

Address:	117 Kentish Town Road London NW1 8PB		
Application Number:	2008/4781/P	Officer: Hannah Parker	
Ward:	Camden Town with Primrose Hill		
Date Received:	08/10/2008		
Proposal: Change of use of ground floor from a retail unit (Use Class A1) to cafeteria (Use Class A3 - no primary cooking involved).			
Drawing Numbers:			
Receipt: Site Location Plan: Ground Floor: Existing Floor Plan, Ground floor Proposed			
RECOMMENDATION SUMMARY: Granted and Warning of Enforcement Action (1) Grant planning permission subject to conditions (2) Enforce against the existing unlawful use as a community meeting venue (Sui Generis Use)			
Applicant:		Agent:	
Mr Yasin Abanur 117 Kentish Town Road London NW1 8PB		N/A	

ANALYSIS INFORMATION

Land Use Details:			
	Use Class	Use Description	Floorspace
Lawful /Existing	A1 Shop / Sui Generis – Community centre		92m ²
Proposed	A3 Restaurants and Cafes		92m ²

OFFICERS' REPORT

Reason for Referral to Committee: The application involves the change of use to a Class A3 use [Clause 3 (iv)].

1. SITE

- 1.1 The application site is 117 Kentish Town Road, which comprises of a basement, ground and two upper floors. The application relates to the ground floor of the building, which has a lawful use for retail purposes [Class A1]. It is currently being used on an unauthorised basis as a community meeting venue as indicated in the planning application form.
- 1.2 The upper floors are currently being used for residential purposes. Council tax records indicate there are two flats and both are in occupation.

1.3 The building is not listed and the site is not located within a conservation area. The site is within the Kentish Town Centre, but is not located within the core shopping frontage.

1.4 117 Kentish Town Road is located at the end of a seven units (no. 131- 119) which are operating under the A1 use class.

2. THE PROPOSAL

2.1 Planning permission is sought for the change of use of the ground floor of the property from Use Class A1 to Class A3. It is intended that the premises will be used as cafeteria, with light food and snacks, but with no primary cooking involved. The agent has also stated that the café will have ancillary Somali community functions. No external alterations are proposed to the property as part of this application.

3. RELEVANT HISTORY

3.1 Application premises

EN07/0004 - an enforcement investigation into the alleged use of the ground floor shop as a cafe/members club for Somalis.

3.2 8701492 - permission was refused for the change of use of the ground floor from shoe shop to unlicensed cafeteria.

3.3 PE9800164R1 Permission granted for the erection of a rear extension to the ground floor retail unit, the installation of a new shop front and works of conversion including the erection of a first floor rear extension to provide two self contained, one bedroom, residential units above.

3.4 Other relevant applications/decisions

3.5 2008/2652/P 109 Kentish Town Road. Change of use of basement and ground floor from retail (Class A1) to an estate agent (Class A2) was refused at a meeting of the Development Control Committee on 23/07/2008. The reason for refusal was the over concentration of non-retail units within this frontage, in that there would be 4 consecutive non-retail units.

3.6 EN04/0600. 109 Kentish Town Road. An enforcement complaint was made regarding the premises being used as a gathering place/ social venue. An enforcement notice was served which was subsequently complied as the use as a social venue ceased.

3.7 2008/1892/P 101 Kentish Town Road Change of use from shop (Class use A1) to Cafe (Class use A3) Withdrawn

4. CONSULTATIONS

Local Groups

4.1 **Kentish Town Road Action Group, Leighton Road Neighbourhood Association and Kelly Street Residents Association** all object on similar grounds:

- Loss of A1 retail in this part of Kentish Town Road. Camden Planning Guidance states that 50% of units in the non-core frontages area of Kentish Town road should be maintained in retail use (A1). This stretch of frontage has 19 units of which, at present, 47% are A1 and 53% are non-retail. If this application were to be granted 42% would be A1 and 58% non-retail. These percentages are unacceptable and fall outside Camden Planning Guidance limits.
- The loss of there A1 premises will add to the poverty stricken/down-at-heel look of this part of the road. There are already 6 cafes or takeaways in this frontage, which is below the 50% A1 that Camden Planning Guidance recommends. The loss of another A1 unit will not help to raise the vitality of the frontage.
- Want application to be refused and a condition imposed on the shop owner to run as an A1 establishment and not as a “community social centre”, as is the stated present use in the application. The shop has blackened windows – these should be replaced with plain glass so that the general public can see what goods they can purchase.
- We note from the application form that the applicant has not sought pre-application advice, nor consulted with his neighbours or the community. He is not proposing to install any waste storage area for the cafeteria nor has he provided any contact details apart from the address of the premises.
- We note that the proposed opening hours of the cafeteria are from 9.00 am to 10pm. Presumably this reflects the current usage as a “community social centre”.
- Request refusal and enforcement action taken to return the ground floor to retail use with clear glass windows.

4.2. Comments have been made by both the Camden Town with Primrose Hill and Kentish Town Hill Safer Neighbourhood Teams. 117 Kentish Town Road falls within The Camden Town with Primrose Hill Safer Neighbourhood Team area.

The Camden Town with Primrose Hill Safer Neighbourhood Team comments as follows:

- There are reservations about the black plastic covering the windows as in the past local Somali youth who have been known to the police have loitered outside these premises and sought refuge in 117 Kentish Town Road and it has proved difficult to spot them or identify them through the blacked out windows.
- Complaints have been made to the police by members of the public regarding males chewing khat in the street and leaving the premises under the influence of khat. (However, it is noted that the possession and consumption of khat is legal in the UK.)

- Camden Town and Primrose Hill Safer Neighbourhoods Team have in the past held a surgery in 117 Kentish Town Road to engage with the Somalian community. Work has also been done in partnership with a representative of Rugby House who offer a free substance misuse service for diverse communities and we are in discussion with them to see if they can bring the 'health bus' to our next surgery in Kentish Town Road.
- The amount of disorder generated by there premises is no worse than many public houses on the ward.

Kentish Town Hill Safer Neighbourhood Team

- There are problems with anti social behaviour, litter, cannabis smoking and noise outside, spitting across the pavement.
- The blacked out windows are intimidating.

4.3. **Adjoining Occupiers**

	Original
<i>Number of letters sent</i>	59
<i>Total number of responses received</i>	2
<i>Number of objections</i>	2

4.4 Two objections received – one from 12 Bartholomew Villa and one from 12 Castle Road. The following grounds of objection were raised:

- Camden Planning Guidance states that 50% of units in the non-core frontage area of Kentish Town Road should be maintained in retail use (A1). This stretch of frontage has 19 units of which at present 47% are A1 and 53% are non-retail. If this application were to be granted 42% would be A1 and 58% non- retail. These percentages are unacceptable and fall outside Camden Planning Guidance limits.
- This particular stretch of Kentish Town Road is shabby and run-down in appearance. There are already too many cafes and take-aways there, the frontages of which are badly-maintained with peeling paint and poor-looking. The loss of another A1 premises will not help to raise the feeling and appearance of this area.
- The application should be refused, and the premises run as a proper A1 retail use and not as a "community social centre".
- The shop has not got a sign and the windows are blackened out. Black film should be removed so that passers-by can see inside the shop and light can spill out onto the pavement at night. The black windows are not inviting and do not enhance the high street – they add a sinister air, and make the area look quite scary and threatening. There are usually a large group of males standing and smoking, often blocking the pavement outside the premises. Does not make the area around the premises feel safe and friendly to walk along – often feels like a no-go area.

- This application should be refused and enforcement should be followed up in order to ensure the shop is run as A1 retail unit.

5. **POLICIES**

5.1. **Replacement Unitary Development Plan 2006**

SD1A Quality of life: sustainable communities

SD1C Quality of life: access for all

SD1D Community Safety

SD6 Amenity for occupiers and neighbours

R1A Location of new retail and entertainment uses: shops and services

R2 General impact of retail and entertainment uses

R3 Assessment of food and drink uses and licensed entertainment

R7A Protection of shopping frontages and local shops

5.2 Camden Planning Guidance is also relevant.

6. **ASSESSMENT**

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

- Land Use
- Residential Amenity
- Other Issues
- Enforcement Issues

6.2 **Land Use**

6.3. Policy R7 [Protection of shopping frontages and local shops] has a broad presumption against the loss of retail floorspace in town centres. It states that planning permission will only be granted for development that it considers would not cause harm to the character, function, vitality and viability of the town centre.

6.4. The Town Centre is divided into core frontages and other frontages. The site is not located within the core frontage. In assessing the impact of proposals, which would result in a loss of A1 retail floorspace outside of a core frontage, Camden Planning Guidance states that consideration should be given to the proportion of non-retail units within a frontage. It states that proposals that result in less than 50% of a frontage being in retail use will generally be resisted. The frontage which 117 Kentish Town Road forms part of runs from 99-139 Kentish Town Road and consists of 21 units. A site visit was carried out to establish the existing mix of uses within the frontage. This was then compared against the lawful uses. This was verified against the Council's planning records to establish if the uses 'as existing' were lawful. The results were as follows;

6.5.

Uses	Existing	Lawful	As proposed (existing uses)	As proposed (lawful)
A1	10 = 47.6%	12= 57.1%	9= 42.9%	11 =52.3%
Non A1	11 = 52.4%	9 =47.6%	12 = 57.1%	10 =47.6%
Total	21	21	21	21

- 6.6 10 out of the 21 units are currently operating as an A1 use although the number of units whose lawful use is A1 is 12 out of 21. There is also one other property located on the frontage which has an A1 use but is operating as an A3. This property is currently under an enforcement investigation. Its change of use in addition to the current proposal would not be appropriate as it would push the number of non-A1 uses over 50%.
- 6.7 It is considered that the frontage 99-139 Kentish Town Road would retain a sufficient number of A1 units so that the conversion of one of these units into an A3, as proposed in this application, would not be detrimental to the vitality and viability of the Kentish Town Centre. The application therefore complies with Policy R7 of the UDP.
- 6.8 The residents have themselves conducted their own retail survey. However, this is based on existing uses not lawful uses. The Council survey and conclusion is based on the lawful uses of the property. Therefore if the proposed change of use were to be granted, the number of A1 premises in the frontage would still exceed 50%, therefore complying with policy.
- 6.9 **Residential and Neighbourhood Amenity**
- 6.10 The upper floors of the property and several of the surrounding properties are in residential use. Before approving an application for A3 use, careful consideration should be given to the impact of the proposal on the occupants of those properties. Policy R3 states that, when considering applications for new food and drink uses, harm to amenity from noise, emission of cooking fumes, the concentration of such uses in the locality and any record of littering or anti-social behaviour should be taken into account.
- 6.11 The applicant has proposed to operate Monday to Sunday from 9am to 10pm. This choice of hours would limit the potential for disturbance late at night arising from the café. Likewise, the absence of any primary cooking at the premises would prevent any significant disturbance from cooking fumes or extraction equipment. Conditions controlling hours of operation and the future installation of cooking equipment are recommended should the application be approved.
- 6.12 In terms of noise and anti-social behaviour arising from the premises at present, it is noted that objections from local community groups principally relate to the loss of retail premises within the Town Centre, rather than specific amenity issues. The Council's Environmental Health department were consulted about any potential noise related complaints. A complaint was received on the 9th November 2006 regarding loud music and a loud television. This issue was resolved and since

then there have been no further noise complaints. However, given the proximity of residential properties to the development, it is recommended that a standard condition be attached limiting the playing of music at the premises.

6.13 One letter of objection has been received raising concern about individuals loitering and smoking outside the premises, whilst the Safer Neighbourhoods teams comment on litter and the consumption of Khat on and in front of the premises. However, as the Camden Town with Primrose Hill Safer Neighbourhood Team acknowledges, Khat is not an illegal substance and disturbance generated by the premises is no greater than an average public house. The premises are located in a designated Town Centre where a higher level of disturbance would be expected compared to a predominately residential area.

6.14 One concern singled out by the Safer Neighbourhood Teams, objectors and Residents Associations is the black plastic film attached to the inside of the property's window. It is considered that this makes the premises appear unwelcoming and has a deadening effect on the street scene. A condition will be placed on this permission stipulating that the film should be removed within three months, should planning permission be granted.

6.15 Given the limited number of objections to the proposal, it is considered that neighbourhood amenity could be adequately safeguarded through the conditions set out above and the proposal would comply with policies SD6 and R3 of the UDP.

6.16 **Other issues**

6.17 The proposed use, given its modest size, is unlikely to generate significant transport demands. Furthermore, it is located in close proximity to existing public transport facilities; several bus routes run along Kentish Town Road and the overland and tube stops are in the vicinity of the site.

6.18 Camden Street and Environmental Services have looked over the storage for the provision for residual waste. It is concluded that as the customer has access to at least twice daily collections storage provision is not required. The premises have already been operating as a community meeting venue where refreshments are being served since late 2007. The measures in place are considered acceptable for the proposed use.

6.19 It is also noted that currently there is no signage on the property. If the applicant were to introduce signage that fell outside the Advertising regulations 2007 they would be required to apply for permission. An informative will be placed on the application stating this.

6.20 **Enforcement**

6.21 The current use of the premises as a community centre (sui generis) would remain unlawful following the granting of this permission. It is considered that the continuation of the current use would be unacceptable. The blacked out windows of the premises would continue to have a deadening impact on the street scene and the absence of any conditions fettering hours of opening, cooking or the playing of

music would allow significant harm to occur to the amenities of neighbours contrary to policy SD6 of the UDP. This would also be harmful to the character, function, vitality and viability of the town centre contrary to policies R2 and R3. Enforcement action should be taken against the current use of the premises to ensure that the community use is discontinued.

- 6.22 If the applicant does not comply with the condition regarding opening hours the Enforcement Team would be in a strong position to take enforcement action. A Breach of Condition Notice (BCN) and/or an Enforcement Notice could be served. There is no right of appeal against a BCN. Failure to comply with a BCN is a Summary offence and can result in a fine of £1,000. The Enforcement Team will promptly investigate any complaints and will take appropriate action.

7. **CONCLUSION**

- 7.1 The proposed change of use from Class A1 to Class A3 would not result in the number of lawful retail uses within the frontage falling below the 50% target referred to in the Camden Planning Guidance. The proposal would not result in four consecutive non-retail uses within the frontage. It is therefore considered that the proposal would not harm the character, function vitality and viability of the centre and is therefore in compliance with policy R1A (shops and services), R2 (general impact of retail and entertainment uses) and R7A (protection of shopping frontages and local shops). It is considered that conditions restricting primary cooking, the playing of music and opening hours would be sufficient to maintain the amenities of residential properties in the vicinity of the site.
- 7.2 The property as it is currently operating as a community meeting venue with a black film on its frontage is not acceptable. The presence of the black film creates an intimidating appearance and has an adverse affect on community safety. This is contrary to policy SD1D. It is therefore recommended that the film been removed and the use as a community centre cease.

8. **LEGAL COMMENTS**

- 8.1 **Recommendation (1):** Grant planning permission with conditions for the change of use from an A1 to an A3.
- 8.2 **Recommendation (2):** Enforce against unlawful use as an community meeting centre operating Sui Generis use and 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.

The Notice shall allege the following breach of planning control:

The unauthorised change of use of the ground floor from Class A1 retail to community meeting venue (sui generis use).

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

The use of the premises as a gathering place / social venue would be likely to result in harm to the residential amenity of the adjacent occupiers by virtue of noise and anti social behaviour and well as being harmful to the character and vitality of the Kentish Town Centre. This is contrary to policies SD1D, SD6, R2 and R3 of the London Borough of Camden Replacement Unitary Development Plan 2006.

Steps: The use of the ground floor and basement of the premises as a gathering place/ social venue shall completely and permanently cease. The black film that has been attached to this shop window shall be completely and permanently removed.

Time period: 3 months