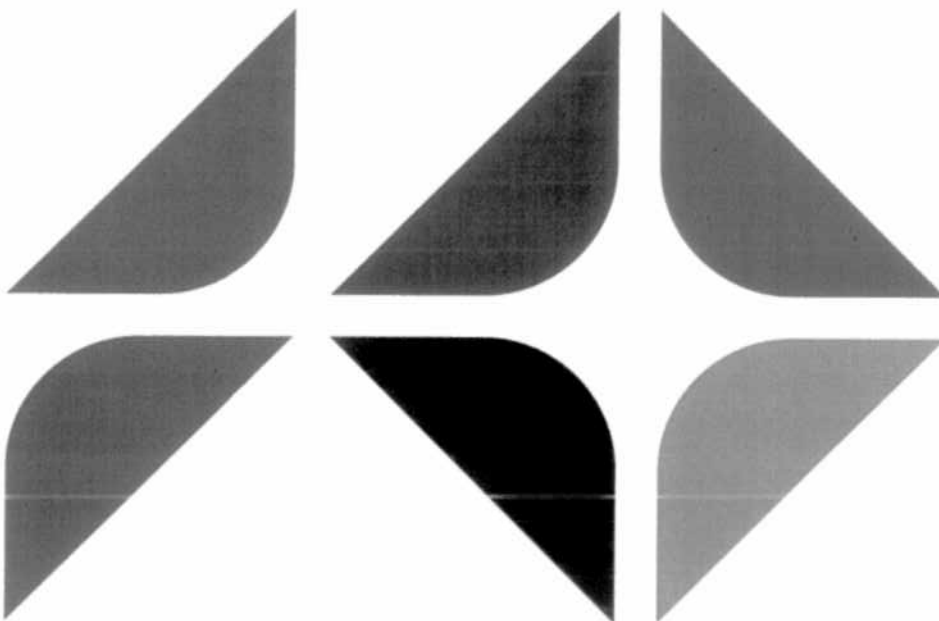


PADDYPOWER.

Appellant's Hearing Statement

64 Kilburn High Road, London, NW6 4HJ
Change of use from retail unit (A1) to betting
shop (SG)



Contents

Summary	2
1. Introduction	4
2. Appeal Site and Surrounding Area	5
3. The Appeal Proposals	6
4. Planning Policy Context	8
5. The Appellant's Case	14
6. Conclusion	30

Appendices

Appendix 1 – Decision Notice and Officer's Report
Appendix 2 – Context Maps
Appendix 3 – Paddy Power Brochure
Appendix 4 – Existing Floor Plans of Upper Floors
Appendix 5 – Planning History for No. 46 Kilburn High Road
Appendix 6 – Table Containing Information on Units within Camden's Core Frontage
Appendix 7 – Updated Marketing Letter from Nash Bond and Email Correspondence from Savills
Appendix 8 – Paddy Power Footfall and Exit Surveys (2014) and Associated Maps
Appendix 9 – Paddy Power Case Studies
Appendix 10 - Map of Existing Betting Shops
Appendix 11 – Maps of Other Operators within the Centre
Appendix 12 – Leytonstone Appeal Decision and map of betting shops
Appendix 13 – Newham Appeal Decision
Appendix 14 – Appellant's Town Centre Health Check
Appendix 15 – Hearing Statement prepared by Adrian Studd

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Summary

Power Leisure Bookmakers LTD (Paddy Power) are seeking planning permission to change the use of the existing small A1 retail unit at 64 Kilburn High Road, which has a history of temporary operators, into a betting shop.

Camden Council refused planning permission on 02 July 2015 on the grounds that the proposals would harm the retail character, function, vitality and viability of the Core Shopping Frontage, and exacerbate the existing concentration of betting shops within the centre by virtue of its cumulative impact, leading to a harmful impact on the character and function of the centre, and further harm to community safety and the fear of crime.

This statement demonstrates through empirical evidence that the appeal proposals would not harm the retail character, function and vitality and viability of the core shopping frontage of the Kilburn High Road town centre. The Council's preferred approach to retail/non-retail thresholds is not set in development plan policy. Camden Planning Guidance 5 identifies that in order to protect the retail function of the Kilburn High Road centre, the Council will generally resist proposals that would result in less than 75% of premises in the Core Frontage being in retail use based on number of units. The measured frontage of this particular part of the Primary Shopping Frontage is important to its retail character and function rather than just the number of individual retail units. Based on measured frontage, the proportion of A1 units would remain above the 75% threshold. The loss of a very small A1 retail unit with a frontage width of just 4.7 metres within a frontage dominated by large retail units and two banks would not cause any significant harm to the retail character and function.

It has also been demonstrated through footfall and exit surveys, case studies and other information that the appeal proposals would not harm the vitality and viability of the Core Shopping Frontage. In fact it has been demonstrated that a Paddy Power betting shop at the appeal site would enhance the Core Shopping Frontage by bringing a unit back into permanent use, enabling significant investment in the unit including much needed external improvements, and creating 6 new jobs for local people.

Detailed analysis of the number of betting shops, their proportion of the centre as a whole (currently only 1.7% rising to 2% of the appeal is allowed¹) and the perception of betting shops on the ground, demonstrates that a concentration/cluster of betting shops does not currently exist, nor would the appeal proposals lead to such a situation. The current position has not reached an oversupply or saturation of betting shop uses.

Even if the Inspector considers there is currently a concentration of betting shops or that the appeal proposals would lead to one, it has been demonstrated that there would be no harmful impact on the character and function of the centre. The centre is described as 'busy and vibrant' by the Council. This is despite the Council's view that there is already a harmful concentration of betting shops in the centre. The Appellant's town centre health check confirms that the centre is in fact a busy and vibrant one, with a vacancy rate well below the national average. An additional betting shop would not materially change this position.

It has been further demonstrated that the proposals would not have a harmful impact on community safety or fear of crime. The Metropolitan Police did not object to the granting of a gaming licence and have recently confirmed that they are satisfied that the new

¹ See paragraphs 5.61-5.62 and Appendix 10 for calculation

Paddy Power betting shop would not cause any problems and it is considered that conditions relating to the installation of CCTV would adequately address the sources of any fear of crime.

The appeal proposals therefore comply with the aims and objectives of local, regional and national policy, and represent sustainable economic development which will bring about clear economic, environmental and social benefits for the town.

1. Introduction

- 1.1. This Hearing Statement is submitted in respect of a planning appeal made by Power Leisure Bookmakers Ltd (Paddy Power) against the refusal of planning permission by the London Borough of Camden for the change of use from a retail shop (Class A1) to a betting shop (Sui Generis) at 64 Kilburn High Road, London.
- 1.2. Camden Council refused planning permission under delegated powers on 02 July 2015 for the following reasons:
- 1.3. *"The proposed change of use from Class A1 to Sui Generis, by reason of the reduction of the total number of retail units within this parade below the recommended minimum ratio of 75%, would harm the retail character, function, vitality and viability of the core shopping frontage of Kilburn High Road centre, contrary to policy CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) of the London Borough of Camden Local Development Framework Development Policies".*
- 1.4. *"The proposed change of use to a betting shop, by reason of its cumulative impact with other similar uses, would exacerbate the existing concentration of betting shops in the Kilburn High Road centre and would have a harmful impact on the character and function of this centre and also would be likely to result in further harm to the community safety and the fear of crime on Kilburn High Road. This would be contrary to policy CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) of the London Borough of Camden Local Development Framework Development Policies".*
- 1.5. A copy of the decision notice and officer's report are contained at **Appendix 1**.
- 1.6. This Statement sets out the Appellant's evidence, demonstrating that the appeal proposals are entirely acceptable and that planning permission should be granted.
- 1.7. The format of this Statement is set out below:
- 1.8. Section 2 provides a description of the appeal site and outlines the relevant planning history.
- 1.9. Section 3 provides a summary of the appeal proposals.
- 1.10. Section 4 outlines the relevant planning policy and guidance at national, regional and local levels.
- 1.11. Section 5 sets out the Appellant's case and focuses on the main considerations.
- 1.12. Section 6 provides an overall conclusion.

2. Appeal Site and Surrounding Area

- 2.1. The application site relates to the 4-storey A1 retail unit at 64 Kilburn High Road. The unit became vacant at the end of December 2013 following the closure of Barratts shoe shop on the 27 December 2013. The unit has been actively marketed for a permanent A1 retailer since January 2014, however there has been little interest and no firm offers from A1 retailers wishing to permanently occupy the premises. Various temporary retail outlets have been operating from the unit since late summer 2014, on a rent-free basis and with no formal contract in place. Since June 2015 World of Discount Ltd have been operating under licence and paying low rent. They have been operating a number of different temporary shops, including 'District' (clothing store) and 'Everything £3.99 or Less'.
- 2.2. The ground floor is small in size, with a frontage of only 4.7 metres and a floor area of 99.5 square metres.
- 2.3. The upper floors are ancillary to the ground floor retail space, linked by an internal staircase. There is no separate external access to the upper floors. The upper floors have previously been used for ancillary A1 storage and staff areas. The three upper floors have a total floor area of 239.9 square metres. The exterior of the upper floors is not particularly attractive and detracts from the overall street scene.
- 2.4. The site is located on the eastern side of Kilburn High Road, on the Camden side of Kilburn Town Centre and is within Camden's designated Core Frontage. The opposite side of Kilburn High Road falls within the London Borough of Brent. Kilburn High Road is designated as a Major Town Centre.
- 2.5. Maps showing the borough boundaries, the boundary of the town centre and the extent and location of the Core Frontages and Secondary Shopping Frontages are contained at **Appendix 2**. This includes a copy of the map contained in Camden Planning Guidance CPG5.
- 2.6. Surrounding units are predominantly in A1 use, and the unit sits between Boots Pharmacy (A1 use) and M&S Simply Food (A1 use).
- 2.7. The building itself is neither statutorily listed nor locally listed, and is not within a conservation area.

The unit has been actively marketed for a permanent A1 retailer since January 2014, however there has been little interest and no firm offers from A1 retailers wishing to permanently occupy the premises.

The ground floor is small in size, with a frontage of only 4.7 metres and a floor area of 99.5 square metres.

Relevant Planning History

- 2.8. Application reference 23186 for 'the change of use of the ground floor to offices for a building society' was refused on 10 August 1976.
- 2.9. More recently, Paddy Power obtained permission for various external works to the unit as follows:
- 2015/2436/A – Display of 1 x internally illuminated fascia (letters) sign and 1 x internally illuminated projecting sign – approved 11 June 2015
 - 2015/2336/P – Installation of new shopfront – approved 24 June 2015
 - 2015/2338/P – Installation of 4 satellite dishes at fourth floor roof level and 2 replacement air conditioning units at second floor rear roof level – approved 13 August 2015.

3. The Appeal Proposals

- 3.1. The appeal proposals involve the change of use of the unit from A1 (retail) use to a betting shop (*sui generis*).
- 3.2. The landlord is keen to secure a permanent occupier as soon as possible. Given that there has been no firm interest from A1 operators wishing to occupy the unit on a permanent basis, the landlord has decided to consider other operators, and has agreed terms with Paddy Power.
- 3.3. Paddy Power is an international betting and gaming group which was founded in Ireland in 1998 with the aim of making betting an entertaining, fun and fair experience. Paddy Power is one of the newest bookmakers in the UK and has a small number of shops compared to other bookmakers. They are therefore keen to increase their market share and invest in Kilburn at this specific location on a permanent basis.
- 3.4. Paddy Power is a responsible operator and is committed to investing time to train staff and work closely with neighbours and community representatives. Further information on Paddy Power is contained in the brochure at **Appendix 3**.
- 3.5. The proposed use would create 6 new jobs for local people. This would include a full time manager position, a full time assistant manager position, a senior cashier position and 3 part-time cashier positions.
- 3.6. The building is one planning unit and comes as a whole (ground and three upper floors linked via an internal staircase). Paddy Power will lease the entire building, but will only trade from the ground floor. The upper floors will be used for storage and staff areas as has been the case previously.
- 3.7. When the planning application was submitted, the description of development referred to the change of use of the 'ground floor' unit to a betting shop. Unfortunately there was confusion over the use of the upper floors and the application submission stated that the upper floors were in separate B1 use. Partway through the application process this error was recognised. The description of development was clearly not correct because the change of use related to the whole building/planning unit, albeit the trading area of the betting shop would only be at ground floor level. The Appellant contacted the Council immediately to explain the situation and requested that the words 'ground floor' be removed from the description of development. However, the Council refused to do this on the basis that it would mean that the proposals would change from an application for a small betting shop to an application for a substantial betting shop. The Council proceeded to determine the application with the original description.
- 3.8. For the purposes of the appeal, we wish to clarify that the proposed change of use relates to the entire building/planning unit and respectfully request that the Inspector removes the words 'ground floor' from the description of development when determining the appeal. We do not consider that this would materially change the proposals in any way. Indeed there would be no change to the red line boundary and the planning application plans show that the betting shop would only trade from the ground floor. As such no party would be prejudiced as a result of the change to the description. We will endeavour to agree this in the Statement

The proposed use would create 6 new jobs for local people. This would include a full time manager position, a full time assistant manager position, a senior cashier position and 3 part-time cashier positions.

For the purposes of the appeal, we wish to clarify that the proposed change of use relates to the entire building/planning unit

of Common Ground. If there is any concern, a condition can easily be imposed stating that the betting shop can only trade on the ground floor, which is indeed the case in all of Paddy Power's existing betting shops.

- 3.9. For completeness sake, we enclose a copy of the existing floor plans for the upper floors at Appendix 4.

4. Planning Policy Context

National Policy

- 4.1. The National Planning Policy Framework (NPPF) sets out the Government's planning policies and how these policies should be applied. It identifies a presumption in favour of sustainable development.
- 4.2. Paragraph 7 explains that there are three dimensions to sustainable development – economic, social and environmental, and that these dimensions give rise to the need for the planning system to perform a number of roles. The economic role involves, amongst other things, contributing to building a strong, responsive and competitive economy. The social role includes creating a high quality built environment, with accessible local services that reflect the community's needs. Finally, the environmental role includes contributing to protecting and enhancing our natural, built and historic environment, and mitigating and adapting to climate change including moving to a low carbon economy. Paragraph 8 states that these roles should not be undertaken in isolation because they are mutually dependant, i.e. economic growth can secure high social and environmental standards, and well-designed buildings and places can improve the lives of people and communities.
- 4.3. Bullet point 3 of the NPPF's Core Planning Policies (paragraph 17) states that in decision making, Local Planning Authorities should 'proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs'.
- 4.4. The NPPF warns that investment in business should not be over-burdened by the combined requirements of planning policy expectations (paragraph 21).
- 4.5. Paragraphs 23-27 of the NPPF seek to ensure the vitality and viability of town centres. The Government advocates a 'town centres first' approach by directing main town centre uses (including betting shops) to identified centres.
- 4.6. These paragraphs go on to advise that planning policies for town centres should be positive and that local planning authorities should (amongst other things):
- Pursue policies to support the viability and vitality of town centres;
 - Define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies which make clear which uses will be permitted in them; and
 - Promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of centres.
- 4.7. Section 8 of the NPPF is concerned with the promotion of healthy communities. Paragraph 69 states that planning policies and decisions should aim to achieve places which promote (amongst other things):
- Safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.
- 4.8. Paragraph 150 is concerned with plan-making and states that planning decisions must be taken in accordance with the development plan unless material

The NPPF warns that investment in business should not be over-burdened by the combined requirements of planning policy expectations

Local planning authorities should...promote competitive town centres

considerations indicate otherwise. Paragraph 151 goes on to state that Local Plans must be prepared with the objective of contributing to the achievement of sustainable development. To this end, they should be consistent with the principles and policies set out in the Framework including the presumption in favour of sustainable economic development. This is reiterated in paragraphs 196 and 197, and Annex 1.

- 4.9. Paragraph 186 of the NPPF is concerned with decision-taking and states that Local Planning Authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The Framework also notes that LPAs should look for solutions rather than problems, and decision-takers, at every level should seek to approve applications for sustainable development where possible (paragraph 187) working proactively with applicants to secure developments that improve economic, social and environmental outcomes for the community.

Regional Policy

The London Plan (March 2015)

- 4.10. Policy 4.7 (Retail and Town Centre Development) seeks to ensure that retail, commercial, culture and leisure development should be focused on sites within town centres.
- 4.11. Policy 4.8 is concerned with *Supporting a Successful and Diverse Retail Sector and Related Facilities and Services*. It states that the Mayor will, and boroughs and other stakeholders should, support a successful, competitive and diverse retail sector which promotes sustainable access to the goods and services that Londoners need.
- 4.12. Part (g) of the policy states that LDFs should manage clusters of uses having regard to their positive and negative impacts on the objectives, policies and priorities of the London Plan including a centre's:
- Broader vitality and viability
 - Broader competitiveness, quality or diversity of offer
 - Sense of place or local identity
 - Community safety or security
 - Success and diversity of its broader retail sector
 - Potential for applying a strategic approach to transport and land use planning by increasing the scope for "linked trips"
 - Role in promoting health and well-being
 - Potential to realise the economic benefits of London's diversity.
- 4.13. Paragraph 4.50A states that over-concentrations of betting shops and hot food takeaways can give rise to particular concerns. Further guidance on implementing this aspect of Policy 4.8 is provided in the Town Centres SPG.

The Mayor will, and boroughs and other stakeholders should, support a successful, competitive and diverse retail sector

Town Centres SPG (July 2014)

- 4.14. Criteria (i) of SPG Implementation 1.2 *Arts, Culture, Leisure and the Night Time Economy* states that Councils are encouraged to manage over-concentrations of activities, for example betting shops, hot food takeaways and pay day loan outlets.
- 4.15. The supporting text outlines current and potential mechanisms for managing the over-concentration of such uses. In particular, paragraph 1.2.28 states that if the concentration of a use has reached saturation levels where the negative impacts outweigh benefits, local authorities can set thresholds at this level of saturation.

In particular, paragraph 1.2.28 states that if the concentration of a use has reached saturation levels where the negative impacts outweigh benefits, local authorities can set thresholds at this level of saturation.

Local PolicyCamden Core Strategy (2010)

- 4.16. The Camden Core Strategy was adopted at a Full Council meeting on 8 November 2010.
- 4.17. Policy CS7 *Promoting Camden's centres and shops* promotes successful and vibrant centres through 'ensuring that new retail and town centre development is located within the borough's identified centres, before edge-of-centre and out-of-centre sites are considered. The last section of the policy is most relevant to the appeal proposals and states that: "The Council will promote successful and vibrant centres throughout the borough to serve the needs of residents, workers and visitors by:
- e) Seeking to protect and enhance the role and unique character of each of Camden's centres, ensuring that new development is of an appropriate scale and character for the centre in which it is located;
 - f) Providing for, and maintaining, a range of shops, services, food, drink and entertainment and other suitable uses to provide variety, vibrancy and choice;
 - g) Protecting and promoting small and independent shops, and resisting the loss of shops where this would cause harm to the character and function of a centre;
 - h) Making sure that food, drink and entertainment uses do not have a harmful impact on residents and the local area, and focusing such uses in Camden's Central London Frontages, Town Centres and the King's Cross Opportunity Area;
 - i) Supporting and protecting Camden's local shops, markets and areas of specialist shopping;
 - j) Pursuing the individual planning objectives for each centre, as set out below, including through the delivery of environmental, design, transport and public safety measures.

Development Policies DPD (2010)

- 4.18. The Camden Development Policies was adopted on 8 November 2010 and supports the Camden Core Strategy through setting out detailed planning policies that the Council will use in determining planning applications. This document is designed to enable the Borough to achieve the vision and objectives of the Core Strategy.

4.19. The document includes Policy DP12 *Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses*. This policy relates directly to Core Strategy Policy CS7, discussed above, and states: "The Council will ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. We will consider:

- a) the effect of non-retail development on shopping provision and the character of the centre in which it is located;
- b) the cumulative impact of food, drink and entertainment uses taking into account the number and distribution of existing uses and non-implemented planning permissions, and any record of harm caused by such uses;
- c) the impact of the development on nearby residential uses and amenity, and any prejudice to future residential development;
- d) parking, stopping and servicing and the effect of the development on ease of movement on the footpath;
- e) noise and vibration generated either inside or outside of the site;
- f) fumes likely to be generated and the potential for effective and unobtrusive ventilation; and
- g) the potential for crime and anti-social behaviour, including littering.

4.20. Policy DP12 states that the impact on 'nearby residential uses and amenity' shall be considered by the Council in addition to 'parking, stopping and servicing and the effect of the development on ease of movement on the footpath'. Other considerations stated in the policy include 'noise and vibration generated either inside or outside of the site', 'the potential for effective and obtrusive ventilation' and 'the potential for crime and anti-social behaviour, including littering'.

4.21. The policy goes on to state that to manage potential harm to amenity or the local area, the Council will, in appropriate cases, use planning conditions and obligations to address a number of issues. This includes, amongst other things, community safety.

4.22. Paragraph 12.6 of the supporting text goes on to state that " the Council will not grant planning permission for development that it considers would cause harm to the character, amenity, function, vitality and viability of a centre or local area. We consider that harm is caused when an impact is at an unacceptable level, in terms of trade/turnover; vitality and viability; the character, quality and attractiveness of a centre; levels of vacancy; crime and anti-social behaviour, the range of services provided, and a centre's character and role in the social and economic life of the local community". It goes on to say: "We will consider the cumulative impact of additional shopping floorspace (whether in a centre or not) on the viability of other centres, and the cumulative impact of non-shopping uses on the character of an area".

4.23. Paragraph 12.7 states that the Camden Planning Guidance will provide more detailed guidance on how applications will be assessed. It also states that the

The Council will ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours

Council will take into account any history of vacancy in shop units and the prospect of achieving an alternative occupier for vacant premises when considering proposals that involve the loss of retail premises.

- 4.24. Paragraphs 12.15 and 12.16 of the supporting text is concerned with 'other town centre uses' and focuses on those uses that do not fall within the A1, A2, A3, A4, A5, B1a, D1 or D2 Use Classes. It states that while centres are generally the most appropriate location for these uses, the Council will carefully consider their potential impact when assessing planning applications to make sure that they do not harm the centre or the amenity of neighbours. It goes on to state that particular issues that may arise include community safety and the fear of crime (e.g. from amusement arcades, betting shops, massage parlours and saunas), particularly where there are concentrations of such uses.

Camden Planning Guidance 5 (CPG5) Town Centres, Retail and Employment (2013)

- 4.25. There are 8 guidance documents that support the Camden Core Strategy and Camden Development Policies. These guidance documents, called Camden Planning Guidance (CPG), are consistent with the two main Local Development Framework documents and each guidance document published forms a Supplementary Planning Document (SPD) which is a 'material consideration' in planning decisions.

CPG5: *Town Centres, Retail and Employment.*

- 4.26. The guidance supports the town centre and retail policies of the Core Strategy and Development Policies DPD including CS7 and DP12.
- 4.27. Paragraph 2.7 states that in order to provide for and retain the range of shops in the borough the Council aims to keep a certain proportion of premises in its centres in retail use.
- 4.28. Paragraph 2.9 goes on to state that where a planning application proposes the loss of a shop in retail use, we will consider whether there is a realistic prospect of such use continuing, and may require the submission of evidenced to show that there is no realistic prospect of demand to use a site for continued retail use. Paragraph 2.10 states that depending on the application, the Council may require some or all of the following information:
- Where the premises were advertised (shopfront; media, web sources etc.) and when (dates);
 - How long the premises were advertised for and whether this was over a consistent period;
 - Rental prices quoted in the advertisement (we expect premises to be marketed at realistic prices);
 - Copies of advertisements;
 - Estate agents details;
 - Feedback from interested parties outlining why the premises were not suitable for their purposes; and

- Consideration of alternative retail uses and layouts.

- 4.29. The table contained at **Appendix 1** of CPG5 lists the properties that are located within the Core Frontages of Camden's Town Centres. For Kilburn High Road, the properties that make up the Core Frontage are nos. 42 to 218 Kilburn High Road (East side).
- 4.30. Pages 24 to 26 are concerned specifically with Kilburn High Road. Paragraph 3.51 states that in order to protect the retail function of Kilburn High Road, the Council will generally resist proposals that would result in less than 75% of the premises in Core Frontages being in retail use; or less than 50% of the premises in Secondary Frontages being in retail use. Paragraph 3.52 states that this guidance will be applied having regard to the existing character of Kilburn High Road and individual frontages.
- 4.31. **Appendix 3** sets out guidance on how to measure the percentages for uses for frontages. The guidance defines a 'frontage' for the purposes of calculating percentages of uses as follows:

"A frontage will start at a road junction or where there are ground floor residential uses in the run, at the beginning of the first two consecutive non-residential uses at ground floor level. Frontages may continue around corners, or across entrances to premises above or rear, and may include isolated ground floor residential uses, but are ended at roadways that interrupt the run of premises".

- 4.32. 4.24 The guidance at **Appendix 3** goes on to state that:

"The percentage is calculated as the number of premises in the specified use...as a percentage of the total number of premises 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".

- 4.33. Paragraph 3.53 of CPG5 states that the Council will seek to prevent concentrations of uses that would harm a centre's attractiveness to shoppers or its residential amenity. The Council will therefore generally resist proposals that would result in more than 2 consecutive premises within the Core Frontages being in non-retail use; and more than 3 consecutive premises in non-retail use within Secondary Frontages.

Emerging Policy

- 4.34. The Council have begun consultation on their new Local Plan however the plan is in the early stages of preparation and has not yet reached Submission stage. Representations objecting to certain policies within the draft Local Plan and questioning their consistency with the NPPF have been made and have yet to be considered by the Council or an EIP Inspector. It is not therefore considered that the Draft Local Plan can be given any weight in the determination of this appeal. This accords with the advice set out in Paragraph 216 of the NPPF.

Paragraph 3.51 states that in order to protect the retail function of Kilburn High Road, the Council will generally resist proposals that would result in less than 75% of the premises in Core Frontages being in retail use

The Council will therefore generally resist proposals that would result in more than 2 consecutive premises within the Core Frontages being in non-retail use

5. The Appellant's Case

- 5.1. As discussed in Section 1 of this Statement, the Council refused planning permission for the change of use of the unit to a betting shop for two reasons.
- 5.2. It is clear that the Council's main concerns are that:
- (a) The proposed change of use would reduce the percentage of retail units to below 75% which would harm the retail character, function, vitality and viability of the Core Shopping Frontage; and
 - (b) A betting shop use in this location would exacerbate the existing concentration of betting shops in the Kilburn High Road Centre by reason of its cumulative impact with other similar uses, which would lead to a harmful impact on the character and function of the centre and would likely result in further harm to the community safety and the fear of crime.
- 5.3. Whilst not made explicit within the reasons for refusal, we have assumed that the Council consider the proposals to be contrary to Criterion (a) of Policy DP12 in respect of the first reason for refusal and Criterion (a) and (g) in terms of the second reason for refusal, as follows:
- (a) the effect of non-retail development on shopping provision and the character of the centre in which it is located.
 - (g) the potential for crime and anti-social behaviour, including littering.
- 5.4. Criterion (b) of Policy DP12 is not relevant to the proposals as it relates to other types of use. Criterion (c) to (f) are concerned with impact on residential amenity, parking/servicing, noise/vibration and fumes, respectively. No concerns have been raised by the Council in this regard and indeed the planning statement submitted with the planning application clearly demonstrates how the proposals comply with these elements of the policy.

Reason for Refusal 1 - Loss of A1 Use

- 5.5. The appeal proposals involve the change of use of an A1 unit to a betting shop (SG use). The proposals will therefore lead to the loss of an A1 unit within the Kilburn High Road Core Frontage.
- 5.6. Neither the Core Strategy nor the Development Policies DPD set any thresholds for A1/non-A1 uses within centres. Policy CS7 of the Core Strategy simply states that centres must provide a mix of uses including retail, and Policy DP12 states that the effect of non-retail use on shopping provision will be assessed. It also goes on to state that the Council will take into account any history of vacancy in shop units and the prospect of achieving an alternative occupier for vacant premises when considering proposals involving loss of A1.
- 5.7. The Council's threshold for A1/non-A1 uses is contained within the Camden Planning Guidance 5 (CPG5), the Council's Supplementary Planning Document (SPD) on Town Centres, Retail and Employment adopted in 2013. This does not form part of the development plan. As SPDs do not undergo the same independent examination as Local Plans, less weight can be afforded to them. We note that whilst the Council have referred to the threshold in CPG5 within the

Neither the Core Strategy nor the Development Policies DPD set any thresholds for A1/non-A1 uses within centres

The Council's threshold for A1/non-A1 uses is contained within the Camden Planning Guidance 5 (CPG5), the Council's Supplementary Planning Document (SPD) on Town Centres, Retail and Employment adopted in 2013. This does not form part of the development plan. As SPDs do not undergo the same independent examination as Local Plans, less weight can be afforded to them.

first reason for refusal, no specific reference is made to CPG5, rather the reason for refusal concludes that the proposals are contrary to Policy CS7 of the Core Strategy and Policy DP12 of the Development Policies DPD. It is not clear whether this was intentional or an error on the Council's part.

- 5.8. Paragraph 1.1. of CPG5 states that the 'guidance' has been produced to support policies in the Core Strategy and Development Policies DPD and that it is an additional material consideration in the determination of planning applications. It is therefore clear that the document is guidance and not policy. As such, there should be a degree of flexibility in its application.
- 5.9. Paragraphs 3.50 to 3.54 are concerned specifically with Kilburn High Road Centre. It states that in Core Frontages the Council will generally resist proposals that would result in less than 75% of the premises being in retail use or more than 2 consecutive premises being in non-retail use. The word 'generally' tells us that this will not necessarily be the case in all circumstances. The SPD goes on to state that this guidance will be applied having regard to the existing character of Kilburn High Road and individual frontages.
- 5.10. The guidance at **Appendix 3** states that percentages will be based on the number of units within a particular frontage, and that frontages are generally defined as a row of shops between two roads. In this instance, the appeal site is located within a row of 10 consecutive commercial units between West End Lane and Belsize Road. The Officer's report confirms that this is the relevant frontage.
- 5.11. A survey of the frontage (excluding upper floors and separate entrances) and the wider centre was undertaken on 04 March 2015 and updated on 27 August 2015. No changes to this frontage have occurred since the first survey. Table 1 below provides the addresses, name of occupier and use class of the units within the frontage.

It is therefore clear that the document is guidance and not policy. As such, there should be a degree of flexibility in its application.

The word 'generally' tells us that this will not necessarily be the case in all circumstances.

Table 1 – Survey of Frontage Between Nos 44 to 72 Kilburn High Road (Use Class)

	Unit Number	Occupier	Use Class
1	70-72	Traid	A1
2	66-68	M&S Food	A1
3	64	Everything £3.99 or Less (Appeal Site)	A1
4	60-62	Boots	A1
5	58	JD Sports	A1
6	54-56	Primark	A1
7	50-52	HSBC	A2
8	48	Nationwide	A2
9	46	Rush Hair	A1
10	44	Vacant (formerly Holland & Barratt)	A1

Source: Planning Potential Research (Survey undertaken on 27 August 2015)

- 5.12. The table shows that A1 units are located either side of the appeal premises, therefore there would not be more than 2 consecutive units in non-A1 use.
- 5.13. In terms of the percentage of A1/non-A1 use, the frontage is currently made up of 8 A1 units and 2 A2 units. The current percentage of A1 use within the frontage based on number of units is therefore 80%. This would reduce to 70% as a result

The table shows that A1 units are located either side of the appeal premises, therefore there would not be more than 2 consecutive units in non-A1 use.

of the proposals. Whilst the percentage would fall to 5% below the recommended threshold set out in the CPG5, other important factors need to be taken into account when considering whether the loss of the A1 use at the appeal site would have a harmful impact on the retail function of the frontage, which is the overriding purpose of the stipulated threshold.

5.14. The Appellant notes that the officer report states that there are only 7 A1 units. This is because they have incorrectly identified No. 46 which was vacant at that time as a D2 use. Indeed, the officer report states that the use of this property is "unknown possibly D1". The officer appears to conclude it was D1 use because the upper floor was in use as a Dentist. A simple check of the planning history records on the Council's online planning register confirms that the lawful use is in fact A1 use and indeed the unit has since been occupied by an A1 operator (see planning history evidence at **Appendix 5**). The Officer's calculation of the proportion of A1 use within this frontage (70%, which would reduce to 60% as a result of the proposals) is therefore based on incorrect information and therefore the Council's decision was based on an erroneous understanding of the proportion of A1 uses. The Appellant hopes to address the Council's error in the agreed Statement of Common Ground.

Measured Frontage

5.15. The appeal premises is a very small unit and has the smallest frontage width within the entire frontage, measuring only 4.7 metres wide. It comprises just 3.5% of the total frontage between nos. 44 and 72 Kilburn High Road. In comparison, many of the other A1 units within this frontage are particularly large units with frontage widths comparable to two or three standard sized units (e.g. Primark and M&S Food). Table 2 below contains the frontage widths of each unit (excluding entrances to upper floors).

Table 2 – Survey of Frontage

	Unit Number	Occupier	Width of Shopfront
1	70-72	Traid	15.5
2	66-68	M&S Food	15.5
3	64	Everything £3.99 or Less (Appeal Site)	4.7
4	60-62	Boots	10.5
5	58	JD Sports	7.3
6	54-56	Primark	22.2
7	50-52	HSBC	15
8	48	Nationwide	10
9	46	Rush Hair	6.7
10	44	Vacant (formerly Holland & Barratt)	28.1
			136 metres

Source: Planning Potential Research (27 August 2015) – ProMap mapping system used for measuring

Based on measured frontage which has a total frontage length of 136 metres, A1 use currently accounts for 82% of the frontage. This would reduce to 78% as a result of the proposals, meaning the percentage would remain well above the Council's 75% threshold.

5.16. Based on measured frontage which has a total frontage length of 136 metres, A1 use currently accounts for 82% of the frontage. This would reduce to 78% as a result of the proposals, meaning the percentage would remain well above the Council's 75% threshold.

5.17. When looking at the frontage, it is the size and frontage width of the A1 units which is apparent, not the number of A1 units. It is therefore the frontage width of A1

retail units which is important to the retail function of this particular frontage, rather than the number of A1 retail units. Clearly, the number of units does not provide the full picture and does not show that the clear predominant use within this frontage is A1 use owing to the presence of large A1 retail units. It demonstrates that the Council's preferred calculation method based on number of units is not always appropriate for measuring the retail function of part of a centre.

- 5.18. As such, it is not considered that the loss of the appeal site, which not only has the smallest frontage of all A1 units within the frontage, but has the smallest frontage of all units within the entire frontage, would have a harmful impact on its retail function. The appeal proposals would not diminish the retail function of the frontage to any significant degree.
- 5.19. This information was included within the application submission, but officers chose not to take this into account when considering the application and chose to apply the threshold within the CPG5 rigidly, despite the fact that the guidance clearly allows flexibility in its application when assessing proposals.

The Presence of Banks

- 5.20. Another important point is that the only non-A1 uses within the frontage are banks – HSBC and Nationwide. The Government's current position on banks and building societies is that they are akin to A1 retail units. This was demonstrated in April 2014 when the Government introduced class CA to the General Permitted Development Order which allowed the change of use from an A1 shop to a bank or building society. These permitted development rights have been made permanent within the new General Permitted Development Order which came into effect on 15th April 2015. This clearly shows that the Government are of the view that banks make the same contribution to the high street as A1 shops. The changes to the GPDO post-date the Council's main policies and CPG5.
- 5.21. Whilst there are 2 non-A1 units within the frontage, they are effectively quasi-A1 units, and again this further reduces the true impact that the loss of the small A1 unit at the appeal site would have on the shopping function of this frontage.
- 5.22. This point was made in the application submission but again officers chose not to have any regard to this part of the applicant's submission.

The appeal proposals would not diminish the retail function of the frontage to any significant degree.

The Core Shopping Frontage as a Whole

- 5.23. It is also important to note that when looking at the entire Core Frontage on the Camden side of the centre, the proportion of A1 use is 78% based on number of units and 76% based on measured frontage. The figure based on measured frontage will not change as a result of the proposals. The unit percentage figure would see a small change from 78% to 77%. So the Core Frontage as a whole on the eastern side of the High Road would be above 75%. A table containing information on all units within Camden's Core Frontage is contained at **Appendix 6**.

Failure to Secure a Permanent A1 Retailer

- 5.24. In view of the fact that the proposals do not conflict with the aims and objectives of the relevant policies and guidance regarding A1/non-A1 use, it is not considered that there is any requirement for the Appellant to provide marketing evidence to demonstrate that the unit is no longer viable for A1 use.

- 5.25. Nevertheless, detailed marketing information was submitted with the application and updated marketing information has been submitted with the appeal, contained at **Appendix 7**.
- 5.26. The letter from Nash Bond (the current marketing agents for the premises) provides the recent history of the unit and the marketing activity which has taken place. It confirms that up until May 2012, the unit was occupied by Clinton Cards. Following the company's collapse into administration, Savills were instructed by the administrator in August 2012 to market the unit. During this time the premises were broken into and an unauthorised squatter occupied the unit for a number of months until interest was received from Barratts shoe shop. Barratts occupied the unit based on a 10 year lease from 22 October 2012 at a rent of £69,000 per annum, however, they too collapsed into administration and vacated the unit on 27 December 2013.
- 5.27. Savills were instructed again to advertise the unit, but there was little interest and they failed to secure an occupier. During that time, the premises were broken into a second time and again occupied by an unauthorised squatter, who went on to open up a series of temporary shops including a jewellery and perfume shop.
- 5.28. The landlord decided to instruct a new agent to market the premises and Nash Bond were instructed in September 2014. Nash Bond have actively marketed the unit up until the present day. Despite erecting a 'to let' board, advertising the unit on-line, and hard copies of the particulars being mailed out to local agents and principal retail property agents, only limited interest has been received (details of which are contained in a table within the letter). It is important to note that the unit was marketed without the asking rent included in order to stimulate demand and not deter any parties who may have been discouraged by the actual rent.
- 5.29. In January 2015, Nash Bond received approaches from the Appellant's agent. The Appellant subsequently came forward with an offer of £65,000 which was accepted by the landlord. Whilst an offer has been accepted, the unit has continued to be marketed as the Appellant is required to obtain planning permission before they can occupy the unit. The Nash Bond letter confirms that no further interest has been received since the beginning of January 2015 up to the present day.
- 5.30. Copies of Nash Bond's sales particulars and other evidence of marketing is attached to their letter at **Appendix 7**.
- 5.31. The Officer Report criticised the fact that no information was submitted to demonstrate that Savills marketed the unit apart from references in the submission. It has come to light that whilst the letter from Nash Bond said that copies of Savills' particulars were attached, they were not in fact submitted within the application. These particulars (one for 2012 and one for 2014) are now included with the updated marketing letter at **Appendix 7**. Note that the particulars are the same. We understand that there was no reason for Savills to update the previous particulars as all information remained the same. The Appellant has also sort to obtain further information from Savills about their marketing of the property in 2012 and the first part of 2014, however, Savills have been unable to provide any further information due to a change in personnel. A copy of the email correspondence with Savills is contained at **Appendix 7**. This,

The landlord decided to instruct a new agent to market the premises and Nash Bond were instructed in September 2014. Nash Bond have actively marketed the unit up until the present day. Despite erecting a 'to let' board, advertising the unit on-line, and hard copies of the particulars being mailed out to local agents and principal retail property agents, only limited interest has been received

in itself, confirms that Savills were involved in the marketing of the unit previously, but regrettably details of any interest received during that time is not available.

- 5.32. Since May 2015 World of Discount Ltd have been operating under licence and paying low rent. They have been operating a number of different temporary shops, including 'District' (clothing store) and 'Everything £3.99 or Less'.
- 5.33. The marketing evidence clearly shows that the landlord has been unable to find a permanent A1 retailer who will pay full market rent since January 2014, despite active marketing. The Nash Bond letter states that the likely reason for this is that the space at first, second and third floor level makes the space relatively more expensive in terms of fixed repairing liabilities and business rates compared to similarly sized ground floor shops.
- 5.34. In essence the costs and overheads are significantly higher for this property than for a unit that is let as ground floor only. The physical constraints present other issues being incorporated on the upper floors.
- 5.35. Officers state within the officer report that: "...whether [tenants] are paying rent or otherwise is not material to the planning assessment. Additionally, whether this use is temporary or otherwise, it is still indicative of demand". The Appellant wholly disagrees with the Council's position for the reasons set out below.
- 5.36. Quite clearly, any small independent retailer would operate within a Core Frontage rent free if they were given the opportunity. This is not reflective of general demand – it is something that has come about due to the history of the site.
- 5.37. A temporary operator is not a viable option for the unit for any length of time and so the fact that the unit is currently occupied by a temporary A1 retailer does not demonstrate that the unit is still viable for A1 use. The rent-free/low rent arrangements has not helped to boost the local economy and temporary operators are not in a position to invest in the unit which is in need of refurbishment, particularly the shopfront and front elevation of the upper floors. The number of staff employed is also much lower than that of a permanent operator. Indeed, the current A1 occupier only employs 2 staff. A permanent operator is needed to pay the full market rent, invest in the unit and improve the quality of the unit and shopfront, create new jobs, and ultimately secure the long term active use of the building.
- 5.38. In comparison to the temporary A1 retailers, Paddy Power, an established national brand are keen to take the unit on a permanent basis and invest a significant amount of money in the unit (circa. £250,000). Six new jobs will also be created that will be available to local people. The application proposals will therefore improve the economic resilience of the unit and this part of the centre and Core Shopping Frontage.
- 5.39. Planning permission (ref: 2015/2336/P) has already been granted for alterations to the existing shopfront which will provide a fresh new look within the Core Shopping Frontage, attracting further investment and welcome improvements in the fabric of this part of the centre. Whilst not part of the shopfront planning permission, the Appellant intends to re-paint the façade of the upper floors to improve its aesthetic appearance. This is clearly not something a temporary A1 retailer or indeed a permanent small independent retailer would be able to commit

A temporary operator is not a viable option for the unit for any length of time and so the fact that the unit is currently occupied by a temporary A1 retailer does not demonstrate that the unit is still viable for A1 use

to and therefore would be clear benefits to the centre and this part of the Core Shopping Frontage.

- 5.40. The above demonstrates that the proposals will result in economic, social and environmental benefits for the centre. Permanent A1 retailers are clearly not interested in occupying the unit and allowing the unit to continue to be occupied by temporary A1 retailers is not in any way beneficial to the centre. They will certainly not be able to deliver the benefits that the proposed Paddy Power betting shop would.

Benefits of Betting Shops

- 5.41. Betting shops can make other positive contributions to a centre's economy in that they attract high levels of footfall, encourage linked trips and provide good levels of employment.

High Levels of Footfall

- 5.42. The Paddy Power betting shop will create activity along this part of the Core Shopping Frontage as it is widely accepted that betting shops generate high visitation rates. Recent survey work undertaken in September 2014 by an independent survey company (ESA Retail) in five different centres of varying size, one of which is the existing Paddy Power unit at the other end of Kilburn High Road at No. 251-255. The results of these surveys were submitted with the application, but are reproduced at **Appendix 8** for ease.
- 5.43. Importantly the results show that Paddy Power betting shops will often attract higher visitation rates than many A1 shops of a similar size (see page 19). Indeed, in Liverpool, Kilburn and Ilford, Paddy Power was the busiest unit of all those monitored and by a significant margin. In Stoke Newington, the Paddy Power was the second busiest unit and in Handsworth, whilst it has the fourth highest count (Nationwide was the busiest) it had a similar footfall to Shoe Zone. Looking at Kilburn specifically, the Paddy Power unit at the northern end of the centre had a significantly higher footfall count than a travel goods shop, a shoe shop, a furniture shop and a hairdressers. The results demonstrate that many A1 retailers, which are strongly protected by Local Planning Authorities, often generate very low levels of footfall compared to certain non-retail uses.
- 5.44. It is important to note that in all survey locations, there are a number of existing betting shops within the centre. This is shown on the survey maps contained at **Appendix 8**. This demonstrates that new betting shops attract high visitation rates even where there are a number of existing betting shops within the area. In terms of new custom, whilst it is acknowledged that a proportion of the footfall generated by the new Paddy Power betting shop at the appeal site will be drawn from existing betting shops, the proposed new betting shop is likely to attract some new footfall as is evidenced in paragraph 5.46 below.
- 5.45. Whilst there is an existing Paddy Power betting shop within Kilburn High Road Centre, it is located at the other end of the centre to the appeal site, 690 metres away. This is a significant distance from the appeal site. Based on the PTAL system which works on an 80m/min basis, it would take the average person 8.6 minutes to walk this distance. However, given that the centre is a busy centre and that there are a number side roads, some of which have pelican crossings, it would actually take longer than this to walk between the two shops and indeed

Looking at Kilburn specifically, the Paddy Power unit at the northern end of the centre had a significantly higher footfall count than a travel goods shop, a shoe shop, a furniture shop and a hairdressers.

this was confirmed during the Appellant's survey of the centre on 27 August 2014 (a Thursday). It took about 10 minutes to walk this distance. As such the new Paddy Power unit would serve a different part of the centre with a different walk-in catchment, and therefore the fact that there is already a Paddy Power shop within the centre does not mean that the new shop would not attract high visitation rates. Indeed, Paddy Power would not be interested in taking the unit if they did not feel that they would attract a high level of custom.

- 5.46. The 2014 survey work also included exit interviews at the Paddy Power betting shops in each of the locations. The results (also contained at **Appendix 8**) show that in three locations (Handsworth, Ilford and Stoke Newington), visiting Paddy Power was the main purpose for visiting the parade/centre. For Kilburn, just under half of customers surveyed said that visiting the Paddy Power shop was the main purpose for visiting the centre that day. Looking at all locations together, nearly two thirds of customers would not have visited the shopping parade/centre at this time if Paddy Power (or another betting shop) were not located there. In Kilburn and Stoke Newington, 23 and 39% respectively did not bet in another betting shop prior to the Paddy Power shop opening, demonstrating that Paddy Power has helped to bring additional footfall to these shopping areas.
- 5.47. The proposals will therefore ensure that the pedestrian flows along this part of the Core Shopping Frontage will be maintained.

Linked Trips

- 5.48. The 2014 exit interviews also demonstrate that Paddy Power shops generate high levels of linked trips. The vast majority of Paddy Power customers in all five survey locations also visited other shops and services nearby (68 to 91%), and in Liverpool 43% indicated that they always visited other shops in the town when undertaking betting at Paddy Power. For Kilburn, almost half of those surveyed said that they either always or regularly visited other shops when visiting the Paddy Power shop. Only 14% said that they never carried out a linked trip. This clearly demonstrates that Paddy Power customers generally go on to spend elsewhere, spreading their spending to more than one shop within the centre or parade, thus enhancing the vitality and viability of the centre as a whole. Given the range of shops and services located within close proximity to the appeal site, a Paddy Power unit in this location will no doubt encourage linked trips with the rest of this part of the Kilburn High Road centre.
- 5.49. It is quite clear when reading the officer report that officer's failed to have any regard to the footfall and linked trip information submitted with the planning application. They simply state: "*Unlike A1 uses, betting shops do not create as much footfall or generate the level of vibrancy associated with shopping uses*". The officer report does not explain what information or evidence this statement is based on. It is suspected that it is simply based on a common misconception.
- 5.50. The Appellant has assessed the vitality and viability of Taunton town centre post a new Paddy Power store opening in North Street, part of the Primary Shopping. A copy of the case study is contained at **Appendix 9**. Concern was raised that an additional betting shop would lead to a decline in the centre. Planning permission was refused but subsequently granted at appeal. The case study assesses changes in retailer representation following opening of the Paddy Power shops. The results demonstrate that there have been no significant changes and

For Kilburn, almost half of those surveyed said that they either always or regularly visited other shops when visiting the Paddy Power shop.

Importantly the case study demonstrates that the new Paddy Power unit has not led to the decline that was feared locally, and that it contributes to the vibrancy of the centre.

that the centre continues to operate in a similar way with a similar mix of uses. The vacancy rate has also reduced. Importantly the case study demonstrates that the new Paddy Power unit has not led to the decline that was feared locally, and that it contributes to the vibrancy of the centre.

Employment

5.51. Betting shops provide a good level of employment, something that will clearly benefit the local area. The proposed betting shop would offer 6 new jobs as follows:

- Manager – full time
- Assistant Manager – full time
- Senior Cashier – part time
- 3 x cashiers – part time

Betting shops provide a good level of employment, something that will clearly benefit the local area

Evening Surveillance

5.52. A betting shop will also be open into the evening providing a well-lit unit, helping to improve and encourage passive surveillance when other shops are closed earlier in the evenings. This will help to enhance the vitality and viability of the centre and bring about social benefits for the community.

Summary

5.53. Betting shops are common within centres, including Core Shopping Frontages. In light of the above, the proposals are considered to maintain the retail character and function of the Core Shopping Frontage, and will not harm its vitality and viability. Rather, it is considered that the proposals will enhance this part of the Core Shopping Frontage, and accords with the overall aims and objectives of Policies CS7, DP12 and CPG5 in this regard.

Reason for Refusal 2 – Concentration of Betting Shops

- 5.54. The Council is of the view that there is already a concentration of betting shops within the Kilburn High Road Town Centre and that an additional betting shop would add to this concentration, leading to a cumulative harmful impact on (a) the character and function of the centre, and (b) community safety and fear of crime.
- 5.55. Before assessing impact, it is important to assess whether there is, in fact, a concentration of betting shops within the centre.

Assessing Concentration

5.56. There are currently 7 betting shops within the defined Town Centre boundary, as defined by Camden and Brent Councils. This includes 3 William Hills, 2 Ladbrokes, 1 Coral and 1 Paddy Power. (There is also an additional Ladbrokes at No. 3 Kilburn High Road within a parade of shops, but this is located outside of the Town Centre Boundary). 6 of the town centre betting shops are located on the Brent side of the centre (3 in the Primary Frontage and 3 in the Secondary Frontage) and only 1 is located on the Camden side within the Secondary Frontage. The appeal proposals would result in a total of 8 betting shops within the centre, and would be the second betting shop on the Camden side. The

There are currently 7 betting shops within the defined Town Centre boundary, as defined by Camden and Brent Councils.

existing betting shops together with the appeal site are identified on the plan contained at Appendix 10.

- 5.57. The Appellant notes that the officer report states that there are "around 11 [betting shops] in close proximity to the site". It is clear that that officers are aware of the 8 betting shops identified by the appellant above (7 within the centre and 1 just outside) but it is not clear how they have arrived at 11. They also state on page 9 that "there are more than eight betting units in close proximity to the proposed site". The Appellant has carried out a thorough assessment of betting shops in and around the centre and can only identify 8. The Appellant can only assume that this is an error or that betting shops a significant distance away from the Centre have been included by the Council. It is hoped this will be clarified in the Statement of Common Ground.
- 5.58. The Council are of the view that there are large number of betting shops within the centre and that they currently form a concentration, as do many objectors. The Council also relies heavily upon the fact that Brent Council refused an application for a Paddy Power unit within the centre on the grounds that it would exacerbate the existing over-concentration of non-retail units within the centre to support their position. However, a planning decision made by another Council cannot be given any weight in the determination of the current proposals. Brent Council's decision to refuse planning permission on those grounds was not tested at appeal. Paddy Power were not able to pursue this site because negotiations broke down in respect of the lease. If they had not, Paddy Power would have appealed the decision as it was considered that the London Borough of Brent did not have any sufficient grounds to refuse the application.
- 5.59. Camden Council's policies do not provide any definition of what constitutes a concentration or cluster. It is therefore important to look at the London Plan and Town Centres SPD which states how Councils should seek to address clustering of specific uses. They advise that Councils should impose policies to avoid clustering when the current position has reached saturation point. It follows that the same approach should be adopted when assessing planning applications. Whilst there is no definition of saturation point in the London Plan, the common meaning is "the stage beyond which no more of something can be absorbed or accepted".
- 5.60. It is the Appellant's view that in order to assess 'concentration' and whether the current position has reached 'saturation point' objectively, there is a need to have regard to the relevant context. Specifically this includes: (a) the number of betting shops as a proportion of the whole centre, (b) the location of the betting shops in relation to one another, (c) how this compares to other uses within the town, and (d) the perception of whether there is a concentration/the centre has reached saturation point on the ground.

Betting Shops as a Proportion of the Whole

- 5.61. Kilburn High Road Town Centre is a large, linear centre, and as a whole (i.e. both the Brent side and the Camden side) has a total of 403 units (this is made up of 118 units in the Core Frontage, 266 in the Secondary, and 19 in un-designated frontages). Table 3 below shows the breakdown.

Camden Council's policies do not provide any definition of what constitutes a concentration or cluster

Betting shops therefore currently account for 1.7% of the total centre. This would increase to 2% as a result of the appeal proposals.

- 5.62. Betting shops therefore currently account for 1.7% of the total centre. This would increase to 2% as a result of the appeal proposals. Even if the third Ladbrokes located outside of the town centre boundary were included within this figure (ignoring the other units within that particular parade) the figures would still be low (2% existing, increasing to 2.2% as a result of the proposals). This demonstrates that betting shops only make up a very small proportion of the town's offer and as such, based on this alone, it cannot possibly be said that there is currently a concentration of betting shops or that there would be as a result of the appeal proposals.

Table 3 – Breakdown of Units within the Centre by Borough and Frontage

	Primary	Secondary	Total	Non-Frontage	Total
Camden	64	84	148	19	167
Brent	54	182	236	0	236
	118	266	384	19	403

Source: Planning Potential Research (Survey undertaken on 27 August 2015)

Location of Betting Shops

- 5.63. The map contained at **Appendix 10** shows the location of the existing betting shops within the centre. It also includes the third Ladbrokes located outside of the centre. The map shows that the existing betting shops are generally spread out throughout the centre. If you take Camden's definition of individual frontages (i.e. consecutive units between two roads), no frontage within the entire centre has more than one betting shop, and this would remain the case as a result of the appeal proposals.
- 5.64. The nearest two betting shops are the Ladbrokes at No. 69-71 on the western side of Kilburn High Road and the William Hill at No. 40 on the eastern side but they are still a fair distance from each other (59 metres). The next two closest betting shops are the William Hill at No. 143 and the Coral. These units are 77 metres apart. In all other cases, the distances to the next nearest betting shop is between 158 and 268 metres. This demonstrates how spread out the existing betting shops are from one another. The overall distance between the northern-most betting shop and the southern-most betting shop is 1.28 km. Further, it is important to look at what is located between the various betting shops. Kilburn High Road has a diverse mix of uses. The Primary Shopping Frontage has a high proportion of A1 use with non-A1 uses mixed in and the Secondary Shopping Frontage has a wide variety of uses. There are large numbers of shops and other uses located between the existing betting shops. In addition there are a number side roads and crossings. There is a lot of activity between each of the betting shops which acts as a physical separation. As such given the significant distances involved and the large number of other uses and physical barriers between each betting shop, it cannot be considered that together the existing betting shops form a concentration, and nor do certain betting shops form smaller concentrations within the centre.
- 5.65. This clearly demonstrates that the statement in the Officer's report that the existing betting shops are *"in close proximity to the proposed site. This cluster is*

The map shows that the existing betting shops are generally spread out throughout the centre. If you take Camden's definition of individual frontages (i.e. consecutive units between two roads), no frontage within the entire centre has more than one betting shop, and this would remain the case as a result of the appeal proposals.

considered significant" is completely unjustified and not based on any objective assessment.

- 5.66. As such, it is not considered that an additional betting shop at the appeal site would contribute to an existing concentration of betting shops, or indeed create one. The proposed betting shop would only be the second betting shop on the Camden side of the town centre (i.e. the northern side of the High Road). The appeal site is 112 metres away from the existing William Hill on the northern side of the High Road. This is a significant distance, and the two shops would be separated by a side road with pelican crossing and a large number of units in a mix of uses. The existing Ladbrokes on the Brent side of the High Road is located 65 metres away which is a fair distance particularly given that it is located on the other side of the busy High Road. The next closest betting shop to the appeal site is located over 200 metres away (Coral).

The proposed betting shop would only be the second betting shop on the Camden side of the town centre

Comparison with other Uses

- 5.67. It is also important to look at the position with other uses/operators when assessing whether there is a concentration of a particular use.
- 5.68. Maps of various existing operators within the town centre are contained at **Appendix 11**. This shows that there is a much higher number of other uses/operators in the centre than there are betting shops. Indeed, there are over 4 times as many restaurants, over 3 times as many hairdressers, over twice as many takeaways and almost twice as many estate agents.
- 5.69. The town centre contains the following:
- 36 restaurants (8.9% of total)
 - 29 Hairdressers (7.2% of total)
 - 19 Takeaways (4.7% of total)
 - 15 Estate Agents (3.7% of total)
 - 10 Mobile Phone Shops (2.5% of total)
- 5.70. This demonstrates that when put into context, 7 to 8 betting shops amounting to 1.7-2% of the centre is not a significant number or proportion.
- 5.71. The maps also show that other uses/operators are located much closer together than the betting shops. This does not necessarily mean that other uses have resulted in concentrations or clusters. Indeed, other factors such as perception on the ground need to be taken into account. Rather it shows that other uses are much more likely to be regarded as representing a concentration than betting shops.
- 5.72. Again, when put into context, betting shops do not amount to the concentration that the Council and many objectors believe to be the case when assessed objectively.
- 5.73. We wish to draw the Inspector's attention to a recent Paddy Power appeal decision (ref: APP/U5930/A/14/2229533) at 620 High Road, Leytonstone which was allowed on 22 April 2015 (a copy of which is contained at **Appendix 12** together with a plan showing the location of betting shops and the appeal site).

This demonstrates that when put into context, 7 to 8 betting shops amounting to 1.7-2% of the centre is not a significant number or proportion.

The decision was made after betting shops became SG uses. The proposals would result in 6 betting shops in the centre, meaning betting shops would account for just under 3.5% of the overall centre, a figure which the Inspector considered to be "a low figure when compared with a comparison of other non-A1 uses in the centre". There was an existing betting shop within the same parade as the application site (4 units along) and an existing betting shop opposite the application site on the other side of the road. The Inspector concluded that:

"I do not consider that an additional betting office within the immediate area would result in a significant alteration to this balance, or result in a clustering effect that would be detrimental to the retail attraction of the immediate area or wider centre".

5.74. The Inspector later stated:

"As I found within the previous section, the proposal would not result in any significant clustering concerns".

5.75. Clearly in the Leytonstone case, betting shops accounted for a much higher proportion of betting shops within the centre and were much closer to one another, than is the case on Kilburn High Road.

Perception on the Ground

5.76. However, it is not considered that it is simply a case of looking at the number of a particular operator/use and how close they are to each other, nor is it a case of simply assessing the situation on a plan. Whether there is a sense of a concentration or cluster on the ground is important.

5.77. As has already been discussed, Kilburn High Road is a large, linear centre. The distance from one end of the centre to the other is 1454 metres (1.454 km/0.9 miles). Based on the PTAL system, it would therefore take the average person over 18 minutes to walk this distance and given that there are a number of side roads with Pelican crossings and the business of Kilburn High Road, it is likely to take between 20 and 25 minutes to walk the full length of the centre.

5.78. When walking around Kilburn High Road or driving through the centre, one does not get an impression that the centre as a whole or that parts of the centre are dominated by concentrations of betting shops. You cannot see all the betting shops from one place within the centre. As betting shops have similar shopfronts and signage to shops and other town centre uses, they tend to blend into the shopping frontages. Further, the centre has a good mix of shops and services and is a busy centre with high levels of activity and footfall. It also has a main road running through it which is a busy thoroughfare for vehicles. All of these factors, together with the factors discussed above, mean that you do not get a sense that the centre is dominated by betting shops. This lends further support to the Appellant's position that there is not an existing concentration of betting shops within the centre as a whole or within any specific part of the centre, nor would the presence of a new Paddy Power betting shop in a small unit at the appeal site change the position on the ground.

5.79. This is certainly the view that the Inspector took when considering an application for a betting shop in Newham (ref: APP/G5750/A12/2172681) in September 2012 (copy attached at Appendix 13). At paragraph 10 of the decision the Inspector states:

Clearly in the Leytonstone case betting shops accounted for a much higher proportion of betting shops within the centre and were much closer to one another, than is the case on Kilburn High Road.

When walking around Kilburn High Road or driving through the centre, one does not get an impression that the centre as a whole or that parts of the centre are dominated by concentrations of betting shops

"While the explanatory material to the CS Policy SP6 refers to Town Centres being adversely affected by a proliferation of non-retail uses, there are no criteria which assist in making an objective assessment of whether a given proportion constitutes a 'proliferation'. I accept that the 10 premises identified within the defined Town Centre represents a significant presence on the High Street. However, I did not get a sense that the Town Centre is presently 'dominated' by betting shops, or that an additional betting shop in this location would lead to such a domination".

Assessment of Impact

- 5.80. Even if the Inspector agrees with the Council that a concentration of betting shops exists in the centre or that an additional betting shop at the appeal site would result in a concentration, the Council have not presented any evidence to demonstrate that the existing/resulting concentration is having/would have a harmful impact on the function and character of the centre. It is also not considered that there is sufficient evidence to demonstrate that there would be further harm to community safety and the fear of crime on Kilburn High Road. In fact, as is demonstrated below, the evidence points to the contrary.

Impact on Character and Function of the Centre

- 5.81. It is not entirely clear from the officer report what is meant by character and function of the centre. Certainly no evidence has been presented by the Council demonstrating that the existing betting shops in the centre are individually or cumulatively having a harmful impact on the character and function of the centre.
- 5.82. It is important to note that whilst the Council is concerned about the impact of existing betting shops on the character and function of the centre, they also confirm in the Officer Report that: *"the high street, to which [the application site] relates, is a vibrant and busy one"*.
- 5.83. This suggests that the existing betting shops within the centre are not in fact having a harmful impact on the centre. Rather it confirms that the centre is functioning well and is a popular and busy destination for shoppers and visitors. This supports the fact that concerns raised by the Council and indeed the public is based more on a perception of betting shops rather than what is actually happening on the ground.
- 5.84. The Appellant has taken the opportunity to prepare a health check of the centre which demonstrates that the centre is functioning well and that the character of the centre is as you would expect – a centre with a large mix of uses with a more retail-led core. A copy of the health check is contained at **Appendix 14**. As discussed above, when walking around the large, linear centre, you do not get an overall impression that it is dominated by betting shops. Whilst the centre has some obvious weaknesses, they far outweigh any potential weakness associated with the presence of betting shops in the centre. The key findings are:
- The centre has a good mix of retail and service uses.
 - The centre has a vacancy rate of 8.9% well below the national average of 11.45%.
 - The centre is a busy and vibrant centre.

It is important to note that whilst the Council is concerned about the impact of existing betting shops on the character and function of the centre, they also confirm in the Officer Report that: *"the high street, to which [the application site] relates, is a vibrant and busy one"*.

The centre has a vacancy rate of 8.9% well below the national average of 11.45%

- Given the centre's long, linear size, this appears to affect its function as one large centre.
- The Kilburn High Road is a busy vehicular thoroughfare and segregates the centre to some extent.
- The shopfronts and buildings outside the Core Shopping Areas are generally in need of improvement.

5.85. The health check demonstrates that the presence of the existing betting shops dotted around the centre are not having a harmful impact on the character and function of the centre. The centre is functioning well and has a good mix of retail and service uses. It also has a vacancy rate well below the national average. An additional betting shop at the appeal site is unlikely to change this position.

Impact on Community Safety and Fear of Crime

- 5.86. The Council are also concerned that a further betting shop in the centre would be likely to result in further harm to community safety and the fear of crime on Kilburn High Road. It is important to note the reason for refusal does not say that the proposals 'would' lead to such problems, rather it is weaker in its position and states that the proposals 'would be likely to'.
- 5.87. When assessing the issue of community safety, the Officer Report relies heavily on comments received from the Metropolitan Police. It says that the Metropolitan Police "provide clear evidence that the current situation is getting worse as there are growing issues associated with the existing betting shops in the high street". The Officer Report goes on to state that "although the Metropolitan Police highlighted one particular betting shop in their consultation response, they have commented that it is indicative of the general issues with betting shops along the high street". This is absolutely not true. The Metropolitan Police only referred to problems with one existing betting shop (a William Hill) on Kilburn High Road. They did not pass comment on any other betting shops or say that this is indicative of betting shops generally.
- 5.88. In terms of the Council's concern that the proposals would likely lead to a 'fear of crime' it is interesting to note that only 7 of the 39 objections received by the public referred to crime/community safety in their representations.
- 5.89. Aside from the brief comment from the Metropolitan Police and a few comments from the public, the Council's reason for refusal in respect of community safety and fear of crime is not based on any other evidence.
- 5.90. Whilst licensing is a separate matter, an important material consideration is that the Council granted Paddy Power their betting premises licence on 30 July 2015. No objections were raised by the Police. The Appellant met with the police during the licensing application process and they did not raise any concerns or request that any conditions be added to the licence. It is important to note that licenses are granted having regard to their compliance to the three main licensing objectives. One of the three licensing objectives is 'preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime'. Another is 'protecting children and other vulnerable persons from being harmed or exploited by gambling'.

The health check demonstrates that the presence of the existing betting shops dotted around the centre are not having a harmful impact on the character and function of the centre. The centre is functioning well and has a good mix of retail and service uses.

Whilst licensing is a separate matter, an important material consideration is that the Council granted Paddy Power their betting premises licence on 30 July 2015. No objections were raised by the Police.

- 5.91. Given that the Police did not object to or raise any concerns in respect of the Appellant's licence application, the Appellant decided to meet with the Police Sergeant who raised concerns in respect of their planning application. Details of the meeting are included within the Hearing Statement prepared by Mr Adrian Studd (contained at **Appendix 15**), an Independent Licensing Consultant, submitted in support of the Appellant's appeal. During this meeting, the Police Sergeant confirmed that he did not have concerns with existing betting shops within the Kilburn High Road Centre (including Paddy Power's existing unit at No. 251), apart from the William Hill located close to the train station, and that having reviewed Paddy Power's policies and procedures, is not concerned that the proposed Paddy Power betting shop would cause any problems.
- 5.92. The report also provides an independent view of the Council's reason for refusal relating to community safety and crime. Based on an assessment of all comments received in respect of the application, discussions with the Police, visits to the centre, and Mr. Studds' experience dealing with issues of crime and disorder and betting establishments, the report concludes that:
- "Overall I have seen no evidence that the existing betting shops have a cumulative impact on the area or generate nuisance, crime or disorder in Kilburn High Road. I am confident that, if planning consent is granted and this premise opens, it will not generate any crime or disorder in the area".*
- 5.93. It has therefore been demonstrated that the existing betting shops are not cumulatively leading to significant problems with crime and anti-social behaviour within Kilburn High Road. It has also been demonstrated that a new Paddy Power betting shop will not lead to any significant problems with crime and disorder.
- 5.94. The strict controls that the Appellant will be putting in place at the new shop will sufficiently address the source of any fear of crime. Indeed, this is the view that the Inspector dealing with the recent Paddy Power appeal at 620 High Road, Leytonstone took when considering the matter of fear of crime (copy of appeal decision contained at **Appendix 12**). The Inspector was of the view that the conditions imposed on the licence, in particular the installation of CCTV at the front of the premises would address the sources of any fear of crime. In this instance, the licence does not contain any conditions, however, the Appellant would be more than happy for similar conditions to be imposed on the planning permission if the Inspector is minded to allow the appeal such as installation of CCTV.
- 5.95. It has therefore been demonstrated that the proposals comply with Policies CS7 and DP12 in this regard.

The strict controls that the Appellant will be putting in place at the new shop will sufficiently address the source of any fear of crime.

6. Conclusion

- 6.1. It has been demonstrated through empirical evidence that the appeal proposals will not have a harmful impact on the retail function of the centre and that the proposals comply with the development plan in this regard.
- 6.2. It has been demonstrated that betting shops currently make up a very small proportion (1.7%) of the overall offer of Kilburn High Road Town Centre, and that this position will not materially change as a result of the appeal proposals.
- 6.3. It has been further demonstrated that a concentration of betting shops does not currently exist within Kilburn High Road Town Centre, nor does the centre currently contain any clusters of betting shops. It has been demonstrated that an additional betting shop at the appeal premises would not create a concentration or cluster, or lead to saturation level. Nor is there any real impression of concentrations of betting shops.
- 6.4. In the event that the Inspector considers that a concentration or cluster of betting shops does currently exist or that the proposed betting shop would result in a concentration/cluster, it has been robustly demonstrated that the appeal proposals will not harm the character and function of the town centre, nor will it result in harm to the community safety and the fear of crime on Kilburn High Road.
- 6.5. It has been demonstrated that the proposals will result in significant environmental, social and economic benefits for the area. These include:
- bringing a unit back into permanent use;
 - installing a new, high quality shopfront together with aesthetic improvements to the upper floors;
 - providing 6 new jobs;
 - attracting high levels of footfall and linked trips; and
 - providing natural surveillance into the evenings.
- 6.6. It is therefore clear that the appeal proposals represent sustainable economic development.
- 6.7. It has been demonstrated that the proposals comply with the development plan and national and regional policies. It is respectfully requested that the appeal is allowed and planning permission granted.

Appendices