

<b>Address:</b>	<b>Thomas Neal's Centre</b> <b>Basement Floor Units 26, 27, 28</b> <b>8-24 Shorts Gardens</b> <b>London</b> <b>WC2H 9AU</b>	
<b>Application Number:</b>	2009/2273/P	<b>Officer: Katrina Christoforou</b>
<b>Ward:</b>	Holborn & Covent Garden	
<b>Date Received:</b>	<b>08/05/2009</b>	
<b>Proposal: Change of use of shop units 26, 27 &amp; 28 (A1 use class) at basement level to dual/ alternative shop (A1 use class) or restaurant/café (A3 use class).</b>		
<b>Drawing Numbers:</b>  <b>Site Location Plan; A3/P1073/EF/02; P3912/ T(10) PE-1 Rev A; P3912/ T(20) P-1 Rev A; Environmental Noise Survey Report 15847/PNA2 by Hann Tucker Associates, dated 9<sup>th</sup> September 2009.</b>		
<b>RECOMMENDATION SUMMARY: Grant planning permission</b>		
<b>Applicant:</b>	<b>Agent:</b>	
Shaftesbury Covent Garden Ltd C/o Agent	Rolfe Judd Planning Old Church Court Claylands Road The Oval LONDON SW8 1NZ	

### ANALYSIS INFORMATION

Land Use Details:			
	Use Class	Use Description	Floorspace
Existing	<i>A1 Shop</i>		<i>319<sup>2</sup></i>
Proposed	<i>A1 Shop</i> <i>A3 Restaurants and Cafes</i>		<i>319m<sup>2</sup> or 319m<sup>2</sup></i>

## **OFFICERS' REPORT**

**Reason for Referral to Committee: Proposals involve the creation of a dual/alternative A1 shop/ A3 restaurant use (Clause 3 iv).**

### **1. SITE**

- 1.1 The triangular shaped building known as the Thomas Neal Centre is bounded by Earlam Street, Shorts Gardens and Neal Street. The building is grade II listed and is within the Seven Dials (Covent Garden) Conservation Area. The building was refurbished in the 1980's to provide a mixed use development comprising retail, theatre, restaurant and business uses.
- 1.2 The site is within the Covent Garden Local Area of the Central London Area as designated in the Revised Planning Guidance for Central London: Food, Drink and Entertainment, Specialist and Retail Uses 2007. The ground floor of the building fronting Earlam Street and Shorts Gardens are designated commercial frontages and protected retail frontages.
- 1.3 Internally the ground and basement floors of the building are arranged as a shopping arcade with frontages onto the street at ground floor level. There is an additional internal parade of shops at ground level known as Cucumber Alley. The three shop units which are the subject of this application are located at basement level along the north west side of the building. The three units are currently arranged and operating as two A1 shops.

### **2. THE PROPOSAL**

- 2.1 The proposal is for dual/alternative use of basement commercial units 26, 27 and 28 of the Thomas Neal Centre for A1 shop/ A3 restaurant use. The units are currently in A1 use. No internal or external alterations are proposed as part of the application.

### **3. RELEVANT HISTORY**

- 3.1 The building was refurbished and converted into a mixed use development in the late 1980's in association with planning permission 8800273 (The refurbishment alteration, extension, and change of use to provide a mixed development comprising theatre, residential, retail, restaurant and business uses) and listed building consent 8870111 (The partial demolition and works of refurbishment alteration and extension), both granted on the 16/02/1989. The area now described as basement units 26, 27 and 28 at this time appeared to form 4 x A1 shop units.
- 3.2 Planning permission 9500205 was granted on the 07/09/1995 for the change of use of units 26 and 27 in the basement from retail to restaurant use to be used in conjunction with existing restaurant use at Unit 28. The unit numbering appear to

have been confused in the submission for this application. The existing plans show the units currently known as 26, 27 and 28 to be in A1 shop use and the proposed drawings show the units in A3 restaurant use. This permission was subject to the following conditions:

*Condition 1: No music shall be played on the premises in such a way as to be audible within any adjoining residential accommodation.*

*Condition 2: No process shall be carried on or machinery installed which is not such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*

*Condition 3: The use hereby permitted shall not be carried out otherwise than between the hours of 9am and 11pm on Mondays to Saturdays and 10am to 10pm on Sundays.*

- 3.3 Planning permission PS9904304 was granted on the 13/05/1999 for the dual use of units 26, 27 and 28 within the building for either Class A1 (retail use) or Class A3 (food and drink). The permission was valid for a period of 5 years from the date of the decision and the same conditions were attached as per permission 9500205.
- 3.4 Most recently planning permission and listed building consent (references 2009/4465/P & 2009/4576/L) were granted on the 15/01/2010 for:

Planning permission: Use of shopping mall including A1 shop units and former ancillary circulation space at basement and ground floor (including 80 sq. m of additional floorspace created by part infilling to atrium at ground floor) for A1 retail use, dual use of existing A3 kiosk for either A3 café use or A1 retail use, change is use of 18 sq. m of retail floor space to Class D1 (theatre use) and replacement of roof lantern with flat roof and new plant room at first floor level including green roof, erection of plant screen/trellis and the erection of solar panels to the internal roof slope of building fronting onto Shorts Gardens.

Listed building consent: Internal and external works in association with use of shopping mall including A1 shop units and former ancillary circulation space at basement and ground floor (including 80 sq. m of additional floorspace created by part infilling to atrium at ground floor) for A1 retail use, dual use of existing A3 kiosk for either A3 café use or A1 retail use, change is use of 18 sq. m of retail floor space to Class D1 (theatre use) and replacement of roof lantern with flat roof and new plant room at first floor level including green roof, erection of plant screen/trellis and the erection of solar panels to the internal roof slope of building fronting onto Shorts Gardens.

The permissions are yet to be implemented.

## **4. CONSULTATIONS**

### **Statutory Consultees**

- 4.1 No statutory consultees.

**Conservation Area Advisory Committee**

- 4.2 Covent Garden CAAC: No response

**Local Groups**

- 4.3 Covent Garden Community Association: No comment

**Adjoining Occupiers**

<i>Number of letters sent</i>	32
<i>Total number of responses received</i>	0
<i>Number of electronic responses</i>	0
<i>Number in support</i>	0
<i>Number of objections</i>	0

- 4.4 A site notice was erected on the 27/01/2010 (expiring 17/02/2010)

**5. POLICIES**

**5.1 Replacement Unitary Development Plan 2006**

SD1- Quality of life  
SD6- Amenity for occupiers and neighbours  
SD7- Light, noise and vibration pollution  
SD8- Noise and disturbance  
B6- Listed buildings  
R1- Location of new retail uses  
R2- Impact of retail and entertainment uses  
R3- Assessment of food and drink uses and licensed entertainment  
R7- Protection of shopping frontages and local shops

**5.2 Supplementary Planning Guidance**

- Camden Planning Guidance 2006  
- Revised Planning Guidance for Central London: Food, Drink and Entertainment, Specialist and Retail Uses 2007.

**6. ASSESSMENT**

- 6.1 The primary considerations material to the determination of this application are summarised as follows:

- The principle of the proposed dual/alternative A1 shop/ A3 restaurant use and the implications for the function, vitality and viability of the area.  
- The impact of the proposed uses on the amenity of neighbours.

- 6.2 Units 26, 27 and 28 that are the subject of this application are already in lawful A1 shop use and it is not therefore necessary to reassess the implications of this proposed use. The application seeks for flexibility in the use of these units allowing the possibility of conversion to A3 restaurant use. It is the A3 element of the proposals which therefore requires assessment.
- 6.3 The application was submitted on the 08/05/2009 but was not valid until 06/01/2010 due to a lack of information. The application was originally seeking the renewal of planning permission PS9904304 granted on the 13/05/1999 allowing for flexible A1 shop/A3 restaurant use. The power to renew planning permissions was not reinstated until October 2009 by which time permission PS9904304 had expired. The A1 use had been established for a period in excess of 10 years from the date on which planning permission PS9904304 was granted. The A1 use therefore became established and the flexibility for A3 use elapsed on the 13/05/2009. The proposals are therefore being considered as new planning application.

#### Principle of the A3 restaurant use

- 6.4 Policy R7 generally seeks to protect A1 shopping floorspace unless it can be demonstrated that the proposals will contribute towards the local character, function, vitality, viability and amenity. Policies R1 and R2 allow for the development of food, drink and entertainment uses in suitable locations, accessible by a range of public transport and where it would not cause harm to the character, function, vitality and viability of the area. The site is within the heart of Covent Garden and the Central London Area. The area is a destination for shopping and entertainment but includes a mix of uses including business and residential. The area benefits from excellent public transport links provided by local tube stations, buses and navigable streets.
- 6.5 The ground floor level of the application building at street level is within a designated commercial frontage and a protected retail frontage. The Central London guidance states that food drink and entertainment uses will generally be allowed up to a maximum of 25% of the frontage in this location. However, the Thomas Neal Centre at ground and basement levels takes the form of a shopping arcade. Whilst the building has shop frontages at ground level facing onto Earlham Street and Shorts Gardens, units 26, 27 and 28 that are the subject of this application are located at basement level. These units have no street frontage and are accessed internally via stairs and a lift. Applying the guidance is not therefore straight forward in this case. It has therefore been considered appropriate to look at the overall mix of uses within the building, the likely implications for the retail function of the area and the overall implications for the vitality and character of the immediate and wider area.
- 6.6 At present, two of the units concerned are occupied by the clothing store 'Breed' and the other by the skate/snowboarding shop 'Urban Chaos'. There are currently no proposals for these occupants to vacate the building and it may be the case that these occupiers remain in the building and the A3 use is not implemented. The applicants have stated there is no potential A3 occupier in mind at this stage. The application has been made to re-instate the flexibility in the use that the premises has benefited from between 1995 and 2009 and to preserve the viability of the

centre. It should be noted that there have been two previous permissions allowing A3 restaurant use of these units, planning permission 9500205 granted on the 07/09/1995 and planning permission PS9904304 for dual/alternative A1/A3 use was granted on the 13/05/1999. The flexibility for the A3 use allowed by this permission expired in May 2009. Whilst guidance and policy has been updated since these permissions were granted, the site circumstances and the implications of the proposed use are considered to have remained broadly unaltered. Even if an A3 use was to become established, under the current Use Classes Order the premises could revert back to A1 shop use without the need for planning permission.

- 6.7 As the units are located at basement level there would be no direct implications for the protected shopping frontages at street level. It is not considered that the basement level retail units concerned provide a significant draw of customers upon which the function of the remaining units or the centre as a whole is reliant. In fact the success of the basement level is largely based on the customers drawn into the centre at street level created by the ground floor level units. The possible loss of the A1 units in this location is not therefore considered to have any negative implications for the viability of the remaining shops or the retail frontages.
- 6.8 Within the building as a whole there appears to be three existing A3/A4 uses all accessible from Earlham Street- Kitchen Italia (basement), Detroit Basement Bar (Basement) and Café Canela (ground). There is also the Donmar Theatre (sui generis use class) accessed from Earlham Street. The remainder of the units at both ground and basement levels and along the Cucumber Alley passage are in A1 use (with the exception of 16 Shorts Gardens which is in B1 office use). It is not therefore considered that the proposals would result in an over-concentration or accumulation of A3 uses. It is considered preferable to allow for alternative A1/A3 in suitable locations to ensure the units are occupied. It is therefore considered that an A3 use could add to the character and vitality of the area in this location.
- 6.9 An A3 use may have different requirements for refuse storage and waste. Given the size of the units and the presence of other A3/A4 uses at basement level it is considered likely that this can be accommodated within the building. The Council's Street Environment Services department have advised that the Centre has adequate provision for waste which is collected by a private company daily. It is not considered that the change of use to would result in increased demand for public transport.
- 6.10 On the basis of the above considered that the proposed use would be compliant with the Council's policies for Town Centres, Retail and Entertainment as well as the supplementary Central London Guidance.

#### Amenity

- 6.11 The surrounding streets are characterised by shops and other commercial uses at ground floor level with residential above. The nearest residential properties are located at the upper floors of the building and at the upper floors of the adjoining buildings fronting Neal Street.

- 6.12 The Central London guidance recommends that new or expanded A3 uses be small scale with generally a floor area of no more than 100m<sup>2</sup> in order to protect residential amenity. As a result of the proposals the maximum floor area if all three of the units were converted would be 319m<sup>2</sup>. The guidance states that 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. The proposed A1/A3 use in this case would be located at basement level with no residential properties immediately adjoining. The ground floor area immediately above the three units concerned is part of the arcade and is occupied by shops. The upper levels are in office use. The residential accommodation is located at the upper levels on the other two sides of the building. The A1/A3 units would be accessed as they are now via the commercial frontages at ground floor level and would not therefore conflict with the residential entrances or result in patrons congregating on the street immediately outside of any residential premises. It is therefore considered that the proposed dual use would not have any negative affects on the residential amenity of neighbours in terms of noise or anti-social behaviour.
- 6.13 However, the Covent Garden Area is considered to be sensitive to night time uses due to the mix of residential and commercial uses on narrow streets. With shopping as the primary function at ground floor level in the immediate vicinity of the application site, the area becomes much quieter during the evening once the shops have closed. To avoid any unnecessary disturbance to neighbours late at night it is recommended that conditions be attached to any permission stating that no music shall be played on the premises in any way so as to be audible from neighbouring residential premises and that the use shall not be carried out otherwise than between the hours of 9am and 11pm on Mondays to Saturdays and 10am to 10pm on Sundays (as per permissions 9500205 and PS9904304).

#### Plant and machinery

- 6.14 No external alterations have been proposed as part of the application. As the application has been made to secure the principle of flexible use without a potential occupier in mind, details of any internal or external fit out are not available at this stage. Where an A3 restaurant use is proposed, it is assumed that ventilation equipment will be required. The floor plans show the position of an existing kitchen extract. A noise report has been submitted stating that an extract fan has been proposed to extract through an existing flue at level 5 on the north side of the site. However, the applicant was unable to provide further details of the extract including whether this is viable, the location of the flue, manufacturers details of plant or potential noise outputs, as this information is not available.
- 6.15 It is not considered advisable to grant planning permission for an A3 use for which there is no certainty that a suitable system of extraction can be provided. The building is grade II listed and any extraction equipment to be installed either internally or externally would require listed building consent. As details of the extraction are not currently available there is no guarantee that a suitable system of extraction can be installed without causing harm to the listed building. Failure to provide sufficient extraction may result in a nuisance to neighbours in terms of noise, smells and/or fumes. It is therefore recommended that any permission be subject to a condition stating that no primary cooking shall take place on site. If

and when an A3 occupant is found, if the occupier so chooses they can submit full details of proposed extraction alongside an application to remove the condition (and any further planning or listed building consents required). An informative can be added to any permission advising of this. With the above condition it is considered that the amenity of neighbours will be preserved in accordance with policy SD6.

## **7. CONCLUSION**

- 7.1 The proposed dual/alternative A1 shop /A3 restaurant use is considered to be acceptable subject to conditions. The site is located within the Central London Area within the heart of the main mixed use area of Covent Garden with excellent links to public transport. The proposed use would be at basement level within the shopping arcade and would not affect the retail frontages at street level. The proposals would not result in a high concentration of A3 uses and the primary function of the centre will remain as retail. The function, vitality and viability of the area would be preserved. There is no immediately adjoining residential accommodation and it is not considered that a nuisance or loss of amenity to neighbours would occur. The proposals, subject to conditions are therefore considered to be compliant with policies SD6, SD7, SD8, B6, R1, R2, R3 and R7 and the supplementary guidance.

## **8. RECOMMENDATION**

- 8.1 Grant planning permission subject to conditions.

## **9. LEGAL COMMENTS**

- 9.1 Members are referred to the note from the Legal Division at the start of the Agenda.