appeal against the Council's decision was submitted and dismissed on 07/09/2010 with the Inspector referring to the 100sqm threshold and commenting that "the loss of a retail unit and the proposed enlarged restaurant at this location would unacceptably harm the retail character of the Covent Garden area."
- 2.14 The applicants have referred to a recent permission involving the loss of a retail unit at no. 53 Endell Street (see history section). In this instance it was not considered that the loss of an A1 unit would harm to character, function, vitality and viability of the area and the proposed use was one that was considered to make a positive contribution. Furthermore the proposed use was not considered to create any amenity issues and was not in conflict with the guidance for Central London.

### **3 Design**

- 3.1 The existing shopfront is of no particular architectural merit with thick glazing bars and a centrally located entrance, and no objection was raised previously to its replacement. The proposed shopfront is a conventional design with a 900mm high stallriser and shop window subdivided by a single mullion. It is considered to be an improvement on the existing shopfront and is better proportioned than the replacement proposed as part of the previous scheme (2009/3361/P).
- 3.2 The building does not appear to be Art Deco, with only its crittal windows differentiating it from the rest of the terrace. Nevertheless the proposed shopfront is considered to be an improvement on the existing shopfront and is not considered to harm the character or appearance of the building, terrace or conservation area. As such the proposal is considered to comply with policies CS14, DP24, DP25 and DP30 of the LDF and Camden Planning Guidance.

### **4 Amenity**

- 4.1 The proposed extension would create a restaurant with a floorspace in excess of 100sqm which the guidance for Central London considers to be the size at which impacts on residential amenity become significant. The existing restaurant has permission for the provision of 7x tables and chairs outside no. 47 and an extension to the restaurant may lead to an application for more tables and chairs outside the application site which would further impact on residential amenity.
- 4.2 The applicant has indicated that the kitchen would be relocated to the front of the basement of the application site and would connect to the existing extract ducting at the rear of the building, but no information has been submitted nor has an acoustic report been submitted to demonstrate that doing so would comply with the Council's noise standards.
- 4.3 As such the proposal is considered to harm the amenity of adjoining occupiers and would not comply with policies CS5, DP12 and DP26 of the LDF and Camden Planning Guidance.

### **5 Enforcement**

- 5.1 The lawful use of the grounds and basement floors of the application site is retail (Class A1). The ground and basement floors are leased by the neighbouring restaurant and are currently being used for purposes ancillary to the restaurant in the form of food storage and preparation,

laundry facilities, and the storage of outdoor heaters. This has been facilitated by the removal of part of the basement wall separating the two premises.

- 5.2 The removal of the wall does not in itself require planning permission, and some excavation has taken place to no. 49 Endell Street which the Planning Enforcement Team considers to be not expedient. However, the use of the ground and basement floors as ancillary to the restaurant is an unlawful change of use from retail (Class A1) to restaurant (Class A3) and the loss of a retail unit in this location, and the extension of the neighbouring restaurant use, is considered to be contrary to policies CS7, DP12 and Camden Planning Guidance.

**6 Recommendation: Refuse Planning Permission and Warning of Enforcement Action**

- 6.1 The Head of Legal Services be instructed to issue an **Enforcement Notice** under Section 172 of the Town & Country Planning Act 1990 as amended requiring the cessation of the unauthorised restaurant use and to pursue any legal action necessary to secure compliance and officers be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

6.2 The Notice shall allege the following breach of planning control:

The unauthorised change of use of the basement and ground floors from retail (Class A1) to ancillary restaurant use (Class A3)

6.3 What you are required to do:

The notice shall require that within a period of 1 calendar month of the notice taking effect the unauthorised use cease and all fixtures, fittings and equipment associated with the restaurant use at number 47 Endell Street be permanently removed.

6.4 REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE.

The proposed loss of Class A1 retail floor space and replacement with an enlarged Class A3 restaurant, would result in an over-concentration of food, drink and entertainment uses and would be harmful to the special retail character, function, vitality and viability of the Covent Garden Area and the residential amenities of neighbouring occupiers, 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 DP10 (Helping and promoting small and independent shops), 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.

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