

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**STATEMENT OF CASE ON BEHALF OF THE APPELLANT**

**SITE AT 317 GRAY'S INN ROAD LONDON WC1X 8PX**

**APPELLANT: Mr. MAHENDRAN SATHYAKUMAR**

**APPEALS AGAINST THE REFUSAL OF PRIOR APPROVAL FOR CHANGE OF USE  
TO A3 USE**

**LPA: LONDON BOROUGH OF CAMDEN (REF: - 2016/2480/P)**

**PLANNING INSPECTORATE'S REF NO. APP/X5210/W/16/3153744**

**SUBMITTED BY – Mr. S S BASUTA MA DIP TP MRTPI**

## **1.0 INTRODUCTION**

This Statement relates to the refusal of the Prior Approval Notice for change of use of the ground and basement of the premises to A3 use (restaurant) by Camden Council on 16 June 2016. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015, Schedule 2, Part 3, Class C allows for the change of use of a building from a use falling within Class A1 (shops) of the Schedule to the Use Classes Order, to a use falling within Class A3 (restaurants and cafes) of that Schedule. The proposed change of use is permitted by the act of the parliament subject to limitations and conditions. This statement justifies that the proposed change of use fulfils the requirements of the GPDO and therefore the proposal comes within the scope of permitted development.

## **2.0 THE APPEAL SITE AND SURROUNDINGS**

- 2.1 The appeal site is situated on the south side of Gray's Inn Road within a predominantly commercial area. The building is a mid-terrace three storey brick building. This appeal relates to the ground and basement levels of the building currently in retail (class A1) use. The site is within a close vicinity of the Kings Cross / St. Pancras station in a highly accessible location. The site is located in an area where background noise levels are very high.
- 2.2 The property is within the Kings Cross St Pancras Conservation Area, but is not a listed building. The site is also within the designated Central London Frontage Area. The area is characterised by A1/A3 ground floor units and hotel/office accommodation on upper floors.

## **3.00 PROPOSAL**

The proposal seeks to change the use of the ground floor (approximately 62sqm) and basement (approximately 52sqm) of the building from a retail shop (Class A1) to a restaurant (Class A3) under permitted development. An extractor duct would be installed in the rear of the property and would reach from the first floor to the third floor/roof level.

- 3.1 The Council received the notice for prior approval for the proposed change of use on 10 May 2016. The notice was accompanied by the following documents:-

Explanatory letter

Existing Plan - CDL/317/1

Proposed Plan - CDL/317/2

Location Plan

Block Plan

### **3.2 Reasons for Refusal of the Prior Approval Notice**

On 16 June 2016 the Council refused the PAN (Prior Approval Notice) for the following reasons:-

1. The proposed change of use would have a detrimental impact on the character and function of the Central London Frontage thereby failing to comply with Schedule 2, Part 3, Class C.2(1)(f)(ii) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and would be contrary to the aims of the National Planning Policy Framework, chapter 2.
2. In the absence of a noise report, the applicant has not demonstrated that the proposed extractor duct would not have a harmful noise impact, thereby failing to comply with Schedule 2, Part 3, Class C.2(1)(a) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and would be contrary to the aims of the National Planning Policy Framework, chapter 11.

- 3.3 An appeal was lodged against the refusal and this statement justifies the appeal proposal.

### **4.0 CENTRAL GOVERNMENT POLICY AND GUIDANCE**

- 4.1 Reference would be made to the relevant legislation particularly GPDO 2015, NPPF and Planning Practice Guidance in support of the appeal. It would be shown that the appeal development complies with the government guidance.

### **5.0 RELEVANT LOCAL PLAN POLICIES**

- 5.1 Policy CS7 of the Camden Core Strategy (2010) seeks to promote and protect vitality of shopping centres across the borough. Relevant extracts from Core Strategy are attached as Document 1. This is supported by policies DP 10 and 12 of the Camden Development Policies (2010) (Document 2) which aim to

promote small independent businesses and supporting town centre uses. Camden Planning Guidance 2013 (CPG5) (Document 3) designate the appeal parade as Central London Frontage and puts a blanket ban on further change of use of retail premises to A3 uses. Detailed commentary on the relevant policies would be included in the in the section justifying the appeal proposal.

## **6.0 RELEVANT PLANNING HISTORY**

- 6.1 The site has a long planning history but none is considered relevant to the determination of this appeal.

## **7.0 THE APPELLANT'S CASE**

The PAN was refused on two grounds; impact on the character and functioning of the Central London Frontage and alleged noise impact of the proposal. Both refusal reasons indicate that the proposal is contrary to Schedule 2, Part 3, Class C.2(1)(f)(ii) of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and to the aims of the National Planning Policy Framework, chapter 2. However, the appellant considers that the proposal complies with the aims and objectives of the NPPF and the Government's objective of promoting competition for a healthier economy.

- 7.1 Class C of Part 3 of the GPDO 2015 indicates that the change of use within the following categories and installation of associated extract duct are permitted development:-

C. Development consisting of—

(a) a change of use of a building from a use—

(i) falling within Class A1 (shops) or Class A2 (financial and professional services) of the Schedule to the Use Classes Order,

(ii) as a betting office or pay day loan shop, or

(iii) as a casino, to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order, and

(b) building or other operations for the provision of facilities for—

(i) ventilation and extraction (including the provision of an external flue), and

(ii) the storage of rubbish,

Reasonably necessary to use the building for a use falling within class A3

(restaurants and cafes) of that schedule.

- 7.2 However, Class C.1 sets out the limitations of the proposed change of use stating:-

C.1 Development is not permitted by Class C if—

- (a) the cumulative floor space of the existing building changing use under Class C exceeds 150 square metres;
- (b) the development (together with any previous development under Class C) would result in more than 150 square metres of floor space in the building having changed use under Class C;
- (c) the land or the site on which the building is located is or forms part of—
  - (i) a site of special scientific interest;
  - (ii) a safety hazard area; or
  - (iii) a military explosives storage area;
- (d) the site is, or contains, a scheduled monument; or
- (e) the land or building is a listed building or is within the curtilage of a listed building.

7.3

Class C2 of part 3 sets out the conditions of the proposed change of use of as follows:-

**C.2—(1)** Where the development proposed is development under Class C(a) together with development under Class C(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- noise impacts of the development,
- odour impacts of the development,
- impacts of storage and handling of waste in relation to the development,
- impacts of the hours of opening of the development,
- transport and highways impacts of the development,
- whether it is undesirable for the building to change to a use falling

within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the change of use—

- on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or
- where the building is located in a key shopping area, on the sustainability of that shopping area, and
- the siting, design or external appearance of the facilities to be provided under Class C(b),

and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

(3) Where the development proposed is development under Class C(a) only, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the items referred to in sub-paragraphs (1)(a) to (f) and the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

(4) Development under Class C is permitted subject to the condition that development under Class C(a), and under Class C(b), if any, must begin within a period of 3 years starting with the prior approval date.

7.4 Paragraph W sets out the procedure for applications for prior approval under Part 3. This applicant formally applied to the LPA to ascertain whether the proposed change of use would constitute permitted development and whether prior approval is required and fulfilled the statutory requirement of the GPDO.

7.5 Class C.1 sets out the basic criteria from (a) to (e) for a change of use. The primary criteria in this case is that the total cumulative floor space of the existing building changing use shall not exceed 150 square metres. The

total gross floor space changing use to class A3 use is 114 square metres. The proposal therefore comes within the scope of permitted development, pursuant to the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Part C.1.

- 7.6 Class C.2 sets out the conditions that before beginning the development the developer must apply to the local planning authority whether the prior approval of the authority will be required as to matters identified in subsections (a) to (f) in that Class. Sub section (a) concerns with the noise impact of the development. The location of the site on a very busy road and due to the relatively minor floor area of the proposed activity, there would be no material increase in the noise level.
- 7.7 An extraction flue would be erected at the rear of the property. The proposed flue is very similar to the other flues in the vicinity. Whilst the council acknowledges that there would be no material increase in noise levels, the application was refused on the ground that a noise report has not been submitted, in the absence of which it has not been demonstrated the proposed plant would not have a harmful impact on neighbouring amenity. It should be noted the site is situated in central London where background noise levels are very high and there are no residential accommodation on upper floors. The Council's reason for refusal on this ground is, therefore unsustainable. Notwithstanding the above, this issue could have been addressed by a planning condition requiring to obtain prior approval for the noise impact under the procedure.
- 7.8 Apart from the noise impact, the Council accepts the proposal would have no implications to cause concerns about odour, storage and handling of waste, hours of operation and transport impacts, thereby complying with conditions b, c, d and e of Class C2 of the GPDO 2015. If the proposal is acceptable on these grounds clearly the Council's reason for refusal no noise grounds is unsustainable as this matter could be covered by a planning condition.
- 7.9 The primary reason for refusal of the PAN is the presumed impact on the sustainability of the shopping area. The table below indicates the current uses

in the parade:-

<b>Nos.</b>	<b>Use</b>	<b>Use Class</b>
311	Subway Sandwiches	A1
313	Metro Express Newsagent	A1
315	Munchtime Café/Pizzeria	A3
317	Kings Cross Food and Wine (subject site)	A1
319	Tips and Toes Nail Salon	A1
321	Computer Centre	A1
323	Best Mangal Bar and Restaurant	A3
325	Euro Tandoori Indian Restaurant	A3
327	Eddies Fish Bar and Best Turkish Kebab	A3
329-331	Franchi Hardware Store	A1
333	Costcut Express	A1
335-337	Nisa Local	A1
339	Case Mama Restaurant	A3
341	Tandoori	A3
343	Indian Lounge Restaurant	A3
345	William Hill	A2

- 7.10 From the Table above, counting the amalgamated units as separate shop units, there are currently total 18 shop units in the parade of which 10 and 8 shop units are in retail (A1) and non-retail uses respectively. This would give an existing percentage of 56% (A1) and 44% non-retail uses in the parade. The proposal would result in a split of 50% each between the retail (A1) and non-retail units which is considered appropriate and would have no material harm on the sustainability of the shopping parade. It should be noted that the Council's assessment of the proposed percentage of the retail and non-retail units is based on the amalgamated units being counted as one unit however, these



amalgamated units functionally may be one, but in reality these should be treated as separate units.

- 7.11 The council made no reference to the relevant policies in refusal reason no. 1 therefore, there seems to be no objective assessment of the impact of the proposal on the sustainability of the shopping centre and the parade. Paragraphs 4.27 to 4.31 of the Camden Planning Guidance 2013 (CPG) designate the appeal parade as Central London Frontage and puts a blanket ban on further change of use of retail premises to A3 uses. This guidance is so inflexible and subjective that whatever the material circumstances may be, there is no scope for any change to A3 uses. However, it has been obvious from para 4.32, (Summary of the Guidance) that the Council would accept A3 uses up to 50% of the frontage in the opposite block bounded by Pentonville Road, Kings Cross Bridge and St Chads Place which is within 10 metres of the site. Applying this criteria the appeal proposal would not exceed the 50% units to non-retail uses within the appeal parade. On this basis there would be no material loss of retail premises in the parade and the sustainability of the shopping centre would not be prejudiced.
- 7.12 There is no evidence that A3 uses are less effective in maintaining the vitality of a shopping centre. In practice food and drink and recreational uses are particularly helpful in attracting large number of people to shopping centres particularly to revive night time economy. Furthermore, the proposal would not result 3 non-retail units in a row within the parade.
- 7.13 Refusal reasons refer to chapters 2 and 11 of the NPPF but no reference has been made to the relevant paragraphs. The proposal does not prejudice conservation or biodiversity issues noted in chapter 11 of the NPPF. The purpose of the NPPF is to promote sustainable development through competitive economy, vitality of town centres, promotion of local economy, housing, tackling climate change and safeguarding environment etc. Paragraph 2 emphasises to determine planning applications in accordance with development plan unless material conditions indicate otherwise to create jobs in cities, towns and villages (Paragraph 9). Local authorities should draw up to date plans and where development plan is absent, silent or relevant policies are

out of date, grant permission unless any adverse impacts of doing so demonstrably outweighs the benefits when assessed against the policies as a whole.

- 7.14 Paragraphs 18 to 23 of the NPPF indicate that the government is committed to promote economic growth to create jobs and additional houses. The planning system should not impede sustainable growth. This is further emphasised to promote competitive environment to facilitate range of retail, eating and drinking, leisure, commercial, tourism cultural, community and residential development through planning policies to ensure town centres remain attractive and competitive. The above noted advice is further endorsed by the Planning Practice Guidance 2014.
- 7.15 Policy CS7 of the Camden Core Strategy (2010) seeks to promote and protect vitality of shopping centres across the borough. This is supported by policies DP 10 and 12 of the Camden Development Policies (2010) aiming to promote small independent businesses and supporting town centre uses. The appeal proposal is supported by Core Strategy and DP policies noted above.
- 7.16 It is also a material planning consideration that the current retail shop is not viable. In order to make it viable the existing retail shop has to open long hours. Two persons are employed in the existing retail shop. The proposed A3 use would create at least 4 jobs. The proposed A3 use would enable the business to be operated not only on a profitable basis, it would also provide additional employment to two persons. The most recent previous accounts from 2011-2014 (Document 4) shows that the current A1 use is not profitable and the business is unlikely to survive. The proposed A3 use would provide a long term security and the Inspector is requested to take account of this material consideration.

## **8.0 COMMENTS ON COUNCIL'S STATEMENT OF CASE**

The appellant reserves the right to send comments in response to the council's statement of case when it is known.

## **9.0 CONCLUSION**

The proposal complies with the key provisions of the GPDO 2015. The purpose of the GPDO is to provide flexibility and completion within shopping centres.

The proposal would have no material impact on the vitality and sustainability of the shopping parade. There would be no material loss of retail premises below an acceptable level. The Council accepts that the proposal complies with the fundamental provisions of the GPDO. The proposed use would promote competition and diversification of uses within the parade to accord with the objectives of the NPPF.

- 9.1 Planning decisions are made in balance and relevant policies are taken into account so far those are materially relevant to the case. Any concern about the proposal could be addressed by appropriate planning conditions. The Inspector is therefore respectfully requested to allow the appeal and grant the prior approval.

#### **DOCUMENTS**

1. Extracts of Camden Core Strategy
2. Extracts from Camden Development Policies.
3. Relevant extracts from Camden Planning guidance 5
4. Financial Statements of the business 2011-2014