

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	23/07/2015
		N/A	<b>Consultation Expiry Date:</b>	17/06/2015
<b>Officer</b>			<b>Application Number(s)</b>	
Angela Ryan			2015/2945/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
130 Charing Cross Road London WC2H 0LA			See decision notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
Change of use from A1(Retail) to A5 (hot food take-away) Retrospective				
<b>Recommendation(s):</b>		Refuse Planning permission with warning of enforcement action		
<b>Application Type:</b>		Full Planning Permission		

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
<b>Consultations</b>						
Adjoining Occupiers:	No. notified	36	No. of responses	6	No. of objections	6
			No. electronic	5		
Summary of consultation responses:	<p>A site notice was displayed on 04/06/2015, expiring on 25/06/2015 and a public notice published in the local press on 29/05/2015, expiring on 19/06/2015. Six objections was received from the occupiers of Flat 8, Flat, 12, and 2x occupiers of Flat 16 Shaldon Mansions at 132 Charing Cross road, and the occupier of Flat 9, Shaldon Mansions at 130 Charing Cross Road which are located directly above the application site. An objection was also submitted by 1x unidentified resident. A summary of the objections are as follows:</p> <p><u>Design:</u></p> <ul style="list-style-type: none"> <li>- Lack of an appropriate flue</li> <li>- shop out of keeping with the Victorian frontage of the grade II listed block (it should be noted that the block is not statutorily listed)</li> </ul> <p><u>Amenity:</u></p> <ul style="list-style-type: none"> <li>- Noise nuisance at unsociable hours</li> <li>- Cooking smells, odours and smoke</li> <li>- Litter pollution</li> <li>- Anti social behaviour</li> <li>- Use may contribute to existing mice and cockroach problem at the site</li> <li>- Inadequate waste storage and collection</li> <li>- Damage to only trees outside the premises due to rubbish being piled against the bark and roots</li> <li>- proposed canopy will not be long enough to accommodate the kebab burner grille and the electric griddle used in shop</li> </ul> <p><u>Other:</u></p> <ul style="list-style-type: none"> <li>-Premises incorrectly described as 84m<sup>2</sup> when it is in fact a mere 8.4m at most</li> <li>- The planning statement states that the “existing and established use is A3 Class D”. This is untrue and misleading.</li> <li>-Petition signed by customers of the shop and transients and not by residents</li> <li>-various misleading statements contained in the planning statement</li> </ul>					
CAAC/Local groups* comments: *Please Specify	<p><b><u>Convent Garden Community Association:</u></b> Were formally consulted and raise objections on the following grounds:</p> <ul style="list-style-type: none"> <li>-Impact on the adjoining residents as well as on the conservation area as this location on the iconic Charing Cross Road serves as a gateway to the Seven Dials CA</li> <li>-This fine building deserves a better shopfront and sign</li> <li>- Noise and disturbance from late night customers</li> <li>- Cooking odour and smells from cooking</li> <li>- Petition submitted is misleading as some of the signatures are from local</li> </ul>					

	businesses and not local residents
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## Site Description

The site comprises a ground floor shop unit with a 7 storey residential block of flats situated above. The shop is currently occupied as an unauthorised hot food take away shop. The authorised use of the shop is for A1 retail use. The site lies within a group of buildings where the ground floors are typically within commercial uses at ground floor level with a residential block located above. There is no particular consistency of building age, type or design along this part of Charing Cross Road, although Shaldon Mansions (126-136 Charing Cross Road) and nos. 122-124 Charing Cross Road form a red-brick and stone "frame" which provides a handsome gateway into Denmark Street. Shaldon Mansions is one of the most distinctive buildings in the location, is built of red brick with stone embellishment and a distinctive, tall stepped gable detail on the main elevation.

This part of Charing Cross Road lies within the Central London Area within a designated Central London Frontage, and is located on the east side between Charing Cross Road and Shaftesbury Avenue.

The site is not listed but lies within the Denmark Street Conservation Area. Whilst the shop unit is not identified as a positive contributor, the mansion block situated above (Shaldon Mansions) located at nos.126-136 Charing Cross Road has been identified as making a positive contribution to the character and appearance of the Denmark Street Conservation Area.

Although the existing use is described in the application statement as class A3 D, the authorised use of the shop unit is for A1 retail use..

## Relevant History

### 130 Charing Cross Road:

17/06/1957- advert consent granted for a double sided noon lighted box sign (CA789)

24/04/1967- advert consent granted for an Internally-illuminated fascia sign with black and white letters to read OMELEITES & HAMSURGER BAR on a red background and a white panel with a red, blue & black "Pepsi" motif on a yellow background. Length 12'3", depth 3'9", overall height 12'3". (CA/762)

### Enforcement history:

#### EN12/0997

A complaint was received on the 9th November 2012 in respect of the site being used for an unauthorised hot food takeaway together with the installation of an unauthorised flue located in the rear lightwell of the premises. An enforcement notice was served on all interested parties on 25<sup>th</sup> June 2013, which came into effect on 6<sup>th</sup> August 2013. The notice required the use to be ceased and the associated flue to be totally removed and any damage made good within 4 months of the notice taking effect. During this time a planning application was submitted in order to regularise the use. Given that the enforcement notice had already been served and the use and associated flue was deemed to be unacceptable in the location the Council refused to determine the application. The notice was not complied with within the required timescale and therefore letters of the alleged offence was issued on all parties on 11/12/2013, with a view to start prosecution proceedings. By 07/03/2014 it was verified that the unauthorised use had ceased and the flue and all cooking equipment had been removed from the site with the exception of a microwave.

#### EN14/1163

A complaint was submitted to the Council on the 19th November 2014 in respect of the ground floor unit again being used for a hot food take away shop (Class A5). A site inspection was carried out on

Thursday 26th February 2015 and it was ascertained that the premises was not being used as an A3 restaurant as asserted by the Occupier but as a hot food take-away shop (Class A5). As planning permission would have been required for the change of use the retrospective application that is now being considered was submitted for consideration.

**132 Charing Cross Road:**

22/07/1971- permission granted for the change of use from residential use to dental surgery at flat 4 Sheldon Mansions 132 Charing Cross Road, W.C.1. (P13/6/13/11241)

**134 Charing Cross Road:**

10/08/1967- Permission granted for the installation of a new shopfront at No.134, Charing Cross Road, Camden. (P13/6/3/4012)

14/12/2012- Permission refused for a change of use from shop/internet cafe (Class A1) to Hot food Take-away (Class A5) at basement and ground floors and installation of extract flue to rear elevation. (Ref: 2012/5441/P)

**45 New Oxford Street:**

24/01/2008- Permission refused for the change of use of the ground floor from retail (Class A1) to betting shop (Class A2). (2007/3440/P)

**47 Endell Street:**

06/11/2009- Permission refused for change of use of the ground floor of number 49 from retail shop (Class A1) to restaurant (Class A3) as an extension to the existing restaurant at number 47 plus associated internal alterations and the installation of a new shopfront.) (2009/3361/P). The application was subsequently dismissed on appeal (Ref ) on the grounds that the Inspector considered that eh proposal would significantly harm the retail character of the Covent Garden area in conflict with Council policies at the time (UDP R2, R3 and R7) which sought to ensure that development, including food and drink uses should not cause harm to the character, function, vitality and viability of the area, particularly taking into account its effect on shopping provision.

**Relevant policies**

**LDF Core Strategy and Development Policies**

**Core strategy:**

**CS5** (Managing the impact of growth and development)

**CS7** (Promoting Camden's centres and shops)

**CS8** (Promoting a successful and inclusive economy and Development Policy)

**CS9** (Achieving a successful Central London)

**CS11** (Promoting sustainable and efficient travel)

**CS14** (Promoting high quality places and conserving our heritage)

**CS18** (Dealing with our waste and encouraging recycling)

**Development policies:**

**DP10** (Helping and promoting small independent shops)

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

**DP18** (Parking standards and limiting the availability of parking)

**DP19** ( Managing the impact of parking)

**DP24** (Securing high quality design)

**DP25** (Conserving Camden's Heritage)

**DP26** (Managing the impact of development on occupiers and neighbours)

**DP28** (Noise and vibration)

## **Camden Planning Guidance**

**CPG1 (2015)-Design: chapters 1, 2, 4 and 11**

**CPG5 (2013)- Town Centres, Retail & Employment: Chapters, 1, 2, and 4**

**CPG6 (2011)- Amenity: Chapter 4**

**Denmark Street Conservation Area Appraisal and Management Statement 2010**

**Consolidated London Plan 2015:**

**4.7 (Retail and Town Centre Development)**

**4.8 (Supporting a Successful and Diverse Retail Sector and related facilities and services)**

**National Planning Policy Framework 2012**

## **Assessment**

### **1.0 Proposal:**

1.1 This proposal relates to a small shop unit located on the east side of Charring Cross Road. Permission is sought for a retrospective change of use from retail (Class A1) to a hot food takeaway (Class A5). The proposed internal layout comprises of a primary cooking and counter area, with an associated juice bar and seating area at ground floor level. The food storage and waste storage areas as well as a W.C are all located internally at ground floor level to the rear of the site.

1.2 The plans submitted do not show any proposed changes to the existing shopfront, although it has been inferred by specific objectors that a new entrance door has recently been installed.

1.3 Council records indicate that the established use of the unit is for A1 retail use, the last use being for a newsagent, prior to the current use being implemented.

1.4 A 'ventless' flue is proposed to be installed internally as an attempt to minimise its visual impact on the external façade of the building and also to safeguard residential amenity in terms of cooking smells and odours.

1.5 The issues to therefore consider are:

- Principle of the Land use
- Impact on the character and appearance of the host building and conservation area
- Amenity
- Refuse storage and management
- Transport

### **2.0 Principle of the land use:**

2.1 The site lies within the Central London Area within a designated Central London Frontage, which are major shopping areas within the Central London Area. They generally either have an international, national or London-wide role in the shopping services that they provide, including a range of comparison or convenience goods and services for the local resident, worker and visitor populations. The proposed change of use has resulted in the loss of a retail unit (last used for a newsagent) and introduces a new food and drink use to provide a fast-food takeaway.

2.2 Policies CS7 and DP12 of Camden's LDF seek to ensure that development does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. There is a general presumption in favour of locating food, drink and entertainment uses, such as the one proposed, within central locations on the basis that they are most appropriately located in commercial areas to minimise their impact on residential amenity. This is supported by paragraph 4.9 in CPG5. It is considered that the existing use for a hot food take-away shop would not cause harm to the vitality and viability of the area.

2.3 Policy DP10 of the Development Policies document of Camden's LDF (adopted in November

2013) seeks to protect small shop units such as the one subject to this application. Paragraph 4.16 of CPG5 stipulates that whilst the retail function in Charing Cross Road is not as significant in terms of their size of number as the Tottenham Court Road/New Oxford Street area, the uses do support other concentrations of specialist book and music shop uses in Charing Cross Road and Denmark Street. It further goes on to say that this part of Central London Frontage has the potential to accommodate some additional non-retail uses provided that the overall level of retail use does not fall below two third (66%) of uses on the frontage. Based on the Council's 2015 retail survey it is calculated that the Charing Cross Road frontage is currently at 59% A1 shops, so it is not far under the target. However, given that the retail frontage along Charing Cross Road is under the recommended quota it is considered that the change of use is unacceptable in principle unless there are unusually convincing reasons why the hot food take-away shop will improve the viability and vitality of the area. As no such justification has been provided, the proposal is considered to be contrary to current policy guidance as it would result in the retail uses within this designated shopping frontage being below the recommended quota.

2.4 This assessment however, should not be based solely on the figures alone. Consideration has also been given to the fact that an A5 hot food take-away use may be considered appropriate within the location as it would be likely to attract both dedicated customers and those on more general shopping trips, displaying similar characteristics to most A1 uses in terms of general activity and expenditure levels. In order to consider an alternative use other than retail within an area of this nature account also has to be taken of any history of vacancy in shop units and the prospect of achieving an alternative occupier for vacant premises. The applicant has inferred in their application statement that the unit has an established use for A3 and A5 use. Our records indicate that from 2007 to 2011 the site was used for a newsagent and then from 2012 to 2014 as a hot food take-away shop prior to it being closed down in 2014. As such the use at the site as a hot food take-away shop is not deemed to be an established use as evidence shows that it has not been in existence for a continuous 10 year period. Notwithstanding the above, no clear evidence has been provided in respect of the viability of the unit for continued A1 retail use at the application site. Due to the lack of clear evidence to show that the unit is not viable for continued A1 use, it is clear that the 'need' for such a unit has not been explored. Marketing evidence for the property should be submitted if the A1 use is considered to be no longer viable.

2.5 In light of the proposal being contrary to policy and the lack of evidence to demonstrate why a breach of policy should be justified, it is considered that the proposal is unacceptable in principle. The proposal is therefore considered to be contrary to Policies CS7, DP10 and DP12 of Camden's LDF.

### **3.0 Impact on the character and appearance of the host building and conservation area:**

3.1 The submitted plans do not show any changes to the existing front elevation, although it has been inferred that a new door has recently been installed at the site. An internal 'ventless' flue is proposed which aims to mitigate against its visual impact on the external façade of the building. When compared with the group of buildings of which the application site forms a part within the Central London Frontage it is considered that no harm would be caused to the character and appearance of the conservation area as the shopfront is considered to be in keeping. It is also considered that no perceived harm will be caused to the character and appearance of the host building given that there is proposed to be minimal intervention to the external façades of the host building.

### **4.0 Amenity:**

4.1 With regard to the impact upon neighbouring properties consideration must be given to potential implications in terms of operating hours and noise and disturbance, particularly in view of the fact that a residential block of flats are located on the upper floors above the application site. Policies CS5, DP12, DP26 and DP28 are applicable in this respect.

4.2 The application site is located within the Central London Area where a certain level of activity and

associated noise is to be expected. Although a fast food takeaway, such as the proposed use is more suitably located within areas of this nature, the residential premises located above would need to form part of the consideration. The proposed hours of operation will be between 11:00am to 23:00pm Monday to Sunday. These hours of operation are such that the Council would normally allow within the Central London Area. However, objections have been received in respect of noise disturbance at unsociable hours attributed to the current use which was operating up until 4-5am and a hot dog vendor which has also been operating outside of Shaldon Mansions. It is considered that the cumulative impact of the two uses has resulted in having a detrimental impact on residential amenity by virtue of the creation of noise nuisance and anti-social behaviour at unsociable hours from patrons. There is also the issue of litter pollution being created as a result of the current uses.

4.3 Development policy DP26 states the Council will only grant permission for development that does not causes harm to amenity. This is further supported by core strategy policy CS5 which seeks to protect the amenity of Camden's residents and those working and visiting the borough.

4.4 The supplied data for the extract system does not give an indication of which unit is to be selected in a view of the volume of cooking for the premises and looks to be effective only with very regular maintenance which the Council is not confident will occur. The proposed design of the flue is considered to be insufficient for the premises use, as the Council would normally expect a flue to be fitted so as to discharge at high level, at least 1m above any residential accommodation, so that neighbours are not affected by the cooking smells/odours. An Environmental Health Officer visited the site and was able to view the rear area from some of the residential premises in Shaldon Mansions and witnessed the odour nuisance that the residents have been complaining of and which also form part of the neighbour objections. As a response to this Environmental Health is intending to issue an abatement notice for odour nuisance.

4.5 Given that the existing use is currently having a detrimental impact on residential amenity and it is considered that a 'ventless' flue would not address the current problems occurring at the site the proposal is considered to be contrary to policies CS5 and DP26 of Camden's LDF and is therefore considered to be unacceptable.

## **5.0 Refuse Storage and Management**

5.1 Refuse storage is proposed at rear ground floor level. It would appear that refuse bags are placed on the highway on the days of collection. If the application were deemed to be acceptable in all other respects then this issue would have been dealt with by means of an appropriate planning condition and an informative.

## **6.0 Transport Issues:**

6.1 The application site has been identified as having a Public Transport Accessibility Level (PTAL) of 6a (excellent). Therefore transport access to the proposed facility will be in accordance with policies DP18 and DP19 of the LDF.

## **7.0 CONCLUSION:**

7.1 The proposed change of use from A1 (retail) to A5 (take away) would be contrary to the aims and objectives of LDF policies CS7, DP10 and DP12 and is considered to be detrimental in terms of its impact on existing residential amenity.

7.2 Concerns are raised in respect of the impact of the proposed flue and the potential for the continuing problem of cooking smells and fumes being emitted from the site. In the absence of a robust scheme to facilitate the levels of odour control, and potential noise nuisance at unsociable

hours it is considered that the proposal would have a detrimental impact on the existing residential amenity of neighbouring occupiers located in the block above the shop unit, and is thereby contrary to policy DP26.

7.3 As no evidence has been provided to support the loss of an A1 retail unit within this designated Central London Frontage, the loss of a retail unit has not been justified in this instance. For the reasons mentioned in the report, it is considered that the proposal is unacceptable in principle.

7.4 It is considered that the development would not result in any harm to the character and appearance of the street scene.

7.5 The proposal is considered acceptable in terms of highway / parking issues. Servicing and refuse arrangements can be secured by means of appropriate conditions.

**RECOMMENDATION:**

That the Head of Legal Services be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended and to pursue any legal action necessary to secure compliance. Additionally, officers to be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

**The Notice shall allege the following breach of planning control:**

The unauthorised use of the ground floor unit for a hot food take-away shop (Class A5)

**What you are required to do:**

- 1) Cease the use of the ground floor as a hot food take-away shop
- 2) Totally remove all cooking equipment from the site

**Period of Compliance:** 1 month

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

The development results in the unacceptable loss of a class A1 retail shop, harmful to the character, function, vitality and viability of the designated shopping frontage, contrary to core 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

In the absence of sufficient information and mitigation measures, the applicant has failed to demonstrate that the proposal would not harm the amenity of surrounding occupiers and neighbours and the proposal is therefore considered to be contrary to Policies CS5 (Managing the impact of growth and development) and CS9 (Achieving a successful Central London) of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (noise and vibration) of the London Borough of Camden Local Development Framework Development Policies