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| Delegated Report | | Analysis sheet | | Expiry Date: | | 13/07/2010 | |
| | | N/A / attached | | Consultation Expiry Date: | | 09/07/2010 | |
| Officer | | | | Application Number(s) | | | |
| Anette de Klerk | | | | 2010/0063/P | | | |
| Application Address | | | | Drawing Numbers | | | |
| 225 Kentish Town Road London NW52JU | | | | Refer to decision notice | | | |
| PO 3/4 | Area Team Signature | C&UD | Authorised Officer Signature | | | | |
| | | | | | | | |
| Proposal(s) | | | | | | | |
| Retention of ground floor use as restaurant (Class A3) following the expiry of planning permission dated 13 March 2007 (reference 2006/1094/P approved under appeal reference APP/X5210/C/06/2022306). | | | | | | | |
| Recommendation(s): | | Refuse planning permission and enforce | | | | | |
| Application Type: | | Full Planning Permission | | | | | |
| Conditions or Reasons for Refusal: | | Refer to Draft Decision Notice | | | | | |
| Informatives: | | | | | | | |
| Consultations | | | | | | | |
| Adjoining Occupiers: | | No. notified | 19 | No. of responses | 5 | No. of objections | 3 |
| | | | | No. electronic | 0 | | |
| Summary of consultation responses: | | <p>A site notice was displayed between 26/05/2010 – 16/06/2010. A letter of objection was received from Cllr Meric Apak stating the following:</p> <ul style="list-style-type: none"> - Planning permission ref. no. 2006/1094/P was only approved under appeal ref. no. APP/X5210/C/06/2022306 and was conditional. - The permission was expressly granted to the owners at the time and not to the premises - Upon sale of the business the permission would expire. - In any event the permission was time limited and would expire in March 2010. - This exceptional granting was approved on appeal only because of the overwhelming support of local residents towards the former owner at the time. However, now that he has sold the business, local residents have expressed that they do not wish to see further loss of A1 use in premises in Kentish Town Road. <p>A letter of support was also received from Cllr Braithwaite stating the following:</p> <ul style="list-style-type: none"> - This unit has been serving cooked meals for longer than 10 years and it is popular with constituents. It has not had any complaints and is | | | | | |

- popular with mothers with small children in buggies during the day.
- -It is my impression that the new owner, when purchasing the lease, believed his use of an electric pizza oven did not require A3 zoning and, in retrospect, he should certainly have sought professional clarification of the fact that a pizza oven, despite not being cooking with a naked flame, does require A3 zoning. But I see little difference between the oven heating that's done at ITTA and the heating that is performed nearby under A 1 use in both Greggs Bakery and Subway with microwave. The technology is little different.
 - I am aware of concern by officers and Kentish Town Action, at the percentage of A 3 outlets on Kentish Town Road - though this has actually been used as a restaurant on the ground floor for much more than 10 years - though this was protracted as a result of the planning inspectors appeal decision to grant an extension, personal to the previous tenant. I do not believe that confirmation as A3 would take the restaurant element to below 50% in that parade.
 - I was on the committee that rejected (I did myself) A3 for the previous occupant in my first DC Committee in June 2006. As I recall, Cabinet Councillor Theo Blackwell described that DC decision to reject A3 change of use as the worst planning decision he'd ever witnessed!
 - However, the economic environment and the circumstances in Kentish Town have changed in the intervening four years. There are long-term A1 voids in the immediate proximity. This welcome young independent business will be likely to have to close if the committee insist that the ground floor reverts to A1.
 - The consequence of insisting on retention of A 1 would be that the ovens, fridges and staff will all have to move upstairs, with both capital and long-term labour cost implications. In my view, as a local Councillor, we should seek to act to help small, valued local independent businesses and not compound their operating overhead cost problems at this time.
 - -It is anomalous that the upstairs of this unit has forever been zoned A3. In practice, I cannot think of any premises that succeeds in use when restricted to upstairs only restaurant occupancy. It is, for example, not practical for either disabled or buggy access to the first floor.

**CAAC/Local groups
comments:**

Kentish Town Road Action ((KTRA) objected on the following grounds:

- Judgement of appeal was that a 3-year time limited personal planning permission was granted for restaurant use of the ground floor, thereafter it must revert to A1.
- The owner sold up a year before the 3 years were up and therefore the premises have been A1 since 2009.
- The appeal was only allowed under these conditions as stated :
“a reasonable approach in this case was to grant a three year limited personal planning permission for the restaurant use of the ground floor. This would enable the appellant to continue a popular and thriving business while also helping to maintain the Council’s planning control these business activities and ensuring that the restaurant use of the ground floor is not taken over by what the Council describe as ‘an A3 chain operator’ ”. – Planning permission was granted with a personal and time limited conditions.
- The appeal on 27/03/2007 related to an application dated 03/03/2006. This application was lodged before Camden Planning guidance was published in December 2006 and therefore the recommendation of the Appeal Judge was based on pre-CPG recommendations that state in paragraph 46.8 that the Council will resist proposal that will result in less than 75% of the core shop frontages in centres not subject to area guidance being in retail use.
- No 225 Kentish Town Road is within the core shop frontages along 189-345 Kentish Town Road, therefore officers would be going against their own recommendations if approval is recommended.
- In 1996 the Council refused a change of use to Class A3 because Council wished to “ensure the viability of the ground floor for independent retail”. The percentage of A1 in this frontage is at present 64% with 36% being other uses. This percentage is already much lower than the Council’s guideline of 75% A1. If No. 225 were permitted change of use, the percentage of A1 would drop to 57% with 43% being other uses. (List of occupiers from 189 – 229 Kentish Town Road not included in summary)
- There is no shortage of restaurants and cafés in Kentish Town Road. The result of losing this A1 usage would be the beginning of a downward trend leading to an unviable high street with too many cafés, restaurants and other non-A1 premises and too few retail shops. It is vital for health and viability of Kentish Town Road to retain all the Class A1 we have.
- Should these premises become entirely A3, and should the owners sell up (they have only been there for less than 2 years and Pizza cafés come and go) yet another large restaurant chain could move in (ie. Kentucky Fried Chicken). It’s a large premises in a good position on the high street. We already have a McDonald’s and a Nando’s here.
- We feel that restaurants which operate without permission as A3 should not be rewarded retrospective change of use. In fact, the present owners have been at this address for little more than one year and they will have known when they signed the lease and built their pizza ovens on the ground floor that this floor had A1 Planning permission only. Several other A1 cafés in the high street are waiting for the result of this application. If the application is granted these cafés may well use this as a precedent.
- Itta may argue that it is one of the few cafés in the high street with wheelchair access where the disabled can eat hot food. They may claim that if this application is not accepted, their disabled customers

will lose out. This is not so. Camden Council has given permission to these premises to serve hot cooked food to those in wheelchairs on the ground floor. This food can be carried down from the restaurant upstairs, which is what has been done there for years. We do not want Itta to close. There is no reason why pizzas cannot be cooked upstairs and served to customers seated on the first floor which has an A3 licence.

Inkerman Area Residents Association raised the following objections:

- We agree with objections of Kentish Town Road Action (see above).
- The principle of maintaining retail on the High Street is a vital one and we support the policy of the KTRA on this and to encourage Camden to stick to their own stated policy.
- We do not wish to see our High Street dominated by restaurants and café's.
- Agrees with KTRA statement that "In particular we agree with the statement that should these premises become entirely A3, and should the owners sell up (they have only been there for less than 2 years and Pizza cafés come and go) yet another large restaurant chain could move in (ie. Kentucky Fried Chicken). It's a large premises in a good position on the high street. We already have a McDonald's and a Nando's here."
- This is not an isolated application but could be a precedent which therefore has great importance.

Bartholomew Area Residents' Association (BARA) supports the application and made the following comments:

- Premises had operated as a restaurant for at least a decade, though we are aware that the permission for Café Med to trade as such, after an appeal, was personal to the then owner and was due to expire in March 2010.
- The pizzeria's operator Argon Oruci attended a BARA meeting and said that when the outlet was sold to Mr Oruci in April 2009, he was aware of the restriction but he told us he believed his pizza oven did not require A3 zoning as he has no cooking with an open flame.
- It was the view of the meeting that BARA should write in response to the consultation in support of the application because there is a view that the service is valued in this community.
- We understand that the ramification of Camden enforcing A1 retail would entail loss of seating on the ground floor and compel relocating the pizza oven and necessary accompanying fridges upstairs.
- Mr Oruci told us that the effect, particularly on extra staff operating costs, would make his operation marginal and he may have to close. There are already three void retail units within 100m unlet and there would be no community benefit in increasing the number of voids during the tough current economy at the expense of a valued small local business run by a newly married young couple.

Site Description

The application site comprises a three storey mid terrace property located on the west side of Kentish Town Road. The application refers to the ground floor of the premises which currently trades as a restaurant (A3) with ancillary take-away (A5). The lawful use of the ground floor is retail (Class A1). The ground floor is linked via an internal staircase to the authorised restaurant at first floor level which also has a separate staircase leading down to a second entrance at ground floor level. Ancillary storage and office space is located at second floor level.

The food is mostly prepared in the kitchen located at the rear of the first floor whilst the pizzas are prepared and baked in two pizza ovens located behind the ground floor display counter.

The site is within a core shop frontage of the Kentish Town Centre. The site is not located within a conservation area.

Relevant History

Planning

- **9501163:** Change of use of the ground and first floors from A1 (retail) to A3 (restaurant). Refused 10/01/1996. Reasons: It is considered that the introduction of a non-retail use in this location would have an adverse effect on the quality and character of the shopping parade.
- **P9601254R1:** Retention of first floor as a restaurant, and of a ventilation duct. Granted 05/09/1996.
- **2006/1094/P:** Continued use of ground floor as a cafe/restaurant (Class A3) to be used in conjunction with the existing restaurant use on the upper floor, with the installation of a new extract flue and air handling equipment to the rear elevation. Refused 07/06/2006. Reasons: The proposed change of use would result in the permanent loss of a unit in Class A1 (retail) use and therefore harm the character, function, vitality and viability of the Kentish Town District Shopping and Service Centre. The Council's refusal was subsequently appealed and on 2006 the Planning Inspector allowed the appeal. Please refer to section under assessment for reasons.

Enforcement

- **EN06/0620** – “Change of use from A1 (retail) to A3 (cafe/restaurant) at ground floor level” - Enforcement notice served and a subsequent appeal was allowed.
- **EN09/0129** – “3-year temporary ground floor A3 approval falls in the event of a sale. Must revert to A1”.
- **EN09/0418** – “Change of use to A3 or A5 - Should be A1”. Ongoing investigation

Relevant policies

Replacement Unitary Development Plan 2006

SD6 - Amenity of occupiers and neighbours

SD7B - Light, noise and vibration pollution

SD8 - Disturbance

R1 – Location of new retail and entertainment uses

R2 - General impact of retail and entertainment uses

R3 – Assessment of food and drink uses and licensed entertainment

R7 – Protection of shopping frontages and local shops

Camden Planning Guidance 2006

LDF Core Strategy and Development Policies

As the draft LDF Core Strategy and Development Policies documents have now been published, they are material planning considerations. However, as a matter of law, limited weight should be attached to them at this stage.

Core Strategy Proposed Submission

CS1 - Distribution of growth

CS5 - Managing the impact of growth and development

CS7 – Promoting Camden's centres and shops

CS8 - Promoting a successful and inclusive Camden economy

CS14 - Promoting high quality places and conserving our heritage

Development Policies Proposed Submission

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

DP28 - Noise and vibration

Assessment

Proposal:

Planning permission is sought for the retention of the ground floor use as restaurant (A3) for use in conjunction with the existing restaurant on the first floor.

Land Use:

Preamble

As stated in the history section of the report, the Council's decision to refuse an application (Ref No. 2006/1094/P) in 2006 for continued use of the ground floor as a cafe/restaurant (Class A3) in conjunction with the existing restaurant use on the upper floor was allowed on appeal subject to conditions. Consideration should be given to the comments made by the Inspector in his statement (APP/X5210/A/06/2021844/NWF) and the conditions attached to the permission. It should also be noted that although the decision was made based on policies contained in the previous UDP 2000, the Inspector referred to the policies in the current adopted UDP 2006 which came into effect after the Council's decision was made and prior to the Inspector's consideration of the appeal.

The Inspector states in paragraph 9 of his statement that it seems indisputable that the change of use of the ground floor to a restaurant would result in a further erosion in retail outlets in this part of the Borough and that it would inescapably intensify the concentration of food providing establishments contrary to the aims of policy R7 (B). The Inspector referred to the previous advice given by planning officers to the then appellants and the Council's omission to provide persuasive evidence against the loss of retail use and concluded in paragraph 12 that a reasonable approach would be *"to grant a three year personal planning permission for the restaurant use of the ground floor, which would enable the appellant to continue a popular and thriving business while also helping to maintain the Council's planning control these business activities and ensuring that the restaurant use of the ground floor is not taken over by what the Council describe as 'an A3 chain operator' "*. The following conditions attached to the planning permission are also relevant to this application:

Condition 1: The use of the ground floor premises hereby permitted shall be carried on only by Mr Hanifi Alagoz and shall be for a limited period, being the period of three years from the date of this decision, or the period during which the premises are occupied by Mr Hanifi Alagoz whichever is the shorter.

Condition 2: When the ground floor premises cease to be occupied by Mr Hanifi Alagoz or at the end of the three years whichever shall occur, the use hereby permitted shall cease forthwith and all materials and equipment bought on to the ground floor premises in connection with the use shall be permanently removed.

Subsequent to the above appeal decision the original appellant, Mr Hanifi Alagoz vacated the premises prior to the expiry of the three year period and the new leaseholder and applicant of the current application, Mr Argon Oruci, continues to operate the ground floor premises as an A3 restaurant with an ancillary A5 take-away, without the benefit of planning permission.

Loss of A1 Retail

Policies R1B and R2 identify town centres as locations which are suitable for new food and drink establishments, provided that they do not have a harmful impact on the amenity of neighbours, the character of an area or its vitality or viability and are easily accessible by a number of means of transport. However policy R7A, seeks to protect shopping floor space in A1 Use Class in town centres at ground floor level. It will not only resist their loss but also will only grant permission for development that it considers will not cause harm to the character, function, vitality and viability of the centre.

The proposal site forms part of the core shop frontage along nos 189 – 345 Kentish Town Road as noted in the Camden Planning Guidance 2006. Paragraphs 46.8 and 46.10 of the SPG states that the Council will resist proposals that will result in the number of shop uses in the core shop frontage to fall below 75%. A site visit was carried out to establish the existing mix of uses within the core frontage. This was then compared to Council's planning records to establish if the non A1 uses 'as existing' were lawful. The results are as follow:

| Uses | Existing | Lawful | As proposed (existing uses) | As proposed (lawful) |
|--------|----------|-----------|-----------------------------------|-------------------------|
| A1 | 32 = 56% | 35= 61.4% | 31= 54% | 34 =59.6% |
| Non A1 | 25 = 44% | 22 =38.5% | 26 =45.6% | 23 = 40.3% |
| Total | 57 | 57 | 57 | 57 |

As can be seen from the table there are three A1 units that appear to be unlawfully in use as non A1 uses. Enforcement investigations have therefore been opened on these units.

There are 32 out of 57 units in the core shop frontage currently in retail use (56%) with 35 (61.4%) having a lawful A1 use. In both the lawful and the actual positions the percentage of A1 uses are already below the 75% quantum the Council seeks to maintain as set out in the CPG 2006. The loss of a further retail unit would result in even fewer units remaining in retail use (54% in use as A1 and 59.6% with lawful A1 use).

The vitality and character of the Town Centre is affected by this loss of a further A1 unit because the town centre requires a mix of A1 units of various sizes. Smaller A1 units such as this are needed in order for smaller A1 retailers and independent shops to function within Town Centres. These smaller units are under pressure to change to restaurant and takeaway uses and their viability is therefore undermined.

Based on the above it is considered that the loss of the retail/A1 unit and the retention of the restaurant/A3 use at the ground floor would have a detrimental impact on the character, vitality, viability and retail function of the core shopping frontage along 189-345 Kentish Town Road. In particular the retention of the A3 use would result in the proportion of units in retail/A1 use falling even further below 75% to 54%. This is considered to be contrary to the requirements of policies R1B, R2 and R7 of the UDP.

Amenity:

Policies R2 and R3 state that the Council will not grant permission for food and drink uses or licensed entertainment (in Use Classes A3, A4, A5, D2 or sui generis) that it considers would cause individual or cumulative harm to an area and provides guidance with regard to the potential effect on nearby residential uses and amenity, noise pollution, the potential effect on highway conditions, the potential for anti-social behaviour and potential effects of a concentration of food and drink uses.

The area immediately surrounding the application site already contains other A3, A4 and A5 uses with Nando's adjoining the application site at 227-229 Kentish Town Road, Chicken Cottage at 211A Kentish Town Road and The Wine Cellar at 193 Kentish Town Road. Other A3, A5 uses are also located the opposite the application site at No's 186-192 Kentish Town Road and 194 Kentish Town Road. The retention of the ground floor in A3 use is therefore considered acceptable in a town centre location such as this. It is not considered that another food, drink and entertainment use in addition to those already in existence, particularly given its floor area of approximately 46.8m, would have a significant detrimental effect on the residential amenity of surrounding occupiers.

No new flue or alterations to the existing plant are proposed and will remain as approved under appeal decision ref. no. APP/X5210/A/06/2021844/NWF. It is therefore not considered that the use of existing plant in association with the retention of the A3 use at ground floor level will result in any detrimental impact on neighbouring amenity in terms of noise or cooking smells. . It would therefore be consistent with the requirements of policies SD6, R2 and R3.

Impact on Transportation:

Given the small floor area of the premise, its location within a town centre and being within walking distance to bus routes and tube stations, the proposal would not be likely to significantly affect the existing transport conditions.

Recommendation:

It is recommended that the application be refused and either:

- 1) That the Head of Legal Services be instructed to issue an **Enforcement Notice** under Section 172 of the Town and Country Planning Act 1990 as amended, and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control; **or**
- 2) That the Head of Legal Services be instructed to issue a **Breach of Condition Notice** under Section 187A of the Town and Country Planning Act 1990 as amended with regard to condition 1 and condition 2 of planning permission granted by letter dated 27 March 2007 reference number 2006/1094/P and officers be authorised in the event of non compliance to prosecute under that section.

Enforcement notice

The breach of planning control that has occurred is:

Unauthorised use of the ground floor of the premises as a restaurant with takeaway pizza use which is not in compliance with conditions 1 or 2 of planning permission granted under 2006/1094.

The notice shall require:

- 1) The use of the ground floor of the premises as restaurant with takeaway pizza shall completely and permanently cease
- 2) All furniture, fittings and equipment on the ground floor of the premises associated with the use shall be permanently removed from the site.

Within a period of:

- 6 months from the date of the notice.

Reason for serving the notice:

The permanent change to restaurant/takeaway use would result in the loss of a retail unit which would be harmful to the overall character, function, vitality and viability of the Kentish Town Centre, contrary to policy R7a (Protection of shopping frontages and local shops) of the London Borough of Camden Replacement Unitary Development Plan 2006.

Breach of Condition Notice

The breach of condition

The following conditions **have** not been complied with:

- Condition 1 - The use of the ground floor premises hereby permitted shall be carried on only by Mr Hanifi Alagoz and shall be for a limited period, being the period of three years from the date of this decision, or the period during which the premises are occupied by Mr Hanifi Alagoz whichever is the shorter.
The condition has been breached in that the use of the ground floor has ceased to be carried out by Mr Hanifi Alagoz.
- Condition 2 - When the ground floor premises cease to be occupied by Mr Hanifi Alagoz or at the end of the three years whichever shall occur, the use hereby permitted shall cease forthwith and all materials and equipment bought on to the ground floor premises in connection with the use shall be permanently removed.
The condition has been breached in that the restaurant use has not ceased and materials and equipment in connection with this use have not been removed.

The notice shall require:

- 1) The use of the ground floor of the premises as restaurant with takeaway pizza shall completely and permanently cease
- 2) All furniture, fittings and equipment on the ground floor of the premises associated with the use shall be permanently removed from the site.

Within a period of:

- 6 months from the date of the notice.

Reason for serving the notice:

The permanent change to restaurant/takeaway use would result in the loss of a retail unit which would be harmful to the overall character, function, vitality and viability of the Kentish Town Centre, contrary to policy R7a (Protection of shopping frontages and local shops) of the London Borough of Camden Replacement Unitary Development Plan 2006.

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