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Dear Mr Nash,

Appeal site: 325 Kentish Town Road, London, NW5 2TJ

Appeal by: Treats Foods Ltd

Proposal: Change of use of ground floor from retail (Class A1) to a coffee shop (mixed use Class A1 / Class A3) and alterations to shopfront

I refer to the above appeal against the Council's refusal to grant planning permission. The Council's case is largely set out in the Officer's delegated report. The report details the application site and surroundings, the site history and an assessment of the proposal. A copy of the report was sent with the questionnaire.

In addition to the information sent with the questionnaire, I would be pleased if the Inspector could take into account the following information and comments before deciding the appeal.

1. Summary

- 1.1. The application site is No. 325 Kentish Town Road, which is a three storey building on the western side of the road, with a retail unit at the ground floor level (vacant at the time of the Officer's site visit) and living accommodation on the upper floors and to the rear. The Council's policies seek to 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. The application site is within the 'Kentish Town' Town Centre, and forms part of a designated Core Frontage. CPG5 notes that Kentish Town has a good range of shops and services for its size, with many independent traders and a significant amount of food and drink uses. CPG5 guides that the Council will generally resist proposals that would result in less than 75% of the premises

in Core Frontages being in retail use; and paragraph 3.48 guides that the Council will generally resist proposals that would result in more than 2 consecutive premises within the Core Frontages being in non-retail use, in order to prevent concentrations of uses that would harm a centre's attractiveness to shoppers or its residential amenity.

1.2. The planning application was refused for the following reason:

1. *The proposed change of use from retail (Class A1) to a coffee shop (mixed use Class A1 / Class A3) would result in the loss of a retail unit which would be harmful to the overall character, function, vitality and viability of the Kentish Town 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) the London Borough of Camden Local Development Framework Development Policies.*

2. Status of policies and guidance

- 2.1. In determining the application the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case.
- 2.2. With reference to the National Planning Policy Framework 2012 (NPPF), policies and guidance contained within Camden's LDF 2010 are up to date and accord with paras. 214-216. The Council's policies should therefore be given substantial weight in the decision of this appeal. The NPPF was adopted in April 2012 and states that development should be refused if the proposed development conflicts with the local plan unless other material considerations indicate otherwise.

3. Comments on appellant's grounds of appeal

- 3.1. The appellant's grounds of appeal are summarised below and addressed beneath as follows:
 1. The proposal would enhance the vitality and viability of 'Kentish Town' Town Centre
 2. Other benefits that weigh in favour of the development

The proposal would enhance the vitality and viability of 'Kentish Town' Town Centre

- 3.2. Policy DP12 notes that 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. As outlined in the Officer's report, the Council does not consider that the proposed change of use would cause any undue harm to the residential amenity of nearby and neighbouring residential properties. Neither does the Council consider that the proposal would cause undue harm to the character and appearance of the host building or the wider area. However, the Council believes that the proposal would cause harm to the mix of uses in the 'Kentish Town' Town Centre, which would thereby cause harm to the character, function, vitality and viability of the town centre.
- 3.3. As outlined in CPG5, Camden has six successful town centres, each with their own character. It is noted that 'Kentish Town' Town Centre has a good range of shops and services for its size, with many independent traders and a significant amount of food and drink uses. CPG5 notes that one of the ways to protect the shopping function of the borough's town centres is to ensure that a high proportion of premises are in retail use. Furthermore, food, drink and entertainment uses will be controlled, to ensure that the town centres are balanced and vibrant as well as ensuring that these uses do not harm the amenity of local residents and businesses.
- 3.4. The application site forms part of a designated Town Centre Core Frontage, wherein CPG5 guides that the Council will generally resist proposals that would result in less than 75% of the premises being in retail use (paragraph 3.46); or more than 2 consecutive premises being in non-retail use (paragraph 3.48). This is in order to prevent concentrations of uses that would harm a centre's attractiveness to shoppers or its residential amenity.
- 3.5. As outlined in the Officer's report, the frontage of which the application site forms a part (Nos. 317 to 347 Kentish Town Road) consists of 14 separate units at the ground floor level, and at the time of the Officer's site visit (23/02/2016), 9 of the 14 units were operating as A1 (64%). The frontage already fails to comply with the CPG5 requirement for at least 75% of the premises in Core Frontages to be in retail use and the proposal to change the use of No. 325 from A1 to a mixed use of A1 and A3 would result in even fewer of the units in the frontage being in full A1 use (57%).
- 3.6. The appellant notes that the appeal proposal seeks the use of the premises as a Starbucks Coffee Shop, which would involve the sale of food and drink for consumption off the premises, as well as a degree of seating for consumption of food and drink on the premises (para. 1.3). At paragraphs 5.20 and 8.4 of their appeal statement the appellant notes that Starbucks frequently operates under Class A1 (because its outlets primarily sell food and drink for consumption off the premises) but that in this case, the proposed use is considered to be a mix of A1 and A3. Although they do not

provide a reason for this view, it presumably relates to the size of the seating area and the proportion of customers they expect to remain on the premises to consume their purchased food and drink.

- 3.7. At paragraphs 5.18-5.19 of their appeal statement, the appellant introduces the concept of "*The Third Place*", "*a place between home and work where people can go to relax or meet family and friends in a welcoming environment with a great cup of coffee*"; and they also note that Starbucks are frequently used for formal and informal business meetings. At paragraphs 5.22 and 5.23, the appellant notes that people now consume coffee at coffee shops rather than at home, and that the coffee shop has increased as a social venue.
- 3.8. The proposed plans that have been submitted are not very detailed; for example, they do not show how many seats and tables the proposed coffee shop would provide. Furthermore, the appellant's appeal statement only notes that, "*the ground floor layout plan shows a counter on the right-hand-side, and disabled toilet*" (para. 5.12). Taking into consideration the information that has been provided as part of the planning application and the appeal (for example, the size of the seating area and the appellant's description of the Starbucks operation and coffee shops in general), the Council considers that the A3 element (i.e. customers using the premises to come in and consume food and drink on the premises) would represent a significant element of the proposal.
- 3.9. Nevertheless, whilst the line between A1 and A3 uses can be hard to draw, that is not the purpose of this appeal. Rather, the Council's main concern is that formally allowing a change of use to allow an A3 use to operate at the site (whether fully or as part of a mixed use scheme) would serve to undermine the retail role of this 'Kentish Town' Town Centre Core Frontage, which would be to the detriment of the character, function, vitality and viability of the wider town centre.
- 3.10. The appellant criticises the Council in their appeal statement for refusing the application solely based on its failure to comply with the relevant planning policy regarding the percentage of A1 uses (paras. 7.11 and 8.14). However, the Council's decision is not merely about percentages, it relates to the fact the proposal would further reduce the range of services provided in the frontage (i.e. food and drink provision instead of traditional shopping provision), which would in turn cause harm to the character, function, vitality and viability of the 'Kentish Town' Town Centre.
- 3.11. The appellant puts forward the argument that coffee shops like Starbucks have a greater patronage than many other solely retail operators, although this presumably depends largely on the retail operator in question (the survey referred to in paragraphs 8.26-8.30 of the appellant's appeal statement concerns a locksmiths and a souvenir shop, but common sense suggests that these types of retail units would be more likely to attract shoppers that specifically want to buy a souvenir or use the services of the locksmith and are therefore not a fair comparison). Notwithstanding all the evidence that

has been provided regarding patronage of coffee shops and other retail operators, the Council does not dispute the fact that coffee shops have high patronage levels, and it may well be the case that the proposed Starbucks would attract visitors to 'Kentish Town' Town Centre; however, a key aim of CPG5 is to ensure that there remains a high proportion of premises in retail use to cater for the needs of the local population. If increasingly more retail units are lost to A3 uses (or mixed uses), this will inevitably undermine the retail provision on offer.

- 3.12. The appellant criticizes the Officer's Report where it notes that, "*the coffee shop would not perform a complementary role because there are a variety of other coffee shops in the local area already*" (para. 8.104) because they note that the fact that there are already existing coffee shops in the centre does not mean that a further coffee shop would not also provide a complementary role. In the following paragraph (8.105) they assert that the Council's approach is flawed insofar as it could be applied to any proposed use entering the centre (e.g. the presence of supermarkets should not be seen as a reason to discourage further convenience stores). The Council does not disagree with this statement. However, the point the Council was trying to make is that there are already coffee shops in 'Kentish Town' Town Centre to attract shoppers and therefore this does not represent sufficient reason to allow a further reduction in A1 uses. The planning system cannot dictate individual occupiers of premises, but the Council can seek to prevent the further loss of A1 floor space and an over-concentration of A3 uses.
- 3.13. The appellant rightly points out in their appeal statement that the level of A1 uses in the frontage is already below 75%, and they note that, "*As such, the application proposal will not result in an adverse 'tipping point' being reached and exceeded*" (para. 8.113). The logic of this statement is not understood. Arguably, the "tipping point" is at 75% and so the proposal would cause further harm to a frontage which is already threatened by its low proportion of A1 uses. The fact the frontage already fails the 75% test set out in CPG5, is not seen by the Council as a reason to allow a further reduction in A1 uses, rather the opposite.
- 3.14. The appellant goes on to state in paragraph 8.114 of their appeal statement that, "*It is not considered that the above level of uses in a Core Shopping Frontage is unreasonable. For instance, inspectors have suggested in various appeal cases elsewhere that an acceptable proportion of non-A1 uses in town centres could be as high as 50% and still retain their vitality and viability*". This statement by the appellant ignores the work that goes into writing the Council's policies, and furthermore, this is not for the applicant to decide. Instead, Section 70 of The Town and Country Planning Act 1990 dictates that planning decisions should be made in accordance with the development plan, unless material considerations dictate otherwise.
- 3.15. The appellant provides numerous appeal decisions which are intended to demonstrate that national multiple coffee shop operators provide significant enhancements to the vitality and viability of shopping centres. They also criticize the Council for failing to address each of the appeal decisions

referred to in their original Planning Statement, and they question why the Council does not think that decisions outside of London are relevant. They state at paragraph 7.5 of their appeal statement that, “*Effectively, the Council has disregarded the appeal decisions submitted in support of the original application without any meaningful consideration or analysis*”. The Council objects strongly to this statement. Each planning application is assessed fully on its own merits and the role of the Officer’s Report is to set out the key considerations which explain how the decision was reached, rather than commenting in detail on every element of the planning submission.

3.16. The Council considers that it is difficult to draw comparisons between different applications in different parts of the country without knowing all the facts and without a proper understanding of the background (e.g. the development pressures that affect that particular area). Nevertheless, in light of the current appeal, the Council would like to make the following brief comments on the appeal decisions referred to by the appellant. (N.B. The numbering in the appellant’s appeal statement repeats itself, so some paragraphs are referred to twice below, this is not an error on the part of the Council)

- Winchester High Street (para. 8.51 onwards) / High Street, Staines (para. 8.51 onwards) / Royal George Buildings (para. 8.53 onwards) / High Street, Harpenden (para. 8.59 onwards) / High Street, Pinner (para. 8.69 onwards) / St James Street, Brighton (para. 8.86 onwards) / Sidcup High Street (para. 8.88 onwards) / High Street, Epping (para. 8.89 onwards) – as already discussed, the Council does not dispute that coffee shops attract high numbers of customers; however, a key aim of the Council is retaining choice and a mix of uses in the ‘Kentish Town’ Town Centre. The Council does not consider that there are benefits to the proposal which outweigh its concerns.
- Sevenoaks High Street (para. 8.46 onwards) / South Molton Street, London (para. 8.50 onwards) / Commercial Road, Portsmouth – the Council still believes that the proposal would undermine the retail function of this ‘Kentish Town’ Town Centre Core Frontage.
- High Road, Loughton (para. 8.62 onwards) – this proposal was compliant with the Council’s policies on percentage of uses, so this is not considered to be entirely relevant.
- High Street, Malden (para. 8.65 onwards) / Sheep Street, Skipton (para. 8.83 onwards) – the Councils’ policies conflicted with national planning guidance, which is not the case in the London Borough of Camden.
- High Street, Keynsham (para. 8.76 onwards) – the Inspector gave weight to the fact the unit had been vacant. In this case, whilst the unit is vacant, no evidence has been provided to suggest the unit could not continue to operate solely as A1, or that it would remain vacant or hard to let, if the proposed change of use is not allowed.
- London Road, Headington – this case involved only a marginal policy breach (64.6% instead of 65% of units remaining as A1) and there were no local concentration of coffee shops, which is not the same as the appeal proposal.

- High Street, Marlborough – Kentish Town has other coffee shops.
- 3.17. It is likely that there are plenty of appeal decisions where the appeal has been dismissed based on the detrimental impact on the location in question. However, as noted already, it is important to fully understand the context of the application. The Council would now like to highlight 2 appeal decisions in the London Borough of Camden (both dismissed) that are considered to be more relevant to the determination of this appeal.
- 3.18. The first is 109 Highgate Road (LPA reference 2013/2931/P, PINS reference APP/X5210/A/13/2208469). The proposed development was a change of use from retail (Class A1) to restaurant (Class A3), with the installation of an extraction system to the rear. The appeal was dismissed. Whilst the proposal related to a Neighbourhood Centre rather than a Town Centre, the Inspector noted that CPG5 guidance helps to define how the function, vitality and viability of such neighbourhood centres can be maintained for the local community, as required by Policies CS7 and DP12, and he therefore afforded it great weight. In that case, the proposal would result in less than 50% of the ground floor premises being in retail use (contrary to the guidance in CPG5) and the Inspector noted that, *“Although Policy CS7 provides for a range of shops and services including Class A3 restaurants, it does so in the context of maintaining vibrancy and choice, and Policy DP12 and CPG5 set out how this is defined. I therefore conclude that the proposed change of use would be likely to have a harmful effect on the function, vitality and viability of the Highgate Road Neighbourhood Centre, contrary to CS Policy CS7 and DP Policy DP12, as well as CPG5.”*
- 3.19. The Inspector’s application of CPG5 guidance is considered to be relevant to this appeal. The Council acknowledges that A3 uses are appropriate to a town centre; however, maintaining vibrancy and choice is also important.
- 3.20. The second, more recent appeal decision of relevance concerns 64 Kilburn High Road (LPA reference 2015/1549/P, PINS reference APP/X5210/W/15/3140916). The proposal was for a change of use from retail (Class A1) to a betting shop (Sui Generis). The appeal was dismissed. The application site is within a defined Town Centre (the same as the appeal site), wherein CPG5 seeks to resist proposals that would result in less than 75% of the premises in Core Frontages being in retail use. The proposal would have reduced the percentage of units in A1 use to 70% (or 60% if an extant permission at a nearby unit was implemented). The Inspector noted that, *“it is reasonable that the Council identify a level at which further non-retail development would be harmful to the functioning of the block and the Centre and that a line be drawn at some point in order to protect the critical mass of retail in the Core Shopping Frontage which is essential to the success of the Centre”*. The Inspector concluded that, *“the loss of this A1 retail unit and the consequential lower levels of footfall and loss of active frontage would harm the retail character, function and vitality of the Core Shopping Frontage. Furthermore, the proposal would undermine the critical mass of A1 retail which is required in order to retain footfall and also attract other retailers to the area which is essential to the success of the centre. Furthermore, the*

proposal would undermine the identified priority of focusing shopping provision in the core of Kilburn High Road Centre. This amounts to significant harm which weighs considerably against the proposal. It would conflict with Policy CS7 and Policies DP10 and DP24; criteria a of DP12 which considers the effect of non-retail development on shopping provision. Conflict also arises with CPG5 and the third bullet point of paragraph 23 of the Framework”.

- 3.21. The Council recognises that a betting shop is different to a coffee shop in terms of attracting customers and footfall; however, the Inspector’s comments regarding the “critical mass” of the shopping frontage and the reasonableness of drawing a line at some point in order to protect the critical mass of retail are nevertheless considered to be extremely relevant to the determination of this appeal.
- 3.22. To conclude, contrary to the appellant’s assertion that the proposed change of use would contribute positively to the character, function, vitality and viability of the ‘Kentish Town’ Town Centre Core Frontage, the Council is still firmly of the opinion that the proposal would in fact cause harm to the area by undermining traditional shopping provision.

Other benefits that weigh in favour of the development

- 3.23. The appellant asserts that the Council has failed to attach any weight to the various other benefits of the proposal, namely those outlined in paragraph 1.5 of their appeal statement, which are summarised thus:
- Bringing the unit back into gainful use
 - Economic benefits of ‘linked spending’
 - Employment opportunities / job creation
 - New facility for local commuters using Kentish Town station
 - In keeping with the local street scene / adding visual interest to Kentish Town
 - Sustainable development / appropriate town centre use
- 3.24. Whilst the appellant notes that the proposal would bring the unit back into “gainful use”, no evidence has been provided to suggest the unit could not continue to operate solely as A1, or that it would remain vacant or hard to let, if the proposed change of use is not allowed. As such, this point is not considered to be relevant to the determination of the appeal. The Council’s main concern is that allowing a change of use to allow a Class A3 use to operate at the site (whether fully or as part of a mixed use scheme) would serve to undermine the retail role of the ‘Kentish Town’ Town Centre, which would be to the detriment of the character, function, vitality and viability of the town centre.
- 3.25. Any benefits associated with ‘linked spending’ are not considered to outweigh the Council’s concerns regarding loss of retail provision in the ‘Kentish Town’ Town Centre, particularly because these benefits would be hard to quantify.

- 3.26. Similarly, the economic benefits of the scheme are not considered to outweigh the Council's concerns regarding loss of retail provision in the 'Kentish Town' Town Centre. If the unit operated as A1 this would also involve job creation.
- 3.27. The proposal may well cater for people using Kentish Town Station; however, the same could be said for a retail shop. Furthermore, the applicant has not identified a need for such a facility.
- 3.28. The Council does not dispute the fact that a coffee shop would be in keeping with the surrounding area in visual terms. But again, the same could be said for a retail unit.
- 3.29. The Council does not dispute the fact that a coffee shop represents an appropriate town centre use and that this is a sustainable location. The key issue, however, is the loss of retail provision in the town centre and the impact this would have.

Other issues

- 3.30. The appellant refers, at paragraphs 7.8-7.9 of their appeal statement, to the Council's continued use of the word "*may*" in their report; and they suggest that the Council's view on the application is "*less than firm*". The Council would like to make it clear that this is not the case. The Council cannot say for definite what the impacts of the proposal would be, in the same way that the appellant cannot do so either. As should be clear from this appeal statement, the Council firmly believes that the change of use of the premises from A1 to a mix of A1 and A3 would have a detrimental impact on the range of shopping provision in the 'Kentish Town' Town Centre.
- 3.31. At paragraphs 8.12-8.13 of their appeal statement, the appellant suggests that the Council is happy to treat Starbucks as an A1 use. The Council would like to make it clear that this is not the case either. As already noted, the line between A1 and A3 can be difficult to draw. The retail survey needs to be read in the context of relevant planning decisions and planning history which determine the lawful use of any premises.
- 3.32. In paragraphs 8.34-8.43 the appellant provides the results from customer surveys which it has undertaken; however, they acknowledge themselves in paragraph 8.35 that the persons surveyed were Starbucks customers. The Council seriously questions the usefulness of this survey. For example, the customer surveys demonstrate that 86.5% of respondents feel that Starbucks adds to the vitality of Pinner District Centre, but the question "*Do you feel that Starbucks adds to the vitality of Pinner District Centre*" is a very leading question which is bound to lead to positive answers. Furthermore, do all those people surveyed have the same understanding of the word 'vitality'. It is worth pointing out at this point that there were 37 objections to the planning

application from local residents, many of whom do not want to see a Starbucks in Kentish Town.

- 3.33. At paragraph 8.48 of their appeal statement, the appellant notes that a nationally recognised operator such as Starbucks would raise the profile of the frontage and may improve the confidence of other retailers who plan to locate to the area. However, again, this contradicts local opinion and CPG5 specifically highlights the fact that Kentish Town has many independent operators. Whilst the Council is well aware that the proposed operator is not relevant to the determination of the application, arguably, the appeal of Kentish Town lies in the fact it lacks chains like Starbucks and this is what local residents are trying to protect.
- 3.34. At paragraph 8.109 of their appeal statement, the appellant notes that the appeal site is towards the periphery of the Core Frontage and, given its small size, it is not considered to provide a meaningful contribution to the overall vitality and viability of 'Kentish Town' Town Centre. Yet, they also suggest that its use as a Starbucks would offer a significant enhancement of the Centre's vitality and viability. These statements are somewhat contradictory and the Council would like to point out that, whilst each unit may in itself be relatively small, the cumulative impact over time of more changes of use away from retail needs to be carefully controlled. As already highlighted, the Council firmly believes that the proposal would cause harm to the area by further undermining traditional shopping provision.

Conclusion

- 3.35. Based on the information set out above, and having taken account of all the additional evidence and arguments made, the proposal is considered to 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.
- 3.36. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns. The proposal presents no benefits that would outweigh the harm identified.
- 3.37. For these reasons the Inspector is respectfully requested to dismiss the appeal. However, should the Inspector be minded to approve the appeal, suggested conditions are included in Appendix A.
- 3.38. If any further clarification of the appeal submission is required please do not hesitate to contact Kate Phillips on the above direct dial number or email address.

Yours sincerely,

Kate Phillips
Senior Planning Officer
Regeneration and Planning
Supporting Communities

APPENDIX A – Suggested planning conditions

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan at 1:1250; Site Location Plan at 1:200; 1; 2B; 4; 5A; 6; 8.

Reason: For the avoidance of doubt and in the interest of proper planning.

- 3 The use hereby permitted shall not be carried out outside the following times: 0630 to 2100 hours, every day including bank holidays.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.