

ESTATES & AGENCY LIMITED

FLITCROFT HOUSE, 114 - 116 CHARING CROSS ROAD, WC2

OPINION

Introduction

1. I am asked to advise ~~Estates & Agency Properties Ltd. ("E&A")~~ with regard to the policy criteria which the London Borough of Camden ("**the Council**") may apply to its proposals to change the use of its premises at 114-116 Charing Cross Road, London WC2 ("**the Premises**") from A1 retail use to an A3 use.
2. The Premises are located on the eastern side of Charing Cross Road, in Camden, adjoining the Phoenix Theatre, and separated from it by Flitcroft Street, a narrow alley linking Stacey Street and St Giles with Charing Cross Road. It is much frequented by tramps and alcoholics and provides an issue for both E&A's premises and the Phoenix Theatre. The emergency exits of the theatre open out onto Flitcroft Street and access to from to the stage door is generally by way of Flitcroft Street.
3. The property was ground floor, basement and first floor A1 and was occupied by Media Tools, as Turnkey, a musical instrument shop. This tenant went into administration at the end of April 2008, and Nash Bond were appointed to market the ground floor and basement. E&A sought and received planning permission to change the first floor back from retail to office. This space is now on the market. The 2nd, 3rd and 4th floors are offices and currently let.
4. I am instructed that pedestrian flows for retail are stronger on the western side of Charing Cross Road at this location, although immediately opposite is St Martin's Art School, and the frontage is dead from the point of view of shopping. The east

side has been damaged by the blight associated with the Crossrail works at Tottenham Court Road Station and the vacant site which adjoins Andrew Borde Street, immediately to the south of Centre Point. In the more immediate locality it is occupied by Borders and Blackwells bookshops and by other music shops. Borders and Blackwells occupy multiple units, and may indicate some consolidation of the book trade. It appears that the block to the south of Cambridge Circus in Westminster shows signs of significant vacancy of what were units occupied by small bookshops (I last visited the location on Saturday 28 February).

5. The statutory development plan is the adopted **Camden Replacement Unitary Development Plan June 2006 ("UDP")** and the **London Plan (2008) ("LP")**. In October 2007 Camden Council approved **Revised Planning Guidance for Central London: Food, Drink and Entertainment. Specialist and Retail Uses ("RPG")**.
6. To date I am instructed that the application has been assessed by the Council only on the basis of paragraph 15.22 of the RPG although a further report has recently been submitted by Savills to the Council (under cover of a letter dated 24 February 2009) setting out a number of factors which are considered should be material in determining E&A's application.

Relevant policies

7. The Site is within the Central Activities Zone ("CAZ") of the LP. Both the UDP and LP contain policies regarding A1, A3 and other mixed uses and in general terms contain a number of policy strands, which include most significantly¹:
 - (1) Promotion of mixed uses in central London to serve both the local community and also the wider function of London as a capital city and tourist and leisure destination [LP 3D.1, 3D.2 and UDP Policy SD3];
 - (2) Protection of the vitality of retail uses and the main retail locations, especially in designated areas [LP 3D.3, 5G.4, UDP R1 to R3, R7];
 - (3) Fostering leisure uses and the night-time economy [LP para. 3.173, 3B.9, 3D.7, paras. 5.181-5.186; UDP para. 6.2, R1];
 - (4) Protecting residential amenity [LP 5G.5; UDP S2, SD6, R2, R7].

¹ These are not intended to be exhaustive but illustrative references to Development Plan policy.

8. Since the application does not raise issues regarding residential amenity, I do not propose to consider this aspect further.
9. I note that it is only the eastern side of Charing Cross Road between Tottenham Court Road and Cambridge Circus that falls within the Council's administrative area and its policies. The whole of the western side together with the remainder of eastern side from Cambridge Circus south to Trafalgar Square is within the City of Westminster. If Charing Cross Road is considered as falling into four quadrants, divided up by Charing Cross Road itself and at Cambridge Circus by Shaftesbury Avenue, only one of those four quadrants falls within Camden.
10. Directly across the road, different planning policies apply. Policy SS5 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:

**"POLICY SS 5: SEEKING AN APPROPRIATE BALANCE OF TOWN CENTRE
USES IN THE WEST END INTERNATIONAL CENTRE AND ELSEWHERE
IN THE CAZ AND CAZ FRONTAGES - OUTSIDE THE PRIMARY
SHOPPING FRONTAGES**

(A) A1 uses at ground, basement or first floor level in the CAZ and CAZ Frontages will be protected.

(B) Planning permission for the introduction of a non-A1 town centre use at basement, ground and first floor level will only be granted where the proposal would not be detrimental to the character and function of an area or to the vitality or viability of a shopping frontage or locality.

(C) Proposals for non-A1 uses must not:

1. Lead to, or add to, a concentration of three or more consecutive non-A1 uses
2. Cause or intensify an existing over-concentration of A3 and entertainment uses in a street or area."

11. It is therefore relevant to note that for at least three-quarters of the length of Charing Cross Road:
 - (1) Westminster considers concentrations of uses and the general issue of over-concentration rather than apply a strict percentage as the RPG does;
 - (2) Westminster also considers the concentration of uses and not simply an arithmetical addition of the number of occupiers (RPG) which gives no account to the scale or extent of such uses.

12. Since the materiality of the mix of uses and vitality of the Charing Cross Road cannot rationally be confined to one portion of it (or even only one side of it), and indeed the LP looks at the issue generally, any decision regarding this issue should take account of the road generally and not confine itself to one part of one side of the road. This is an issue which was commented on by the Roger Tym 2008 Camden Retail Study which stated:

"difficulties in management posed by the centre being bisected by the City of Westminster and London Borough of Camden could be in part solved by the creation of a BID for the centre, possibly in conjunction with Tottenham Court Road."

Issues arising with regard to the RPG

13. In my opinion, there are a number of issues which arise with regard to the continued reliance by the Council on the RPG as the primary or main focus for determining E&A's application for the Site. A number of them are general in nature and, whilst I understand that E&A is engaging on the basis of the RPG with Camden, it has noted at least some of the difficulties, and if the application is refused (or unacceptably delayed) and is appealed, it will be appropriate to raise these issues and the continued relevance to be attached to the RPG.
14. In my opinion, the following issues cast doubt on the significance apparently attached by the Council to the RPG so far as the Site is concerned:
- (1) The impact of Crossrail;
 - (2) The relationship of the RPG to the Development Plan policies, which in the form of the LP has been reviewed since the RPG was published;
 - (3) The reasonableness of the prescriptive nature of the RPG in terms of
 - (a) Applying a specific percentage limit to changes in Charing Cross Road which effectively prevents a reduction below the 66% of retail units in the defined frontage assessed at the time of the RPG;
 - (b) The method by which the percentage is to be assessed by reference to units of occupation only.
15. I do propose to comment in detail on the other material planning circumstances which are relevant to the granting of permission for change of use of the premises from A1 retail use to A3. These circumstances are set out in the submission by

Savills on behalf of E&A sent to the Council under their covering letter of 24 February 2009 and I have nothing to add to the Savills Submission in this respect other than to state that they appear to me all to be material and that they accord with my own views of the application and policy.

16. Indeed, as will be clear from my consideration of these issues below, I consider that the RPG is not only inconsistent with Development Plan policy but appears to conflict with it. The fact that it has not been subject to legal challenge is irrelevant since the question as to what materiality and weight should be ascribed to it arises in the context of planning applications.
17. In any event, for reasons I set out at the end of this Opinion, there are strong reasons why if applied properly in the context of the statutory policies of the Development Plan, there are good reasons for permitting the application in order to support and enhance the vitality and attractiveness of the locality.

(1) The impact of Crossrail

18. As the recent Savills' Submission makes clear, the Crossrail works (which are scheduled to continue in this location to about 2014) are already having an effect in the boarding up of properties and the northern end of the Road and will be followed by the closing of the Road to through traffic and significant demolitions and excavations. See the extent of the amended proposals in the Crossrail **Additional Provisions No. 3 (AP3) Environmental Statement Chapter 5 (November 2006)**²: the photograph from p. 55 of the AP3 ES is reproduced in the Savills' Report.
19. The RPG does not discuss the implication of Crossrail nor is there any mention of it. Given the likely impacts of this in terms of the medium terms construction impacts and the longer term changes to the public highways and the improvement of passenger transport, this seems difficult to understand. It suggests that the base text and work pre-dated the Crossrail proposals, although the Bill was introduced in February 2005 and had its Second Reading before the summer recess in 2005. Indeed, Camden was a petitioner against aspects of the Bill.
20. The works under the Crossrail Act 2008 will physically isolate the northern end of the Road for their duration and will replace the Centre Point fountains with a new

² All the documents comprising the environmental statement can be found and downloaded from <http://billdocuments.crossrail.co.uk/>.

plaza entrance to the new tube and Crossrail stations. There will be no frontage development as is the case at present.

(2) Relationship of the RPG to the Development Plan

21. The UDP specifically directs A3, among other uses, to locations such as Charing Cross Road as part of the defined Central London Frontages. It recognises the role of leisure uses and A3 as part of the important mix in these locations (my emphasis):

"6.2 Central London - parts of Central London have a national, international or London-wide retail role or serve a similar function to town centres. These have been designated as Central London Frontages, as shown on the Proposals Map. The Central London Frontages at Tottenham Court Road / Charing Cross Road operate as an extension to the West End. High Holborn operates as a town centre for workers and residents in the Holborn area. Euston Road has potential to strengthen its existing role providing for local workers, residents and visitors.

6.11 The vitality and viability of centres is strongly influenced by the variety and choice of shops and services available in them, and the presence of other uses. **There is a growing demand for leisure facilities and food and drink uses within centres which provide activity when shops are shut. Workplaces such as offices can provide an important source of customers, while the provision of housing can provide both customers and natural surveillance during the evening and at weekends. The Council will seek a mix of uses in each centre that maintains its particular character, but will allow changes in the mix that ensure its continued vitality and viability."**

22. Policy R1 provides:

"R1 - Location of new retail and entertainment uses

A - Shops and services

The Council will grant planning permission for development for shopping and service uses (Use Classes A1 and A2), and markets (sui generis use) in Central London Frontages, Town Centres and Neighbourhood Centres. The Council will also grant planning permission for development of a significant focus of shopping and service uses and for Neighbourhood Centres and local parades in the King's Cross Opportunity Area provided that these would not harm the vitality and viability of existing centres.

In assessing development for shopping and service uses and markets, the Council will consider whether it could be accommodated in any of these locations before edge-of-centre sites, or sequentially, sites out-of-centre are considered for development.

Developments should be of an appropriate scale and character for the centre to which they relate.

B - Food and drink and entertainment

The Council will grant planning permission for development for food and drink

uses and licensed entertainment (in Use Classes A3, A4, A5, D2 or sui generis) in Central London Frontages, Town Centres and the King's Cross Opportunity Area.

In assessing development for such uses, the Council will consider whether it could be accommodated in any of these locations before sites on the edges of Central London Frontages and Town centres; or, sequentially, sites elsewhere are considered for development. Neighbourhood Centres are considered a suitable location for small-scale food and drink uses.

Developments should be of an appropriate scale and character for the centre to which they relate."

23. It is therefore undeniable that A3 uses have an important role to play in Central London Frontages including Charing Cross Road. It is important that UDP para. 6.26 recognises the positive contribution which A3 uses can make which is of particular importance here given the environmental and security improvements which the proposals can bring about and the adverse effects on vitality generally of the Crossrail works and the general lack of interest in the site as A1:

"6.26 Food and drink uses and licensed entertainment can have an impact on the character of an area in a positive or a negative way. In centres, such uses may provide additional variety that adds to vitality and viability, with evening activity that makes use of transport infrastructure and provides natural surveillance. Having a range of food and drink uses alongside shops can reduce travel by allowing people to combine trips.

6.40 Shops, services and food and drink uses are essential to maintaining the Borough's communities. It is the Council's policy to guide such uses to centres where there is access by a choice of means of transport. However, outside centres such uses can also have an important role to play by allowing easy access for people with young families, elderly people, people with mobility difficulties, and by providing a focus for the community. The presence of corner shops, traditional pubs and cafés and small parades can help define an area's character and support its residential, commercial or mixed-use function."

24. Impacts of proposed changes are to be judged under R2, R3 and R7:

"R2 - General impact of retail and entertainment uses

The Council will only grant planning permission for development for shopping and service uses, food and drink uses, licensed entertainment and markets (in Use Classes A1, A2, A3, A4, A5, D2 or sui generis) where it considers the development:

- a) will not cause harm to the character, amenity, function, vitality and viability of the area, or of other areas it affects; and
- b) is readily accessible by a choice of means of transport, including by foot and public transport, and by late night public transport if late night opening is proposed.

The Council will consider the cumulative effects of a development, having regard

to existing provision and valid planning permissions with potential to be implemented, and also the need to reduce car travel.

Neighbourhood Centres and smaller groups of shops are generally considered to be inappropriate locations for large-scale development and late night licensed entertainment.

R3 - Assessment of food and drink uses and licensed entertainment

The Council will not grant planning permission for development 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.

The Council will consider:

- a) the number and distribution of existing uses and valid planning permissions with potential to be implemented;
- b) the effect of the development on shopping provision (in Use Class A1);
- c) the effect of the development on nearby residential uses and amenity, and any prejudice to future residential development nearby;
- d) any record of harm to amenity caused by the concentration of such uses in the area;
- e) any record of littering or anti-social behaviour related to the concentration of such uses in the area;
- f) emission of fumes and the potential for effective and unobtrusive ventilation;
- g) noise and vibration generated inside and outside the site, including noise/vibration from plant and machinery, and noise disturbance arising from opening frontages (such as sliding and folding doors);
- h) the effect of the development on ease of movement on the footway; and
- i) the vehicular stopping and parking characteristics of the development and their effect on noise and highway conditions.

The Council will seek to ensure that, where permission is granted, any potential harm to the area can be controlled. The Council will consider [specific types of conditions to be considered] ...

...

R7 - Protection of shopping frontages and local shops

A - Central London Frontages, Town Centres and King's Cross At ground floor level in Central London Frontages, Town Centres and any focus of shopping and service uses established in the King's Cross Opportunity Area, 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."

25. Although Charing Cross Road is plainly of significance with the LP CAZ and UDP Central London Frontages, it is an adjunct to West End retailing rather than its core or prime focus. This is recognised by the RPG at para. 15.22 and its absence from the list of key locations in para. 5.181 of the LP.

26. The RPG notes in its introduction that it is intended that the SPD³ should supplement the UDP:

"This guidance has been produced to ensure that it is consistent with the current UDP and to reflect the recent changes to the planning system, for example amendments to the Use Classes Order and the introduction of the Planning and Compulsory Purchase Act 2004. Furthermore it has been written to accord with the recommendation of the Inspector who held the public inquiry into the UDP, to prepare supplementary guidance for the part of Central London that experiences conflicting development pressures. It also reflects other changing circumstances such as more recent development data and licensing issues.

...

This guidance supplements policies within the UDP and the relevant policies are referred to in the text. In addition, it is in general conformity with the Mayor's London Plan and its policies. The guidance has been prepared with reference to other relevant Council Strategies.

The SPD will be reviewed and updated in the light of evolving national, London and Borough-wide policy and changes in the local context such as trends in food, drink and entertainment uses and retailing, as appropriate."

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27. The RPG, whilst adopting general objectives in Section 5 which appear generally consistent with the Development Plan, then proceeds to adopt an approach when dealing with Charing Cross Road which is less flexible. The relevant parts of the SPG provides (my emphasis):

"Charing Cross Road

15.16. Charing Cross Road is characterised by a mixture of development forms including the large-scale redevelopment at Centre Point, and older smaller scale development around Denmark Street as well as residential mansion blocks along its eastern side.

15.17. **Retail uses account for two thirds of units in this part of the Central London Frontage.** Book shops and music shops account for about half the total number of retail uses. While neither are clusters of specialist retail in their own right, they relate to other nearby clusters: the bookshops to a larger cluster on Charing Cross Road (within the City of Westminster); and the music shops to those in Denmark Street (see Section 14).

15.18. As in Tottenham Court Road / New Oxford Street, **food, drink and entertainment uses are interspersed throughout this part of the Central London Frontage, comprising approximately a third of uses.**

³ I am not sure whether it is a document which properly underwent SPD procedure but has assumed for present purposes that it did. If this application has to go further, the issue merits further investigation.

Planning Guidance

....

Charing Cross Road

15.22. The retail function 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**, but the uses do support other concentrations of specialist book and music shop uses in Charing Cross Road and Denmark Street. It is considered 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 frontage shown on Map 16 (UDP policy R7) (see Appendix C for calculation of the percentages for frontages).**

15.23. Planning permission for development for food, drink and entertainment uses may be granted in this area, provided development does not result in a harmful concentration or cause harm to amenity, and **does not result in a reduction in retail uses to less than two thirds (66%) of uses on the frontage shown on Map 16 (refer to UDP policies SD5, R1, R2, R3 and R7). This allows some flexibility for limited growth of these uses."**

28. Appendix C provides:

"Appendix C: Percentages for Frontages

Introduction

This guidance identifies controls expressed as a percent of units for a number of frontages in the Central London Area. This Appendix explains the method by which these percentages were derived and the way in which they should be calculated.

Method for Preparation of Frontage Percentages

The method used to generate the percentage controls for frontages was as follows:

- existing and committed uses in each frontage were analysed;
- the character of the area was reviewed;
- residential development was identified;
- public transport provision was reviewed;
- available data relating to impacts potentially from food, drink and entertainment activities was reviewed; and
- relevant policies were considered in the light of the above data for each specific street frontage to produce percentages for consultation.

Calculation of Frontage Percentages

The percentage is calculated as the number of units in the specified use (e.g. food, drink and entertainment use) as a percentage of the total number of units within the frontage. All calculations should be based upon the existing lawful use of the properties and valid planning permissions with potential to be implemented, and refer only to ground floor uses.

In some instances a shop unit may include a number of addresses, such as where two shops have been combined into one. For the purposes of this guidance they will be counted as one unit.

In the example below there are 11 different addresses within the commercial frontage, but only 8 individual shop units. The percentage should be calculated on the basis of the 8 individual uses. For example, if there are two individual A3 uses within the frontage, this would account for 25 per cent of the frontage. Each individual frontage is shown by a continuous line on the relevant map."

29. Accordingly, the SPG using the approach in Appendix 6 does not permit A3 uses to be accommodated if they lead to a reduction of A1 units below 66%. The reference to flexibility is a little difficult to understand since 66% represents the assessment of the number of retail units already present in the frontage (para. 15.17) and therefore implies that only a *de minimis* change would be permitted regardless of any broader assessment of effects. It turns the "*resist net loss... 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*" policy test in R7 into one which effectively simply provides there should be no reduction below the base 66% A1 level.

30. Additionally, it appears clear from Appendix C and from the Central London Frontages Map that:

- (1) The block of Charing Cross Road lying to the north of Andrew Borde Street and south of Oxford St/Tottenham Court Road is designated frontage though there is no frontage property at all, the site being that of the fountains of Centre Point, due for removal by Crossrail;
- (2) There are other areas of questionable "frontage", as the Savills Submission explains and with which I concur. In particular I note paragraph 4.17 of the Savills Submission relating to 3-5 Caxton Walk which makes it clear that that property

"has been vacant for several years. Planning permission was granted for A3 use in 2006 but has not been implemented. Until the change of use has commenced, the lawful use remains A1."

- (3) The percentage calculation is derived from the number of units of occupation, not the size or length of frontages or the number of physical units. A shop which comprised 3 physical units/addresses would count as one unit only.

31. I am instructed that the Council applies the RPG in the manner indicated above and may seek to determine the application on a calculation based on the 66% of units approach.

(3) Terms and interpretation of the RPG

32. It is plain that the RPG, since it does not form part of the Development Plan and has not even been advanced as SPD within the LDF, does not have the significance, weight or statutory function of the UDP and LP to which the force of s. 38(6) of the Planning & Compulsory Purchase Act 2004 is applied.
33. The broad key objectives in Section 5 of the RPG appear generally consistent with the Development Plan, however the RPG goes significantly further than either the UDP or LP. It does so in that it seeks to ascribe a high degree of precision to the minimal percentage change which can be permitted in Charing Cross Road which it substitutes for the more general judgments to be made under policies R2, R3 and R7 in particular e.g. "not cause harm to the character, amenity, function, vitality and viability of the area, or of other areas it affects" and.
34. The problems which the less flexible RPG/appendix C approach may create can easily be illustrated. If a frontage comprised a large department store, two small shops and an A3 unit, with the department store physically taking up 75% of the frontage, the SPG would require the refusal to change one small shop into A3 regardless of overall impact, since the A3 uses would, on the basis RPG/Appendix C, reduce the units of A1 occupation below 66% (from 75% to 50%).
35. Moreover, it is difficult to understand how vitality and the impact generally (as is considered under R7 and the other UDP policies) can be judged simply by the proxy of percentage units of occupation in one part of one side of the Charing Cross Road. Contrast, for example, the many factors which fall to be considered in terms of town centre vitality and viability in PPS6.
36. It appears to me strongly arguable that by seeking to substitute for the broader approach in R7 a uniform and arithmetical exercise based on 66% of units in the frontage, the RPG has gone further than is justifiable for supplementary guidance which is meant to support and exemplify Development Plan Policy but not undermine that process. See PPS 12 e.g. at paras. 4.7, 4.55 and 6.1. If a more prescriptive approach is required, then the Council should pursue that through DPD process not through supplementary guidance.

37. The difficulties created by the arithmetical exercise are compounded by:

- (1) the fact that, unlike Westminster UDP policy or its own UDP R7, it does not apply an umbrella general impact of change test which allows other matters to be brought into account;
- (2) it artificially seeks to confine the exercise to the number of units of occupation rather than considering the impact of the change of use in wider terms, including the policy objectives;
- (3) In principle, the percentage unit of occupation approach conflicts with and undermines development plan policy and is arguably perverse:

- (a) Its over-simplistic approach could fail to reflect wider judgments of vitality and so harm the area;

- (b) It seeks to apply only one aspect of the UDP R7 policy test to the exclusion of the other;

- (c) By simply counting units of occupation it not only ignores the fact that there may be very significant overall amounts of A1 within the frontage but by the same methodology it could allow a number of very large A3 establishments which could be harmful to the vitality of the area but which in terms of percentage units of occupation was within the percentage tolerance permitted by the RPG. Thus harm could be caused in several respects to the underlying policy objectives of the Development Plan.

38. In these respects, the RPG can also be criticised in that the approach applied to Charing Cross Road undermines also its own general objectives in Section 5 and fails to give proper weight to the point at para. 6.2:

"6.2. The Central London Area has seen growth in residential development, retail facilities and food, drink, and entertainment outlets in recent years. The traditional heartland of food, drink, and entertainment uses in the broader Central London area is in and around the West End, identified in the London Plan as a mixed use area with a strong arts, cultural or entertainment character. This also represents the main concentration of food, drink and entertainment uses within the London Borough of Camden."

Conclusions on policy and the relevance of the RPG

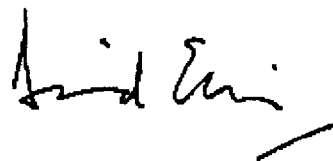
39. It is strongly arguable that the RPG, while acceptable in its general objectives, goes further than is warranted by the Development Plan and proceeds by an over-rigid and formulaic approach to determining the acceptability of the replacement of A1 by A3 uses in the Central London Frontages in the Charing Cross Road. By adopting that approach, the SPG also ignores other factors relevant to vitality, the majority of the road which lies outside of Camden and perversely requires there to be counted towards the frontage calculation areas, such as that part of Charing Cross Road in front of Centre Point, which simply have no frontages A1, B1⁴ or A3 and will not have any for the foreseeable future.
40. While it is true that the SPG did undergo a consultation exercise, it oddly fails to factor in the impact of the Crossrail works (the Bill process was well underway at the time) and can be said to be out of date at least in this respect and in respect of the effect that such works will have.
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41. I consider that a strong case can be made that the SPG should now be given limited weight in any planning determination and that the proper approach is to apply the Development Plan policies in the light of all the circumstances applicable to the location of the Premises including those parts of Charing Cross Road lying within the City of Westminster and the fact that the north eastern end of the Road is simply not a frontage at all, being severed by the hostile environment of Andrew Borde Street from the bulk of the road to the south, currently the fountains for Centre Point, and to become a plaza for access to the new Crossrail and rebuilt Tottenham Court Road tube stations.
42. Moreover, not only do there appear to be significant issues with the RPG itself but when considered in the light of other circumstances (rather than the arithmetical exercise under the RPG) there are important factors which show that the application proposals will contribute to the vitality of the location and frontage:
- (1) The proposals will put into active and attractive use part of the Road where there are currently vacancies and boarded up premises due to Crossrail and possibly the current economic climate. There is also evidence that the traditional retail uses in the Charing Cross Road are reducing due to changes

⁴ I am instructed that it appears that the Council included the reception area of Centre Point in their calculations as B1. In terms of the underlying policy objectives of the relevant policy and the RPG, this seems difficult to justify.

in the market and that the character sought to be protected by the RPG may be changing beyond the Council's control in any event;

- (2) The proposals will also enhance the vitality of the area, and assist in several policy objectives, by improving the return frontage into thus improving the currently unattractive and potentially hostile environment of Flitcroft Street. Indeed, the proposals should have beneficial effects on security and anti-social behaviour as a result thus supporting policy; and
- (3) There will not in general terms be an overconcentration of A3 uses in the Road, if considerations of the scale and extent of frontages of other uses, and not simply units of occupation, are considered. See the recent Savills' Report at Section 4. On that basis, the policies in the UDP and LP will be complied with, in particular Policy R7 of the UDP.

43. I have nothing further to add as presently instructed but would be pleased to advise further should it be necessary.
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OPINION

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