

Rolfe Judd

Planning

On behalf of Kimchee Ltd

106 New Oxford Street

Units 1 and 2, 106 New Oxford Street, London, WC1A 1HB

Appeal Statement

RJP: P6291

26 May 2016

Contents

1.0	Introduction	1
1.1	Introduction	1
1.2	The Appeal Site Description & Location	1
1.3	Surrounding Area	1
1.4	Relevant Planning History	2
1.5	Relevant Application Discussions	2
1.6	Changing Retail Market	3
2.0	Appeal Scheme	4
2.1	Description of the Appeal scheme	4
3.0	Relevant Planning Policies	5
3.1	National Planning Policy Framework	5
3.2	LB Camden Core Strategy and Development Policies	6
3.3	Camden Planning Guidance	7
3.4	Camden Retail and Town Centre Study GVA (November 2013)	8
3.5	Fitzrovia Area Action Plan (March 2014)	9
4.0	Principal Planning Considerations	10
5.0	Conclusion	15

1.0 Introduction

1.1 Introduction

1.1.1 The appeal premises are currently occupied by the appellant and are located at 106 New Oxford Street, part of Prospect House. The premises are situated within a predominately commercial area, approximately 2 minutes' walk from Tottenham Court Road Station.

1.1.2 This Appeal Statement has been prepared on behalf of Kimchee Ltd ('the Appellant') in support of an appeal against the decision by London Borough of Camden ('the Council') to refuse planning permission for the use of the premises for a hybrid mix of Class A1/A3 uses, a 'Sui Generis' use, that is a use all on its own ('the Appeal Scheme').

1.2 The Appeal Site Description & Location

1.2.1 106 New Oxford Street is positioned centrally near Tottenham Court Road and the proposed redevelopment of the station for the new Crossrail line. The property is comprised of basement and ground floors below a large office development. The basement and ground floors have a lawful retail (Class A1) use.

1.2.2 The Site is situated short walk from Tottenham Court Road Underground station and there are a number of bus services in the area. The Site has a PTAL of 6b. This part of New Oxford Street is a busy thoroughfare linking Oxford Street with Holborn.

Planning Policy Designations

1.2.3 The key planning policy issues are as follows:

- Within Bloomsbury Conservation Area (Not listed with no adjoining listed buildings);
- Central London Area and Central London Frontage;
- Fitzrovia Area Action Plan.

1.3 Surrounding Area

1.3.1 New Oxford Street is characterised by a mix of ground floor retail uses with a number of office frontages also located on the street. The area is an important focal point for employment and tourism alike and is subject to a high level of pedestrian traffic.

1.3.2 The mix of surrounding uses at ground floors complements the employment and commercial spaces as above; as such there are a number of other shops and restaurants and other food and beverage shops located along New Oxford Street in the vicinity of the Appeal Site. Further details regarding the makeup of the uses can be found within section 5 of this appeal statement.

1.4 Relevant Planning History

1.4.1 The site has a fairly limited planning history as detailed below:

Reference	Address	Development	Decision	Date of Decision
2011/5087/P	Prospect House 106 New Oxford Street London, WC1A 1HB	Change of use of retail shop (Class A1) at the basement and ground floor to dual use Class A1 (shops) and Class A2 (financial and professional services)	Granted	16-12-2011
2013/1884/P	106 New Oxford Street London WC1A 1HB	New shopfront	Granted	24-04-2013
2013/2346/A	106 New Oxford Street London WC1A 1HB	Installation of 1 x internally illuminated acrylic fascia sign and 1 x internally illuminated hanging sign to front elevation of existing retail unit (Class A1)	Granted	24-04-2013
2014/5302/TC	Kimchee To Go Prospect House 106 New Oxford Street London, WC1A 1HB	5 Tables and 10 Chairs Monday to Sunday: 09:00 to 23:00	Granted	14-08-2014

1.5 Relevant Application Discussions

1.5.1 Email correspondence with the Borough Council's planners between the 23rd November 2015 and 08th March 2016 discussed a number of issues pertaining to the submitted scheme (APP29). Key issues related to establishing the existing context, the form and layout of the store and the scale of proposed changes to facilitate the provision of an 'eat-in' component to the use of the store. As part of the changes the following information was submitted to the Council:

- Drawings - C371-001 A, C371-002 B, C371-003 and Existing Plant GA Plan
- Existing Site Layout

1.5.2 Further details regarding these emails can be found within section 5 of this document.

1.6 Changing Retail Market

- 1.6.1 It is also material to set the context of this application in the on-going changing character of retail and food & beverage retail market within the UK. Recent studies suggest that as retailers improve their 'multichannel offer' (range of shopping experiences) in response to e-shopping, town centre stores will be used more to support e-retailing with click and collect points and safe drop boxes for customers to collect their online orders as well as satellite stores opening for customers to make online purchases. As demand for conventional retail floorspace declines, it is anticipated that more secondary locations will increasingly be converted into alternative town centre supporting uses.
- 1.6.2 In light of these trends, strategies which support the high street are considered ever more vital. This may involve providing higher quality shopping 'experiences', maximising the benefits of tourist trade, and improving the mix of retail and non-retail outlets to increase consumer dwell-time in an area.
- 1.6.3 The prominence of convenience food retailers notably in London is clearly a response to these changing trends. Companies such as Kimchee and other food retailers which provide a service to tourists, the local workforce and visiting shoppers compete for and cluster in accessible locations close to transport interchanges and main concentrations of retail stores.
- 1.6.4 Studies suggest that former; principally retail locations will be used more for leisure and social activities with more bars, restaurants, food outlets and community spaces opening in vacant units. It is therefore considered important to protect and promote quasi and non-retail offers to provide an attractive shopping and leisure experience which cannot be provided online.

2.0 Appeal Scheme

2.1 Description of the Appeal scheme

- 2.1.1 The Appeal Scheme involves the variation in the conventional A1 retail use of the existing store into a hybrid mix of Class A1 and Class A3 functions. This mix of uses would not fit neatly into any single use class classification. The premises, if permitted would have a Sui Generis use. No external alterations are proposed as part of the application.
- 2.1.2 As part of the A1/A3 use it is proposed that 45 covers would be provided internally providing a significant dine-in component to the use of the premises. This function would nonetheless still be ancillary to the main use of the store as a food retailer. The seats provide the opportunity and option for tourists and visitors to rest in a key location and consume their purchases on site. The unit will continue to contribute to the local area and provide an attractive service function in this part of the street. Due to the nature of product sold by the Kimchee store a large number of visitors frequent the unit which adds to the footfall through the locality.
- 2.1.3 The proposed internal design will be of a high quality, delivering a store which can operate within the locality without adversely impacting on the surrounding area.

3.0 Relevant Planning Policies

3.1 National Planning Policy Framework

3.1.1 National Planning Policy Framework (NPPF) March 2012 – the NPPF sets out the Government's planning policies for England. The recently adopted Framework supersedes the myriad of Planning Policy Statements (PPS) and Guidance (PPG) documents. At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF recognises that there are three dimensions to sustainable development; economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles, which are mutually dependent and should not be undertaken in isolation:

- An Economic Role - contributing to building a strong, responsive and competitive economy by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- A Social Role - supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and supports its health, social and cultural well-being; and
- An Environmental Role - contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

3.1.2 In relation to retail, the NPPF advocates a 'town centres first' approach, requiring planning policies to positively promote competitive town centre environments and sets policies for the management and growth of centres over the plan period.

3.1.3 The NPPF defines primary frontages as likely to include a high proportion of retail uses which may include food, drinks, clothing and household goods. Secondary retail frontages are defined as having greater opportunities for a diversity of uses such as restaurants, cinemas and businesses. The site, although located in the Central London Frontage is clearly within the secondary area of the Tottenham Court Road designation.

3.1.4 It appears clear that New Oxford Street performs a support role secondary to the primary role exhibited by nearby Tottenham Court Road and Oxford Street. The frontage within which the appeal site is situated secondary in character and is suitable for a diversity of uses such as restaurants, cinemas and businesses including the proposed use as part of the appeal scheme.

3.1.5 It should also be noted that from the 26th March 2013 all development plan policy documents should be consistent with the provisions of the NPPF. Any outstanding development plan policies inconsistent with the NPPF will carry less weight, including Camden Development Policies.

3.2 LB Camden Core Strategy and Development Policies

3.2.1 The Camden Core Strategy and Development Policies were adopted in November 2010. This pre-dates the NPPF and had its provenance at an even earlier time. This Strategy sets out the vision for future development of the borough and covers a 15 year plan period up to 2025. The following policies are relevant to the Appeal Scheme.

Key Policies

- **CS7 Promoting Camden's centres and shops as successful and vibrant centres** - Central London contains a number of shopping and service areas as part of its diverse mix of uses. These range from larger areas predominantly serving workers and visitors to neighbourhood centres serving local residents to areas of specialist shopping. The main shopping streets in Camden's Central London area have been designated as Central London Frontages. Camden's Central London Frontages serve a similar function to town centres or have a London wide or even national retail role, for example Tottenham Court Road.

The Council will promote and preserve the specialist retail character of Tottenham Court Road and Charing Cross Road by managing the level of shop and food, drink and entertainment uses in these areas, in line with the approach set out in the Planning Guidance for Central London supplementary planning document.

- **DP12 Supporting strong centres and managing the impact of food, drink etc. uses, ensuring such uses do not harm the character, function and viability of the centre concerned** - When assessing proposals for these uses the Council will seek to protect the character and function of our centres and prevent any reduction in their vitality and viability by requiring sequential assessments and impact assessments where appropriate (in accordance with Planning Policy Statement 4 Planning for Sustainable Economic Growth), and through implementing this policy.

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. The Council considers 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 antisocial behaviour, the range of services provided; and a centre's character and role in the social and economic life of the local community. The Council will also 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 the area.

Other Relevant Policies

- CS1 Distribution of growth
- CS2 Growth areas
- CS5 Managing the impact of growth and development

- CS8 Promoting a successful and inclusive Camden economy
- CS9 Achieving a successful Central London
- CS11 Promoting sustainable and efficient travel
- CS14 Promoting high quality places and conserving our heritage
- DP1 Location and management of Camden's growth
- DP16 The transport implications of development
- DP17 Walking, cycling and public transport
- DP20 Movement of goods and materials
- DP24 Securing high quality design
- DP25 Conserving Camden's heritage
- DP26 Managing the impact of development on occupiers and neighbours
- DP28 Noise and vibration

3.3 Camden Planning Guidance

3.3.1 The Camden Planning Guidance provides advice and information on how the Council will apply their planning policies as detailed within the Core Strategy and Development Policies. The guidance is therefore consistent with the Camden Core Strategy and Camden Development Policies, and is a formal Supplementary Planning Document (SPD) which is an additional "material consideration" in planning decisions.

CPG 5 Town Centres, Retail & Employment (September 2013)

3.3.2 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. The proportion of shops that the Council will aim to retain will vary from centre to centre and area to area.

3.3.3 Camden's Central London Area plays an important part in providing the vibrancy, diversity and identity that makes the borough such a popular place to visit and live in. It also forms a key part of London's Central Activities Zone whose unique role, character and mix of uses provides much of the capital's distinctiveness. Central London Frontages are considered generally appropriate locations for new food, drink and entertainment uses, as they have good public transport provision (including late-night services) and are busy, commercial streets with limited residential development. This, however, needs to be balanced against the need to protect their retail functions and protect the amenity of those who live in the area.

- 3.3.4 The Tottenham Court Road and the immediately adjoining area of New Oxford Street shopping area comprise over 180 ground floor commercial premises. It is characterised by larger-scale developments and large retail premises and contains about 90% of the overall premises in this Central London Frontage. Concentrations of furniture/home furnishings and electrical goods shops of London-wide significance are located here. These uses are intermingled with High Street multiples providing a range of convenience goods and services.
- 3.3.5 There has been a rise in the number of sandwich bars and cafes in Tottenham Court Road operating out of shop premises (Use Class A1), many occupied by High Street chains. A large majority of cafes along Tottenham Court Road operate within the A1 shop use class. The law does not say at what point a change of use happens between Class A1 and Class A3; therefore, the Council has to consider each application on a case by case basis.

3.4 Camden Retail and Town Centre Study GVA (November 2013)

- 3.4.1 The Camden Retail and Town Centre Study GVA (November 2013) is a study commissioned by the London Borough of Camden to undertake a comprehensive and robust borough-wide review of retail provision within Camden's town centres and central London frontages to provide an update of the 2004 and 2008 Retail Studies, which are now out of date. The study provides the Council's retail evidence base to inform the preparation of future development plan documents, the scope for future retail development in the Borough, and sets out a recommended strategy for the borough's six town centres and central London frontages.
- 3.4.2 The Council set specific requirements for the proportion of A1 or A3/4/5 uses which will be acceptable in the core, secondary and sensitive frontages, which vary from centre to centre. These requirements focus higher proportions of Class A1 retail in primary frontages, in line with the NPPF.
- 3.4.3 The document considers that the specific policy requirements for minimum retail and maximum food and drink units within each frontage must continue to be appropriately monitored to ensure that these do not restrict or inhibit the occupation of units, particularly in secondary areas. It will be important for centres which have problems with high vacancy levels in secondary areas that the specific thresholds for maximum levels of A3/4/5 uses are not overly restrictive and that vacant units are able to be brought back into beneficial economic use.
- 3.4.4 This is particularly important in light of the Government's recent amendments to permitted development rights, which allow temporary changes of use in town centres to bring vacant commercial buildings back in to Class A1/2/3/B1 use (up to 150m). The document therefore recommends that the Council monitors the proportion of uses within primary and secondary areas and where appropriate allow greater flexibility of uses to encourage social activity in peripheral retail areas.
- 3.4.5 The central London frontages of Tottenham Court Road and Holborn provide strong leisure service uses, however this is mainly as a result of a high provision of cafés and coffee shops, and there may be scope to diversify the daytime and evening eating and drinking offer within the frontages at Charing Cross Road, New Oxford Street, Kingsway and High Holborn.

- 3.4.6 Reflecting the centre's location within the West End and the significant proportion of workers in the area (including Mid Town), the nature of the wider retail offer is catered towards meeting needs of the shopper and workforce populations: convenience top up, sandwich shops, coffee shops and pharmaceuticals.
- 3.4.7 Over the plan period the document expects Tottenham Court Road, Charing Cross Road and Denmark Street to continue to perform specialist retailing functions; however, in light of market changes, there may need to be a more flexible approach towards allowing a range of town centre uses to come forward within these areas in order to maintain the strength of the centre.
- 3.4.8 Five shop units along New Oxford Street fall within the boundary of the Central London Frontage; however these retail units are fragmented from the main retail provision on Oxford Street, and the rest of Tottenham Court Road. There is no distinctive retail character to the east of these shops and therefore this appears to be a natural boundary to the Central London Frontage. Traffic is relatively heavy in this location and has a negative impact on the quality of the public realm in this area.

3.5 Fitzrovia Area Action Plan (March 2014)

- 3.5.1 The Fitzrovia Area Action Plan has as its Principle 5 relating to retailing the aim of guiding the development of food, drink and entertainment uses to the Central London Frontage on Tottenham Court Road and New Oxford Street, except those the Council considers to be small scale and low impact.
- 3.5.2 .In relation to food and drink uses, the plan is concerned that such uses do not adversely impact upon but rather safeguard local residential amenity. However the plan states that:

Proposals for food, drink and entertainment development anywhere in Fitzrovia will need to be considered under the full range of criteria in the Council's Development Policies, **including cumulative impact on residential amenity** (see Principle 9). Given the existing concentrations of food, drink and entertainment uses and the high residential density the potential for further development of this type in the Plan area is relatively limited. However, the Central London Frontage on Tottenham Court Road and **New Oxford Street** is considered to offer some potential for new food, drink and entertainment uses,

4.0 Principal Planning Considerations

4.1.1 As identified in Section 3 the Appeal Scheme was refused for the following reason.

The proposed change of use would result in the loss of a retail unit (Class A1) and the ratio of retail uses within this shopping parade falling below the recommended minimum of 80%, which is considered to undermine the provision of shopping services in the Tottenham Court Road / Charing Cross Road Central London Frontage, and thereby cause harm to the character, function, vitality and viability of the frontage. This would be contrary to Policy CS7 of the London Borough of Camden Local Development Framework Core Strategy and Policy DP12 of London Page 2 of 2 2015/5800/P Borough of Camden Local Development Framework Development Policies.

4.1.2 The Appellant's response to the reason for refusal is set out below.

4.1.3 Policies seek to minimise the potential harmful impacts of the non-retail related uses within the Central London Frontages while promoting a mix of uses which help complement the surrounding office and tourism related trades. In this case it should be noted that there will still remain a significant retail (Class A1) component to the proposed sui-generis use so at the outset it is misleading to suggest that the proposal will result in a 'loss' of class A1 use. The council's policies do not expressly set a threshold of 80% within a shopping parade as being a prescribed level below which the introduction of non-Class A1 uses will be harmful – it is a guide and a starting point for consideration taking into account all material considerations. There is no clear evidence to suggest that the appellant's use will seriously undermine the functioning of the parade as a retail location. The appellant Kimchee's use will bring day-long trading activity to this part of the street, catering for retail A1 take-out and dine-in Class A3 services.

4.1.4 Core Strategy Policy CS7 states that the Council will make sure that food, drink and entertainment uses do not have a harmful impact on residents and the local area, and indicates that such uses are most appropriately located in Camden's Central London Frontages, Town Centres and the King's Cross Opportunity Area. Within each of Camden's centres, the Council will seek to prevent concentrations of uses that would harm an area's attractiveness to shoppers or its residential amenity. It is clear that the policies concern themselves with primarily protecting residential amenity.

4.1.5 Policy DP12 goes further to list the criteria Camden considers important to ensure that character, function, vitality and viability of a centre is not infringed upon.

4.1.6 In addressing the policy it is possible to see how the appeal proposal accords with the policy's key criteria.

- *the effect of non-retail development on shopping provision and the character of the centre in which it is located;*

4.1.7 The retention of the A1/A3 hybrid use retains a strong A1 presence within the Central London Frontage. The store will continue to operate as existing, providing a retail food offering to the area. The introduction of additional

seating will not impact on the key characteristics of the store which ensure that it appropriately contributes to, supports and is generally consistent with the prevailing the retail character and function of this part of New Oxford Street. The Camden Retail and Town Centre Study undertaken by GVA states that:

“the nature of the wider retail offer of Tottenham Court Road and New Oxford Street is catered towards meeting needs of shopper and workforce populations providing convenience top up, sandwich shops, coffee shops and pharmaceuticals”

The provision of additional seating to supplement and complement the existing food retail offer will not impact on the wider goals of the area and is clearly consistent with the opinion of the Council’s own consultant’s appraisal of the area’s retail character.

4.1.8 The following key Class A1 elements of the store will be retained and will continue to contribute to the characteristics of the area.

- **Trading Hours** – The store currently trades as per traditional shop opening hours ensuring that there are no featureless facades or dead frontages outside the lunch time trading times. The store also shuts in the early evening to ensure no negative impact on surrounding amenity
- **Product Offering** – The Kimchee store is branded as Kimchee To-Go which promotes the consumption of the products off site. The product offering of this Kimchee brand revolves around cold or simply reheated dishes provided for take away. The majority of the products taken away are cold as they are more easily transported, however, there is an ancillary warmed / re-heated food component to the use providing a popular additional service offering. A small amount of dine-in only dishes are provided, however, these are presently ancillary to the main use of the premises which is for the retail sale of convenience food take-out. While it is anticipated that a small increase of the provision of hot food may be provided as part of the proposed change to incorporate a dine-in experience, the balance will still clearly favour cold food take away Class A1 use.
- **Active Frontage** –New Oxford Street plays a supporting role for the primary retail centre of Oxford Street to the West and Tottenham Court Road to the north. The regeneration of Tottenham Court Road Underground Station is likely to bring significant footfall to the area and New Oxford Street will need to adapt to meet the changing needs of the area. Given that the site is unsuitable for the larger retail stores which are important to the character of the Central London Frontage, the site is a strong location for support service retail uses that provide shoppers and workers a convenient location from which to choose between a wide range of food and beverage offers. The store will retain an active frontage on what is currently (due to significant construction activity) a blank and inactive street scene. The continuing use of this frontage which will promote activity along the street will help promote the frontage as a parade serving commuters working in the area for their lunch-time needs.
- **Internal Layout** – The internal layout of the store will not significantly alter, the proposed change will allow greater flexibility for the internal layout of the store and provide opportunities to increase seating and dine-in capacity as and when required.

4.1.9 In summary it is considered the appeal proposal, by adding a modest Class A3 dine-in component to the existing use, will not have a material or adverse impact on the character of this part of the Central London Frontage. In addition, when considering the comments of the Camden Retail and Town Centre Study, it is concluded that the introduction of food retail can be seen as beneficial to the area as a supporting service function.

- *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;*

4.1.10 The change of use to an A1/A3 hybrid will only add a minor number of additional seating capacity in the street and a slight change in menu will help the store develop its customer offering to continue to viably compete within the area while retaining its convenience retail character. The Council state that the proposed change of use would result in the loss of a retail unit (Class A1) with the ratio of retail uses within this shopping parade falling below the recommended minimum of 80%. However this fails to account for the baseline nature of the street and potential beneficial impacts resulting from the incorporation of an additional component to the use of the premises.

4.1.11 As summarised by the Council's officer's report the existing shopping frontage already fails to meet Policy CS7's target of 80% A1 retail. The Kimchee Store is not included within the calculation however it is considered that in its existing capacity it contributes to the retail and shopping function of the area. The introduction of the A1/A3 use and the subsequent increase in restaurant / dine-in offering will not impact of the continuing function of the Central London Frontage. The more flexible use proposed will allow the Kimchee store to adapt to changing market conditions and stay viable in the modern retail market. The proposed scheme will therefore help retain the vitality of the frontage by ensuring viability of one of the key contributing stores.

4.1.12 As there is no perceived change in the retail offering of the store as part of the change of use, it is considered that the A1/A3 hybrid will not cause any material harm to the character of the central London frontage or the vitality and viability of the street either individually or cumulatively. The proposal does not result in a loss of retail per-se, but rather will *add positively* to the trading character of the street.

- *the impact of the development on nearby residential uses and amenity, and any prejudice to future residential development;*

4.1.13 The site has been operating for a number of years without any complaints regarding the impact on local residential amenity. Given that that the proposed change of use will result in minimal intensification of the cooking equipment used on site and that there are limited residential properties within the surrounding area; it is considered that the proposed change of use will not have a detrimental impact on surrounding amenity nor prejudice future development.

- *parking, stopping and servicing and the effect of the development on ease of movement on the footpath;*

4.1.14 There are no proposed changes to the servicing strategy or parking arrangements for the site and there will therefore be no material change to the surrounding highway network and footpaths.

- *noise and vibration generated either inside or outside of the site;*

4.1.15 The change of use proposed as part of the appeal scheme does not propose any additional plant or noise generating equipment which may impact on the surrounding units and street. In addition the Council has reviewed the plant proposed and found the information acceptable.

- *fumes likely to be generated and the potential for effective and unobtrusive ventilation;*

4.1.16 As stated above the Council has confirmed the acceptability of the existing plant within the store. Given the minor nature of the changes proposed it is considered that there will be no adverse impacts on the surrounding area. The Kimchee concept has no need for any significant primary cooking ventilation facilities beyond the system already in place at the premises so the potential for adverse impact arising from the additional component to the store's use should be compatible with the store's central London commercial location.

- *the potential for crime and anti-social behaviour, including littering;*

4.1.17 The minor changes to the store will have no effect on the potential for crime and anti-social behaviour, including littering currently generated by the use. The premises are not licenced to sell alcohol so the potential for antisocial activity is remote. On the basis that there have been no complaints regarding the operation of the store and the opening time of the store ends in the early evening; it is considered there will be no adverse impact on the surrounding area.

4.1.18 As shown above, therefore, it is clear that the proposal aligns with the contents of policies CS7 and DP12. On this basis it is considered that the Council has been unreasonable in the application of the relevant policies.

4.1.19 It is recognised that Camden Policy Guidance 5.5 Town Centres, Retail & Employment (September 2013) suggests a **guideline** retail percentage for the area. However the blanket use of this guideline and the uncritical application of it fail to account for the specialist nature of the site as a location for support service retail functions. However the document provides a blanket approach for the wider frontage and fails to account for the clear differences between the provision of retail units on Tottenham Court Road and those in New Oxford Street which represent the extreme end of the central London frontage centred upon Tottenham Court Road.

4.1.20 The Camden Retail and Town Centre Study identifies the nature of New Oxford Street as a secondary service frontage which is capable of supporting ancillary supporting uses complementing the retail character of the surrounding West End and Tottenham Court Road. Furthermore, the Fitzrovia Area Action Plan suggests that New Oxford Street might have the potential to accommodate more Class A3 uses (para 3.5.2 above).

4.1.21 In addition to the above considerations we have also provided below some supplementary comments regarding the appeal scheme.

Defining an Appropriate Use Class for Kimchee

4.1.22 The proposed change to a hybrid mixed use of A1/A3 reflects the difficulties in appropriately defining the use class for the Kimchee brand where there is a significant dine-in component to the use. The site operates as a

traditional food retail outlet with the majority of its trade being focussed around cold food sales which are taken away and eaten off premises, mostly as take-out lunch time meals. A small amount of ancillary seating, which can be expected as part of any food retail shop is provided internally, however this does not impact on the character and function of the store. In broadly applying the loss of A1 policy the Council is not considering the differences Kimchee offers compared to a traditional A3 use and the beneficial trading impacts that widening the permitted uses can have for the store.

- 4.1.23 In a similar appeal regarding the change of use from A1 to A1/A3 in Winchester (06/12/2004) the inspector concluded that the impact of the proposal would not be detrimental to the area. The inspector stated that the rapid growth in the number of such shops since 1997 post-dated the Use Classes Order and the advice contained in PPG 6 on town centres and retail developments. Many local plan shopping and town centre policies were based on the advice in PPG 6 and so the niche market exploited by the shop chains and their special requirements for prime retail locations had rarely been addressed specifically in local planning policies.
- 4.1.24 In summary it was concluded that the current use of the premises as retail / restaurant store had no adverse effect on the vitality and viability of the primary shopping area; it maintained pedestrian flows, it was a use which needed to be located at ground floor level; it complemented the retail function of the shopping area and drew people into it thereby increasing its attractiveness, and the retail frontage remained predominantly retail.
- 4.1.25 On this basis we consider that although the proposal in strict use class terms does introduce a non-A1 use within the site, it does not significantly or adversely change the character and function of the space. The introduction of a small amount of additional seating will not adversely impact of the retail character of the store nor the character and function of the street. The proposal will therefore cause no material harm to the shopping services within the local central London frontage as required by policies CS7 and DP12.

Council Comments during Application Period

- 4.1.26 The Council originally stated during application correspondence that the proposal might be considered acceptable citing it accords with the guidance in CPG5 for changes of use in the Tottenham Court Road designated frontage..
- 4.1.27 While it is appreciated that such comments were subject to approval and did not constitute the final opinion of the Council it does demonstrate the subjective nature of the proposal's impact on the vitality of the shopping parade and the less than clear-cut nature of the decision given the issues involved and the character of the frontage. This further demonstrates the difficulty in appropriately assessing hybrid uses such as the proposal for this appeal.
- 4.1.28 It should be noted that the Council have raised no issues with the proposals when assessing against other relevant considerations. On this basis it is deemed that the proposal is acceptable in terms of its impact on the surrounding area including transport and air quality issues.
- 4.1.29 When considering the above it is concluded that the proposal can reasonably be considered acceptable on all grounds.

5.0 Conclusion

- 5.1.1 The Appeal Scheme simply seeks to increase the number of seats within the existing unit to offer a broader service to potential customers involving a greater proportion of eat-in use on the premises. The existing A1 use (which has not been challenged by the Council) will remain on site with slight changes to the menu, but with opening hours remaining as is. The site is appropriately situated within the surrounding built environment and shopping frontage and delivers an appropriate use for this area of London where convenience shopping and sandwich shops are prevalent.
- 5.1.2 The Council state that the proposal would cause further harm to the mix of uses in the Tottenham Court Road / Charing Cross Road Central London Frontage. However this approach fails to acknowledge the minor change in use of the store and the fact that unit could provide ancillary seating as part of the existing consent. The proposal, given the small scale of the change, would undoubtedly have an inconsequential affect upon the perceived character and functioning of this Central London Frontage.
- 5.1.3 The Council states that the change may deter shoppers from coming to this area for the purpose of shopping, which in turn may impact on the remaining 2 shops in the frontage and their ability to attract shoppers / continue operating. This blanket statement fails to account for the Camden Retail and Town Centre Study which already acknowledges the differing use of New Oxford Street as a supporting service area compared to Tottenham Court Road. The Council may arguably be trying to 'shut the stable door after the horse has bolted' in its approach to regulating use on this part of New Oxford Street. However, the use will continue to exhibit a strong retail component to its functioning.
- 5.1.4 The Kimchee product will continue to (as it already does) bring vitality to a street scene which would be worse without its presence. The introduction of a small amount of seating will not harm the remaining two shops as identified by the Council.
- 5.1.5 The thrust of planning policy is also to protect residential amenity. There is no significant concentration of residential accommodation likely to be impacted by these proposals and even if there was, the impact is likely to be immaterial given the nature of Kimchee's food concept.
- 5.1.6 In summary it is considered that the mixed A1/A3 use of the site should be considered acceptable in terms of its impact on surrounding amenity and the vitality of the frontage. The hybrid use will maintain an active retail frontage and make an important contribution to the character of the conservation area, adding interest to the streetscape and vitality. It is respectfully considered that this appeal should be allowed.

Rolfe Judd

Old Church Court,
Claylands Road,
London, SW8 1NZ
T +44 (0)20 7556 1500

www.rolfe-judd.co.uk