

PLANNING STATEMENT

Section 73 Removal of Condition Application

Removal of condition 5

Of planning permission (ref:2008/4781P) dated
02/11/2009

At 117 Kentish Town Road NW1 8PB

On Behalf of Melange Restaurants.LTD

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	<u>Page</u>
1.0 BACKGROUND	3-4
2.0 PLANNING HISTORY	4
3.0 THE PROPOSALS	4
4.0 PLANNING POLICY	5
5.0 MATERIAL CONSIDERATIONS	6-7
6.0 CONCLUSION	8

1. Background

- 1.1 This Statement is written on behalf of Melange Restaurants Ltd, in respect of an application to remove Condition 5 from planning consent 2008/4781P, which permitted the change of use from Class A1 to Class A3 of the 117 Kentish town road (ground floor only).
- 1.2 Application 2008/4781P sought permission for "*change of use of ground floor from Class A1 to Class A3*", and was approved on 02 November 2009
- 1.3 Melange Restaurant Ltd is a potential tenant of 117 Kentish Town Road NW1 Premises subject to obtaining all relevant permissions Owner of the Premises in Subject is Overlid Limited 73a Windmill Hill, Enfield, Middlesex EN2 7AF. Owner is fully Aware of the application.
- 1.4 Condition 5 states:
"Notwithstanding the provisions of Class A3 of the Schedule of the Town and Country Planning (Use Classes) Order, 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, the premises shall not be used for any purpose other than as a cafe without primary cooking taking place at the premises."
Reason: To ensure that the future occupation of the building does not adversely affect the adjoining premises by reason of noise and fumes from cooking equipment in accordance with policies SD6 of the London Borough of Camden Replacement Unitary Development Plan 2006.
- 1.5 Planning application ref: 2008/4781P was done by previous tenants Mr Yassin Abanur with the plans to run cafeteria, conditions 5 was not considered unduly restrictive.
- 1.6 Condition 5 was attached to the consent in order to safeguard the amenities of adjoining premises and the area generally. Therefore this statement seeks to demonstrate that the proposed removal of condition will not give rise to any significant adverse amenity impacts accordingly.
- 1.7 This application is submitted alongside a second application that includes installation of a kitchen extract duct to the rear of the premises. The extract duct is a mechanical

feature which supports primary cooking activity. The two applications are therefore related to each other, however can be considered independently with regards to their respective determinations.

- 1.8 Section 2 describes planning history 3 describes the proposals in greater detail; section 4 outlines planning policy description. 5 Sets out the material planning considerations; and section 6 provides final conclusions.

2.0 Planning History

- 2.1 The application site 117 Kentish Town road is a retail unit in Class A3 use ground floor and A1 basement floor. The unit is currently vacant, after the previous occupier Mr Yassin Abannur, terminated the lease.

- 2.2 The key application referred to the above are detailed below:

2008/4781/P Change of use of ground floor from a retail unit (Use Class A1) to cafeteria (Use Class A3 - no primary cooking involved) was approved 02 November 2009

3.0 The proposals

3.1 This application seeks the removal of Condition 5 from planning permission 2008/4781/P, under Section 73 of the 1990 Town and Country Planning Act, in order to allow a potential tenant Melange Restaurants Ltd to be able to operate as a restaurant.

- 3.2 Application 2008/4781/P sought permission for "*change of use of the ground floor from Class A1 to Class A3*", and was approved on 02 November 2009.

- 3.3 Condition 5 states:

"Notwithstanding the provisions of Class A3 of the Schedule of the Town and Country Planning (Use Classes) Order, 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, the premises shall not be used for any purpose other than as a cafe without primary cooking taking place at the premises."

Reason: To ensure that the future occupation of the building does not adversely affect the adjoining premises by reason of noise and fumes from cooking equipment in

accordance with policies SD6 of the London Borough of Camden Replacement Unitary Development Plan 2006.

- 3.4 Given Condition 5 restricts the scale of cooking that is permitted to take place on the premises, there are a limited number of prospective tenants who would be able to operate from the unit. Overlid limited have therefore struggled to secure a new tenant to occupy the vacant unit, and has a conditional offer from Mélange Restaurants. It'd to take the premises if this condition will be removed.

4.0 Planning Policy

Camden Core Strategy 2010

- 4.1 Policy CS5 manages the impact of growth and development in the borough. In respect of amenity, Part E states that the Council will make sure that the impact of developments on their occupiers and neighbors is fully considered.
- 4.2 Policy CS7 promotes Camden's centers and shops. In respect of amenity, Part H states that the Council will promote successful and vibrant centers throughout the borough to serve the needs of residents, workers and visitors by making sure that food, drink and entertainment uses do not have a harmful impact on residents and the local area.

Camden Development Policies Section 2

- 4.3 Policy DP12 supports strong centers and manages the impact of food, drink, entertainment and other town center uses. Part C states that the impact of the development on nearby residential uses and amenity, and any prejudice to future residential development will be considered.
- 4.4 Policy DP26 seeks to manage the impact of development on occupiers and neighbors, by considering factors such as noise and vibration levels, and odor, fumes and dust

5.0 MATERIAL CONSIDERATIONS

Principle of Use

- 5.1 The principle of use of the unit for Class A3 purposes has been established through the extant change of use consent. It is not necessary to re-evaluate the principle of A3 use.
- 5.2 Given planning permission is required to install kitchen extract equipment separately – which, when used, would give rise to the potential for primary cooking to impact on the amenity of neighbors - it is considered that the principle of relaxing the 'no primary cooking' Class A3 permission can be established independently. This would allow a potential tenant to take currently vacant premises in subject and operate as a restaurant.

Amenity Concerns

- 5.3 As previously stated, Condition 5 was attached to the change of use permission to ensure the Class A3 proposals would not adversely impact on the amenity of neighbors.
- 5.4 It is considered primary cooking can only in principle impact on the amenity of neighbors when the noise and odors are extracted externally. Otherwise, the noise and odors associated with primary cooking would be retained within the building. For primary cooking on a commercial scale however, this is not generally desired.
- 5.5 Given there is no extract equipment currently installed within the unit, the products associated with primary cooking cannot reasonably give rise to any impacts on amenity. Therefore, it is considered that the removal of Condition 5 alone will not give rise to significant adverse impacts on local amenity. The policy requirement to protect local amenity can be assessed through the separate determination of an application to install a kitchen extract duct.
- 5.6 Notwithstanding, it is not the applicants intention for primary cooking to take place within the unit without the presence of kitchen extract equipment which would, in practice, transport associated by-products externally. The installation of a separate kitchen extract system is proposed through a separate application.

- 5.7 The installation of additional mechanical equipment and external extraction generally associated with primary cooking has the potential to give rise to noise, vibrations and odours that could harm the amenity of neighbours. However, as previously outlined, a removal of condition 5 alone would not, in principle, give rise to any concerns in respect of neighbour amenity impacts. For clarity, however, the separate application to install a kitchen extract duct demonstrates that the proposals will not give rise to any significant impacts on neighbour amenity

Economic Benefits

- 5.8 This property has been on the market for a few months. There is little market demand from prospective A3 tenants with the restriction defined by Condition 5. If the condition remains in place, it is possible that the unit will remain vacant. This has the potential to negatively impact on the vitality and viability of the Kentish Town Road.
- 5.9 Melange Restaurant Ltd is an established company with a proven track record in Crouch End N8 and Barnet EN5 areas. Such tenant would be a great asset to Kentish Town Road and whole area.
- 5.10 It was considered that a Class A3 unit would make a greater contribution to the vitality and viability of the frontage, by securing a high quality tenant with long term aspirations in the local area. Given the value that food and drink retail can have in enhancing the commercial health of town in general, it was considered that the A3 use would help the road to become a stronger retail destination, with an associated uplift in footfall along the parade than previously observed.
- 5.11 Notwithstanding the reason for attaching Condition 5 to the consent, in respect of safeguarding amenity, it is important to note that the application site is within an established town centre environment where food and drink uses are acceptable uses in principle.
- 5.12 The presence of other Class A3 operators in the neighborhood, including Guanabana 85 Kentish Town Rd, Nandos 227-229 Kentish Town Rd, Beef and Brew 323 Kentish Town Rd where we are unaware of any restriction in terms of primary cooking, demonstrates that primary cooking is in principle accepted within the Kentish town Road.

5.13 Furthermore, it is noted that the types of food and drink operator who are able to operate without primary cooking are typically sandwich shops or similar, which generally operate under Class A1. A condition restricting primary cooking is often applied to such A1 operations to ensure the units remain strictly as A1 food and drinks units, and are considered less common for A3 units.

6 Conclusion

- 6.1 This application is submitted in support of proposals to remove Condition 5 from a recent change of use consent, which prohibits primary cooking activity from taking place on the premises. Removal of this condition would secure a good tenant for currently vacant premises in subject.
- 6.2 In assessing the amenity impacts associated with primary cooking, it is concluded that a removal of Condition 5 alone would not give rise to any concerns in respect of neighbor amenity. For primary cooking on a commercial scale to have potential to give rise to adverse amenity impacts, external extraction equipment would be required.
- 6.3 A separate application to install a kitchen extract duct has been submitted independent of this application, which essentially allows the principle of allowing unrestricted cooking at the premises to be assessed independently. The amenity impacts associated with kitchen extraction equipment are assessed in full within the separate kitchen extract duct application.
- 6.4 The proposals are in accordance with Policies CS5, CS7, DP12 and DP 26, and it is considered that planning permission should be granted under Section 73 accordingly.