

Enforcement Delegated Report

Receipt date:

02/11/2016

Officer

John Nicholls

Enforcement Case

EN16/1098

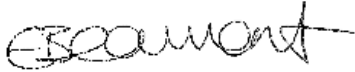
Breach Address

109 Highgate Road, London, NW5 1TR

Photos & Other material

See file

Authorised Officer Signature



13.02.2017

Alleged Breach

Unauthorised change of use from a retail shop (Class A1) to a scooter repair and sales business (sui generis)

Recommendation(s):

That the Borough Solicitor issue an Enforcement Notice under section 172 of the Town & Country Planning Act 1990 as amended, requiring the cessation of the use of the property as a sui generis scooter repair and sales shop, and officers be authorised in the event of non-compliance to prosecute under section 179 or appropriate power and/or take direct action under section 178 in order to secure cessation of the breach of planning control.

Site Description

The site comprises a ground floor unit, located on the west side of Highgate Road. The unit is part of a modern four storey building (No's 97-119 Highgate Road) comprising 9x retail/commercial units at ground floor level and self-contained residential flats (Class C3) on the upper floors. The shops face Highgate Road, which at this point are set back slightly from the highway with two separate footways. To the rear of the building are servicing doors for the ground floor units and car parking facilities, which front onto Carrol Close. Above the rear access of the ground floor units is a walkway which provides access to the flats above. The Carrol Close properties are two-storey brick built properties, approximately 18m from the application site.

The site is not listed, nor is it located within a conservation area. The Highgate Road frontage is adjacent to Dartmouth Park Conservation Area, which includes the residential properties located on the east side of Highgate Road. The site is also located within the Highgate Road Neighbourhood Centre.

Investigation History

The unit has been sublet to a scooter repair and sales business. The use of such is therefore one of mixed use, scooter showroom sales and mechanics / repair shop (sui generis).

The new tenant (who has yet to sign the paper work for this Camden owned unit) has been warned that such a change of use away from A1 retail is not acceptable and that he must cease trading. The case officer has also been in contact with the Council Valuer's department because they would be the ones agreeing the sign over of the unit to the new owner. However, they also consider that the new use would require planning permission before they agreed to sign the new tenant up.

One of the concerns is the smell of petrol in the flats above. Environmental Health colleagues have visited and are taking an active interest. They have also asked the Fire Brigade to check the premises are suitable for such a use in close proximity to residents.

The occupants of the shop unit have been informed of this assessment and advised to cease the use of the premises as a sui generis scooter repair and sales business for several months, however, they have sought to ignore warnings that an enforcement notice would be served if they did not.

Therefore, due to the concern raised by local residents and the Council's own Environmental Health officer, it is considered that it is now expedient to take formal enforcement action.

Relevant policies / GPDO Category

LDF Core Strategy and Development Policies

CS5 Managing the impact of growth and development

CS7 Promoting Camden's centres and shops

DP12 Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses

DP26 Managing the impact of development on occupiers and neighbours

Camden Planning Guidance 2013

CPG 5 - Town Centres, Retail and Employment

NPPF 2012

London Plan

Assessment

Planning history:

2013/2931/P - Change of use from retail (Class A1) to restaurant (Class A3) at ground floor level including installation of extraction flue to rear elevation – Refused – 29/10/2013. This was appealed and the appeal was dismissed on 23rd April 2014.

Issues:

The main issue is the loss of A1 retail unit in a parade already containing a mix of uses causing harm to the character, function, vitality and viability of the Highgate Road Neighbourhood Centre in which the unit is located contrary to policies CS7 and DP12.

The same consideration was made in 2013 (ref: 2013/2931/P) when an application was submitted to change the use from A1 retail to A3 restaurant.

The assessment for that application set out the following considerations:

The existing unit operates as a dry cleaners (Class A1) and is located within a parade of 9xcommercial units underneath a four storey block of flats. It lies within the Highgate Road Neighbourhood Centre.

Policy DP12 (Supporting strong centres and managing the impact of food, drink and entertainment uses) and Camden Planning Guidance (CPG 5 – Town Centres, retail and Employment) seek to retain a certain proportion of premises in designated centres in retail use. For Neighbourhood Centres outside central London, CPG5 (para 3.59) advises that development that results in less than

50% of ground floor premises being in retail use, or more than 3 consecutive premises being in non-retail use, will be resisted.

As mentioned above the site lies within a parade of 9x units, two of which are vacant and five of which, including the application site, are in A1 use (55.5%). Of the vacant units, one was a police contact point (sui generis) and the other an annexe to the Parliament Hill Surgery at no. 115-119 Highgate Road (Class D1).

The proposed change of use would result in four of the nine units in the frontage being in retail use (44.4%), which is only marginally below the 50% threshold. However, it would also create a row of four consecutive units in non-retail use (nos. 103, 105, 107 and 109). As such, due to the reduction in retail provision in the frontage, and a concentration of non-retail uses, it is considered that the proposal would harm the character and function of the Neighbourhood Centre and would be contrary to policy DP12 and CPG5.

<i>Address</i>	<i>Premises</i>	<i>Use class</i>
97	Vantage Pharmacy	A1
99	Kasra Carpets	A1
101	Regina Hair & Beauty	A1
103	Ristorante Rossella	A3
105	Vacant (formerly Police Contact Point)	Sui Generis
107	Vacant (formerly surgery annexe)	D1
109	Mr Gate Dry Cleaners	A1
111-113	Nisa supermarket	A1
115-119	Parliament Hill Surgery	D1

This assessment was challenged at appeal (APP/X5210/A/13/2208469); with the Inspector agreeing with the Council's position in relation to these Policies and Supplementary Planning Guidance. The Inspector states in paragraphs 15, 16 and 19 of this decision:

I therefore accept that there are nine premises in the Highgate Road Neighbourhood Centre, and that the proposal would result in only four of these nine units being in Class A1 retail use (44.4%), under the 50% stipulation in CPG5.

I also note that the proposal would fail to comply with the other stipulation in paragraph 3.60 of CPG5 that no more than three consecutive units should be in non-retail use. The proposed change of use would result in a row of four consecutive units in non-retail use and it would therefore also fail to comply with this part of the Guidance.

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.

Since 2013, the Council's policies and Supplementary Planning Guidance have not changed and therefore, the same assessment applies to the current sui generis use already being undertaken without planning permission.

The case officer has re-surveyed the street in order to ensure that the assessment is clear, and found that the units are occupied in an identical fashion to the 2013 planning application. The only difference being the recent unauthorised change of use within No. 109 which now has a sui generis use within it.

The current use is considered to be a sui generis use, which is made up of scooter sales and repairs.

Individually, the scooter sales use would fall within the sui generis use class (despite being sales), similar to a car showroom. The scooter repairs part of the business falls within the B2 use class as a mechanic workshop. However, because of the mix of these two uses and the lack of one single use class covering both, the whole unit is now considered to fall within the sui generis use class.

Therefore, in order to be consistent in applying their policies to both the proposed application for the loss of the A1 unit to A3 in 2013 and today, with the loss of A1 to a sui generis use the Council now consider it necessary to serve a formal Notice to ensure the unauthorised use ceases.

Recommendation:

That the Borough Solicitor issue an Enforcement Notice under section 172 of the Town & Country Planning Act 1990 as amended, requiring the cessation of the use of the property as a sui generis scooter repair and sales shop, and officers be authorised in the event of non-compliance to prosecute under section 179 or appropriate power and/or take direct action under section 178 in order to secure cessation of the breach of planning control.

The notice shall allege the following breaches of planning control:

Unauthorised change of use from a retail shop (Class A1) to a scooter repair and sales business (sui generis)

WHAT ARE YOU REQUIRED TO DO:

1. Cease the use of the ground floor shop unit as a sui generis scooter sales and repair business.

PERIOD OF COMPLIANCE:

3 months

REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:

Reasons for Issuing the Notice:

1. It appears to the Council that the above breach of planning control has occurred within the last 10 years.

2. The proposed change of use to a scooter repair and sales business (sui generis) would result in the loss of an A1 retail unit within the shopping frontage, and would also result in a harmful concentration of non-retail premises within the frontage, which overall would cause harm to the character, function, vitality and viability of the Highgate Road Neighbourhood Centre, contrary to policy CS7 (Promoting Camden's Centres and Shops) of the London Borough of Camden Local development Framework Core Strategy and to 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.