

Planning Advice and Information Services  
London Borough of Camden  
2<sup>nd</sup> Floor, 5 Pancras Square  
C/O Town Hall, Judd Street  
London  
WC1H 9JE

**Planning Portal Reference (PP-06082243)**

27567/A3/BS/MH  
13<sup>th</sup> June 2017

Dear Sir / Madam

**56 BELSIZE LANE, LONDON, NW3 5AR**  
**SECTION 73 APPLICATION ON BEHALF OF MR BRENDAN ROBINSON FOR THE REMOVAL OF**  
**A CONDITION**

**Introduction**

Barton Willmore LLP ('Barton Willmore') is appointed by Mr Brendan Robinson ('the Applicant') in respect of the Veterinary Surgery at no. 56 Belsize Lane, London NW3 5AR ('the Site'). Barton Willmore has been instructed by the Applicant to submit to the London Borough of Camden ('the Council') a Section 73 Application for the removal of Condition 3 attached to the grant of Planning Permission (LPA Ref: 2014/3227/P).

The Planning Application seeks to remove Condition 3 which states:

*"3. This permission is personal to Mr. Brendan Robinson and shall endure for the period of their occupation only. On Mr. Brendan Robinson vacating the premises the use of the entire ground and basement floors shall revert to A1 retail."*

The Planning Application submission comprises the following:

- Completed Application Forms and Certificate, signed and dated;
- Site Location Plan (Drawing no. 27567.R001);
- Legal Opinion, prepared by Mishcon de Reya;
- Copy of Decision Notice (Planning Permission LPA Ref: 2014/3227/P); and
- Copy of Case Officer's Report.

The appropriate planning application fee of £195 has been paid via the Planning Portal Ref: PP-06082243.

### **The Site**

No. 56 Belsize Lane is a four storey Victorian mid-terrace building located within Belsize Lane Neighbourhood Centre. The property is used for a veterinary surgery at lower ground and part-ground floor, a retail shop at part-ground floor and residential accommodation at upper floors. The building is not statutory or locally listed but is located within the designated Belsize Conservation Area.

The retail shop "SPOT" at ground floor has been trading since June 2015 and has an active shop frontage onto Belsize Lane. The retail shop sells a diverse range of products relating to animal products in association with the veterinary surgery at basement level and other household ornaments and art work.

The veterinary surgery "London Vet Specialists" has been operating since December 2015 and is a referral veterinary surgery for specialist treatments and operates as a partnership supporting a number of veterinary practices, both locally and regionally.

### **Planning History**

The Council granted conditional Planning Permission (2014/3227/P) in July 2014 for the following:

*"Change of use of part ground and the basement floors from shop (Class A1) to veterinary surgery (sui generis)".*

Prior to the grant of Planning Permission (2014/3227/P) the existing retail unit at ground floor level comprised of approximately 42.1 sq.m Class A1 floorspace with storage space at basement level. The Planning Permission changed the use of approximately 7.3 sq.m of Class A1 floorspace at ground floor level, to be used as ancillary reception for the proposed veterinary surgery (sui generis) at basement level. The remaining 34.8 sq.m of the ground floor floorspace is still within Class A1 and was excluded from the description of development.

The grant of Planning Permission had three conditions attached to the Decision Notice. Condition 3 attached to the Decision Notice imposes the Permission personal to Mr Brendan Robinson. Condition 3 states:

*"3. This permission is personal to Mr. Brendan Robinson and shall endure for the period of their occupation only. On Mr. Brendan Robinson vacating the premises the use of the entire ground and basement floors shall revert to A1 retail.*

As stated on the Decision Notice, the condition was imposed for the following reason:

*Reason: In recognition of the special circumstances of the application and to accord with the London Borough of Camden Local Development Framework Core Strategy, the London Borough of Camden Local Development Framework Development Policies and Camden Planning Guidance 5."*

The Planning Permission has been implemented and the veterinary surgery is currently operating from the property, along with a retail shop at part ground floor known as Spot.

### **Planning Context**

The Development Plan for the Site currently comprises the Camden Core Strategy (November 2010); the Camden Development Policies (November 2010); the Camden Site Allocations Plan (September 2013) and Camden Planning Guidance.

The National Planning Policy Framework (March 2012) ('NPPF') and the Planning Practice Guidance (2014) ('PPG') are both material considerations in the determination of planning applications.

Camden Council is in the process of adopting a new Local Plan for the Borough. The draft Camden Local Plan has undergone Examination in Public and the Planning Inspectors Report has found that the Plan is 'sound', subject to modifications to the Local Plan Submission Draft. The Council will decide whether to adopt the draft Local Plan at a full Cabinet Committee in June 2017. As such, it is considered that the draft Camden Local Plan is a material consideration in the determination of planning applications.

The adopted Proposals Map confirms that the Site is located within the Belsize Neighbourhood Centre and within the designated Belsize Conservation Area.

The NPPF states at Paragraph 206 that planning conditions should only be imposed where they are (i) necessary; (ii) relevant to planning; (iii) relevant to the development to be permitted; (iv) enforceable; (v) precise; and (vi) reasonable in all other respects.

The PPG states at Paragraph 21a-004 that the 6 tests as set out within the NPPF, must all be satisfied each time a decision to grant planning permission subject to conditions is made.

Camden Planning Guidance 5: Town Centres, Retail & Employment ('CPG5') specifically provides guidance on appropriate uses within designated Neighbourhood Centres and states, inter alia, that "*Other uses that can make a positive contribution to the character, function, vitality and viability of these centres include:...veterinary surgeries*" (Paragraph 3.59). CPG5 continues to state that "*As a guide we will resist schemes that result in: i. less than 50% of ground floor premises being in retail use; or ii. more than 3 consecutive premises being in non-retail use*" (Paragraph 3.60).

Emerging Draft Local Plan Policy TC2 'Camden's centres and other shopping areas' ("Policy TC2") states in relation to Neighbourhood Centres that "*The Council will seek to retain convenience shopping for local residents in Camden's Neighbourhood Centres and will ensure that development in them does not harm the function, character or success of that centre*".

## Planning Policy Assessment

### The Existing Use

As existing, the veterinary surgery currently operates from the basement and a small part of the ground floor (which relates to an ancillary reception), whilst the remaining floorspace at ground floor level is used as a retail unit (Class A1).

CPG5 confirms that veterinary surgeries are appropriate uses within Neighbourhood Centres and positively contribute to the character, function, vitality and viability of these centres. London Vet Specialists is unique as it is a practice that is in partnership with other veterinary practices and acts as a specialist referral clinic. This unique partnership draws customers from both local locations and from further afield which further contributes to the vitality and viability of the Neighbouring Centre by encouraging linked trips with other local business and services in the Neighbourhood Centre.

Village Vet, which operates from no.11 Belsize Terrace is within the same ownership as London Vet Specialist, also provides an element of ancillary retail floorspace, selling ancillary pet products to customers. Both London Vet Specialists and Village Vet play an important part in the vitality and viability of the Neighbourhood Centre, sponsoring a number of local initiatives including street improvements and flowering and contributing to local festivals.

In determining the Planning Permission (2014/3227/P) the Case Officers' Report confirms that the ground floor of the unit and a significant part of the overall unit will be retained as retail space and resultantly retail levels will be maintained within the area and the vitality of the parade will not be adversely impacted.

In specific regard to the basement level, the Case Officers' Report confirms that it previously comprised low density storage space for the retail use above and its loss to a veterinary surgery would not be considerably felt. Moreover, the Case Officers' Report confirms that veterinary clinics serve important roles in Neighbourhood Centres.

It is therefore considered that the existing use of the building as a veterinary surgery at basement and part ground floor level and the retention of a retail unit at part ground floor level, maintaining an active frontage, in a designated neighbourhood centre, is wholly appropriate and in accordance with the Development Plan.

### Necessity of Personal Condition

When providing justification for the use of a Personal Condition in relation to the Planning Permission the Case Officer's Report states that:

*"...it is considered necessary to attach a condition making this permission personal (with the entire unit reverting back to A1 retail upon cessation of usage by the applicant) as this will ensure that the strong retail element is not eroded."*

and

*"Furthermore, should any proposed change of business types be sought for the unit in the future, the Council would be in a position to assess these through a planning application. Overall, the attachment of this condition will assist in maintaining vitality to the parade, ensuring that the parade's retail element is not diminished".* In the Officers' Report, they conclude that *"...a condition has been attached to the consent making it a personal permission, thereby ensuring that the ground floor remains predominantly in retail use"*.

We consider this justification and conclusion to be unnecessary and consider that the use of this personal condition does not meet the 'necessary test' of the NPPF's 6 tests for the use of conditions, as per the reasons set out below.

Firstly, the attachment of a personal condition to create a personal permission is not needed to *"ensure that the ground floor remains predominantly in retail use"*. The approved scheme did not include the majority of the ground floor in the change of use, confirmed by the Case Officer's Report which clearly stated that a *"significant part of the overall unit, including the majority of the ground floor, would be retained as retail space; hence this will maintain levels of retail in the area and not result in a further net loss"*. This position is also confirmed by the description of development on the Decision Notice. The A1 Use Class at ground floor level was predominantly protected as part of the design concept, making sure that the retail element was not eroded from the outset. Therefore, the personal condition does not protect the majority of the ground floor, but does protect the small proportion of floorspace at ground floor level, which has been changed to an appropriate Neighbourhood Centre use, as well as the basement level. The Case Officer confirmed that the change of use of this small proportion of ground floor and entire basement floor, which was previously used as low density storage, would *"not be considerably felt"*.

Secondly, the Case Officer, in reaching his conclusion, states that the parade *"will not be adversely impacted as a consequence of the proposal in the longer term"*. The approved and implemented scheme contributes to the parades vitality due to the retention of a predominant retail use at ground floor and the operation of a veterinary surgery which positively contributes to the function, vitality and viability of centres, in accordance with CPG5. The removal of the personal condition would not change this.

Finally, should this S73 Application be granted the Council would still be in a position to assess any proposed change of business type for the unit in the future, through the determination of a full planning application. This is due to the veterinary surgery's sui generis land use classification, which requires Planning Permission for any change of use.

It is clear that Condition 3 is unnecessary in planning terms and does not protect the existing retail use at the Site. Its removal is therefore considered acceptable.

## **Conclusion**

It is considered that the Condition 3. of Planning Permission (2014/3227/P) does not meet the NPPF planning conditions test for being 'necessary' as there is no definite and justified planning reason for its use, as the development is acceptable in planning terms without it. Therefore, it is considered acceptable in planning terms for the removal of Condition 3.

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We look forward to receiving confirmation of the application's registration marked for the attention of Ben Shaw at this office. In the meantime, should you have any questions or require additional information, please do not hesitate to contact the aforementioned.

Yours Faithfully,

A handwritten signature in blue ink, appearing to read 'Barton Willmore', with a long, sweeping underline that extends to the right.

**BARTON WILLMORE**

Enc.