

114 – 116 Charing Cross Road, WC2

Supplementary Statement

Planning application for change of use of basement and ground floor from A1 to A5

On behalf of Estates and Agency Holdings plc

February 2009

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Planning application for change of use of basement and ground floor from A1 to A3

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FLITCROFT HOUSE, 114 – 116 CHARING CROSS ROAD, WC2

Submission on behalf of Estates and Agency Holdings plc in respect of the planning application for change of use of basement and ground floor from A1 to A3.

1. Introduction

- 1.1 This Submission on behalf of Estates and Agency Holdings plc is provided to Camden Council in respect of the planning application for change of use of the basement and ground floor from A1 to A3. As agreed with Camden Council, it sets out supporting matters to be taken into account in their consideration of the application.
- 1.2 The development plan is the adopted Camden Replacement Unitary Development Plan (UDP) June 2006. In October 2007 Camden Council approved the Revised Planning Guidance for Central London: Food, Drink and Entertainment. Specialist and Retail Uses (RPG). To date the application has been assessed by the Council purely on the basis of paragraph 15.22 of the RPG.
- 1.3 This is an application where not only is the calculation of the units in retail and non retail use inherently open to wide interpretation but also there are a number of special circumstances, singly or cumulatively, which justify the grant of planning permission.

2. Marketing Report

- 2.1 The report by Nash Bond (Appendix 1) sets out their unsuccessful attempts to find a retail tenant. This demonstrates that there is no significant A1 market for this location. It is not consistent with the requirement to maintain the vitality of Charing Cross Road for there to be a vacant unit.
- 2.2 In this report Nash Bond refer to the marketing efforts of Deloittes, appointed as Administrators of Media Tools Ltd at the end of April 2008. Having marketed the unit as a going concern and not found a buyer, Deloittes surrendered the lease back to Estates and Agency Property Ltd.
- 2.3 Marketing by Nash Bond included :
 - Placing the details on the 'in house' website and the shop property website on the 24th June which is available to both retailers and agents nationwide.
 - Using the Estate Agents Clearing House, firstly on the 25th June 2008 and again in November, which provides hard copy details to some 230 West End agents.

- Sending a further hard copy mail out to retailers with current requirements for properties of this size in the West End.
 - A marketing board was erected on the 14th July 2008.
- 2.4 Only four retailers expressed an interest. Two did not have an acceptable covenant, the third decided that the unit was too large and the fourth rejected the unit due to there being very little footfall. Further details are set out in the report.

- 2.5 The report concludes that:

"In our view, the prospect of securing an A1 retail tenant is negligible because of the changing character of this stretch of Charing Cross Road, the Crossrail works which have now started to the north of Flitcroft House and the state of the economy which makes secondary retail frontages such as this even less attractive to potential tenants."

- 2.6 Nash Bond's observation on the changing character of Charing Cross Road is significant. It has long been known for bookshops, including second hand and the art trade, and also for the sale of musical instruments. Both are responding to the growth of internet trade and the number of outlets is declining. This trend is set to continue and is likely to reduce further the demand for retail units on Charing Cross Road for the foreseeable future.

3. Environmental Improvements to Flitcroft Street

- 3.1 It is important to note that the proposed scheme will bring considerable benefits to the attractiveness and vitality of the locality in accordance with the Unitary Development Plan policy and the underlying objectives of the RPG. According to Roger Tym & Partners, on behalf of Camden Council:

"The shopping environment on Charing Cross Road is poor and would... benefit from environmental improvements" (Camden Retail Study para. 6.47)

"At the northern part of the centre, St Giles Circus, the poor quality is particularly acute." (Appendix 5, para. 97)

- 3.2 In particular Flitcroft Street is, at present, a drab, unwelcoming and unhygienic alleyway attracting unpleasant and anti-social behaviour. The proposed scheme, illustrated on the two sketch drawings (Appendix 2), will rectify this in two ways:

- A restaurant will bring an active shopfront facing Flitcroft Street. This would be in marked contrast to a retail unit where the display windows on Flitcroft Street would invariably be shuttered (as they are and have been for many years) because the retailer would block off the windows in order to maximise their retail

sale and display space. Not only would a restaurant shopfront be a visual improvement to Flitcroft Street but it would help deter the anti-social behaviour.

- The applicant is willing to contribute an additional £10K towards the repair and refurbishment of the paving of Flitcroft Street together with the provision of street lighting.

3.3 The state of Flitcroft Street is of equal concern to the Phoenix Theatre who support the change of use to restaurant (Appendix 3). They have written to say:

"We have long been concerned, as you are, with the deplorable state of Flitcroft Street.

Not only would repair of the paving be a significant improvement but also a restaurant with an active and well-lit shopfront onto Flitcroft Street would enliven the alleyway and deter anti-social behaviour. The latter is a source of serious concern to us. On an almost daily basis, we encounter problems of urine and vomit in Flitcroft Street. This affects us in particular in the region of our five fire escape route doorways onto Flitcroft Street, where we experience both hygiene problems and smells permeating the theatre. To combat this, we find it necessary to wash and disinfect these doorways – both externally and internally – on a regular basis.

In addition a suitable vibrant restaurant at the ground floor and basement of Flitcroft House would be a welcome asset for patrons of the theatre particularly in the evening.

On behalf of the Ambassador Theatre Group, owner of the Phoenix Theatre, I welcome and support your proposals."

4. The Revised Planning Guidance for Central London (RPG)

- 4.1. Paragraph 15.22 of the RPG acknowledges that the retail frontage of this part of the Central London Frontage is not as significant in terms of size or number of uses as the Tottenham Court Road / New Oxford Street area. It recognises that this part of the Central London Frontage has the potential to accommodate some additional non-retail uses provided that the overall level of retail use does not fall below two thirds (66%) of uses on the east side of Charing Cross Road between the junctions of Tottenham Court Road and Shaftsbury Avenue.
- 4.2 Appendix C of the RPG states that the calculation is undertaken on the basis of units rather than length of frontage, approved A3 units count as non-retail even if the permission has not been implemented and *"each individual frontage is shown on a continuous line on the relevant map"*
- 4.3 It is notable that the GLA, in responding to the draft RPG, considered that the draft Guidance was too prescriptive. It requested, inter alia, where reference is made to a

maximum percentage of food, drink and entertainment uses being in one frontage that the word 'normally' should be inserted and reference should be made to special circumstances that may exist to justify such uses in any commercial frontage exceeding the specific figure.

- 4.4 Camden Council responded by inserting the word '*normally*'
- 4.5 Camden planning officers consider that there are 25 existing units of which 16 (64%) are in retail use. As a result of the application, 15 (60%) would remain in retail use i.e. just below the specified 66%.
- 4.6 However, the calculation of the number of units is not clear cut and is open to interpretation. It also appears that to take an approach based (apparently) on units of occupation rather than percentage of frontages or area produces a highly artificial result since it fails to take into account the additional beneficial effects which larger A1 units and frontages may have on the vitality of the location.
- 4.7 The following factors should be taken into account:
 - (i) Centrepont
- 4.8 The inclusion of Centrepont within the defined shopping frontage in the RPG is perverse. It is set back and has always been unrelated, both visually and functionally, to Charing Cross Road from which it is further severed by Andrew Borde Street. The frontage is hostile and virtually impassable for pedestrians. This was noted by Roger Tym & Partners on behalf of the Camden Council:

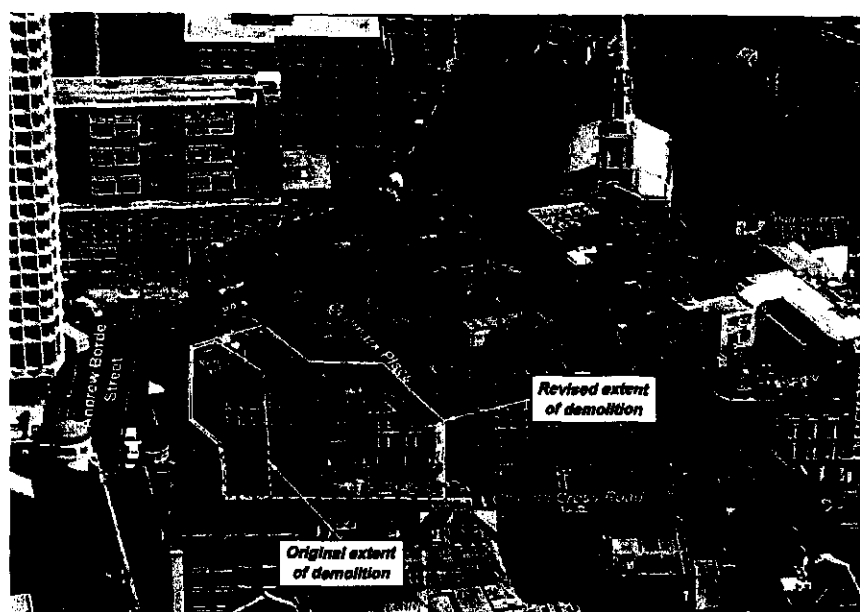
"there is no footway adjacent to Centrepont on Charing Cross Road, forcing pedestrians to take less direct routes to reach their destination."

(Roger Tym & Partners, Camden Retail Study, Appendix 5, para. 97)
- 4.9 It would be more logical to exclude Centrepont from the frontage.
- 4.10 This conclusion would apply in any event but is confirmed and reinforced by the start of Crossrail construction under the Crossrail Act 2008. Indeed, following the completion of the Crossrail works, the section of Charing Cross Road to the north of Andrew Borde Street will still not be one with any frontages but will be a plaza with entrances to the new tube and Crossrail stations.

- (ii) Crossrail

- 4.11 The construction of Crossrail is expected to continue until at least 2014 with the line itself probably opening in 2017. There are three practical consequences for this planning application:

- The forecourt of Centrepont will become a new entrance to the Tottenham Court Road station. It will not perform any retail function. The pool and plaza will be demolished.
- The demolition of 148 was always necessary for Crossrail but the revised construction methodology now requires the demolition of the entire block, 138 – 148 Charing Cross Road. As shown below, this block will no longer form any part of the Charing Cross Road retail frontage.



(Para. 5.1.6 in Chapter 5 of the Crossrail Environmental Statement)

- Charing Cross Road will be closed between Andrew Borde Street and St Giles Circus for at least three years during construction. Pedestrians using Charing Cross Road will be limited to the western side. The frontage between Centre Point and 136 Charing Cross Road will be physically broken.
- 4.12 The major impact, temporarily from construction and permanently, of the new Tottenham Court station and the demolition of 138 – 148 Charing Cross Road was not considered in the RPG. It is not known why the Crossrail proposals were not considered by Camden Council since the Bill received its first reading in February 2005 and by the time the RPG was consulted upon the main and several addendum environmental statements had been published which describe in some detail the proposed works. It is understood that Camden was aware of the Bill and was a petitioner in Parliament. The policy for Charing Cross Road needs to be reconsidered as a result of both of these.

4.13 As a result, this part of t effectively superseded.

(iii) 12 Flitcroft Street

4.14 Camden's Schedule includes 12 Flitcroft Street. This has no frontage at all to Charing Cross Road. The 'continuous line' on Map 16 of RPG runs along the main road frontage. On this basis 12 Flitcroft Street should not be included..

4.15 In any event, the lawful use of No 12 pursuant to planning permission granted in 1997 is for a "mixed use of business (Class B1) and retail (Class A1) in connection with the sale of musical equipment and instruments". Accordingly, even if included, the unit counts as both A1 and B1 and not just A1.

(iv) Caxton Walk

4.16 Similarly, Camden's Schedule includes 3 – 5 Caxton Walk which is excluded from the continuous line of Map 16. It does not fall within the frontage definition.

4.17 Moreover, 3 – 5 Caxton Walk has planning permission was granted in 1997 for a change of use has been significant for several years. Planning permission has not been implemented. Until the unit is mains A1.

4.18 Therefore, Centrepair 2 Flitcroft Street can all with good reason be excluded. 3 -5 Caxton Walk could either be excluded or included as it still to be implemented

4.19 The following table shows how these factors affect the percentage of A1 units.

	Existing units	Proposed A1 units	Proposed A1 %
Camden survey	25	15	60
Without 12 Flitcroft Street	24	15	62.5
Without 12 F St and Centre Point	23	15	65.2
Without 12 F St, Centre Point and Nos. 138 – 148	19	13	68.4
Without above + 3 / 5 Caxton Walk as A1.	19	14	73.7

- 4.20 These ambiguities demonstrate that, depending on the mode of calculation, the proposal could well result in more than 66% remaining in A1 use and comply with the RPG.
- 4.21 Unlike the reliance of the RPG on the number of units, the actual length of retail frontage is also relevant (as mentioned above) since this is as much a measure of vitality and street level interest as the number of units. Unlike the reliance of the RPG on units, actual retail frontage takes into account the successful expansion of retailers, such as Borders and Blackwells, into adjoining premises. It must surely be relevant to consider whether the arithmetical calculation of simple unit numbers is representative of the overall contribution of A1 to Charing Cross Road.

- 4.22 On the basis of the foregoing, Centrepont and Caxton Walk should be excluded from the measurement of actual frontage. The overall frontage is 260 m (excluding side roads) of which 201m is Class A1 retail and 59m is non A1 uses. This amounts to 77% retail and 33% respectively which exceeds the two thirds threshold of the RPG.
- 4.23 While this Submission proceeds on the basis of the RPG, the applicant reserves its position to argue if necessary that the RPG is inappropriately prescriptive and does not comply properly with the statutory development plan. Indeed, the policies in both the UDP and the London Plan set out the general objective but are not prescriptive as to percentages (or as to how the percentages should be calculated) in the way set out in the RPG. It is plainly arguable that the application of the RPG may not be consistent with those policies and unduly rigorous.

5. Different Policies on Charing Cross Road

- 5.1 It is anomalous that Charing Cross Road is divided between two local authorities which apply different policies to what, to customers and retailers, is a single shopping street.
- 5.2 Only the east side of Charing Cross Road between Tottenham Court Road and Cambridge Circus is within the London Borough of Camden. The whole of the west side together with the east side from Cambridge Circus south to Trafalgar Square is within the City of Westminster.
- 5.3 If the site was directly opposite on the west side, different planning policies would apply. Policy SS 5 in the Westminster UDP protects A1 uses but allows A3 use if it would not lead to a concentration of three or more consecutive non-A1 uses and would not cause or intensify an existing overconcentration of A3 and entertainment uses.
- 5.4 In this instance the first criteria is met and, with only three other A3 units in the frontage, it may be argued that an 'overconcentration' would not result. Accordingly, it may be concluded that planning permission would be granted had the boundary of Westminster extended across the road.
- 5.5 Moreover, it is also probable that planning permission would be granted under the policies of the adopted Camden Replacement Unitary Development Plan (UDP) June 2006 rather than the Revised Planning Guidance.
- 5.6 Policy R7 of the UDP states that the Council will resist the net loss of shopping floorspace (Use Class A1) and will only grant planning permission for development that it considers will not cause harm to the character, function, vitality and viability of the centre. That general objective (which is repeated in the RPG) is not undermined by the current proposal and, indeed, the points set out above support the view that the vitality of the locality will be enhanced by the application proposals given the

very difficult market for A1 in this location and the undoubted environmental improvements which the application scheme would deliver. It should also be noted that Charing Cross Road is not mentioned as part of the key focus for retail in para. 5.181 of the London Plan 2008. This part of London is also important for leisure and night time activity as part of the CAZ and close to cinemas and theatres.

5.7 For the same reason as the proposal complies with Westminster's Policy SS5 so it would accord with Camden's UDP Policy R7.

5.8 In terms of the adopted Unitary Development Plan, planning permission would be granted for the change of use of Flitcroft House to A3.

6. Conclusion

6.1 The GLA, in responding to the draft RPG, considered that the Guidance was too prescriptive.

6.2 This Submission explains that not only is the calculation of the units in retail and non retail use on this stretch of Charing Cross Road inherently open to wide interpretation but also there are a number of special circumstances, singly or cumulatively, which justify the grant of planning permission.