



## Appeal Statement

Change of use from A1 to A2  
AT  
287 Finchley Road,  
London NW3 6ND

Reference:  
287FR-1800141

Date:  
14 December 2018

## **1. Introduction**

- a. This Appeal Statement has been prepared by Just Planning on behalf of Mr O Dadabhoy to support an appeal against the decision of London Borough of Camden to refuse planning permission for the change of use of a shop at 287 Finchley Road from retail in use class A1 to an estate agency in use class A2.
- b. Following a description of the site and surrounding area, the report will review the planning history, set out an overview of relevant planning policy and outline the case for the appellant.
- c. It will be demonstrated that the proposal complies with national and local planning policies and that planning permission should therefore be granted.

## 2. Background

- a. On 8 August 2018, the appellant submitted an application to London Borough of Camden (reference: 2018/3870/P) for the following development:

*Change of use application from A1 (retail) to A2 (financial and professional services) and alterations to shop front.*

- b. In a Decision Notice dated 15 October 2018, the Local Planning Authority (LPA) advised that the application had been refused, for the following reason:

- 1. The change of use, by reason of the loss of an A1 retail unit, would harm the mix and balance of uses within the secondary frontage and would therefore undermine the vitality and viability of the Town Centre contrary to policy TC2 (Camden's centres and other shopping areas) of the Camden Local Plan (2017).*

### **3. Site Description**

- a. The application property is the ground floor retail unit of a four storey terraced building located on the western side of Finchley Road (the A41), a busy arterial route leading out of central London to the north-west. The properties in the immediate vicinity are mixed use, generally with commercial uses at ground floor and residential above.
- b. The retail unit at the appeal site was formerly in use as a Fuji film shop and IT support company and later as a charity shop. Both organisations found it unviable and vacated and the unit is now vacant. It lies within a secondary frontage of the designated Finchley Road centre. The relevant frontage is numbers 279a to 291 Finchley Road.
- c. The designated Finchley Road centre is the third largest town centre in the borough after Camden Town and Kilburn High Road. Apart from the O2 centre, which provides a range of comparison shopping opportunities, the other retail units in the centre are primarily local and convenience shops.

#### 4. Planning Policy

- a. Planning law states that planning decisions must be made in accordance with the statutory development plan unless material considerations indicate otherwise. The development plan for this area comprises the Camden Local Plan 2017 and the London Plan 2016. According to the Decision Notice, the proposed development fails to comply with policy TC2 of the Local Plan.
- b. Policy TC2 seeks to promote "*successful and vibrant centres*" to meet the needs of the local population. It seeks to "*protect and enhance the role and unique character*" of each centre and:

*"provide for and maintain, a range of shops including independent shops, services, food, drink and entertainment and other suitable uses to provide variety, vibrancy and choice"*

- c. The policy states that the Council will:

*"protect the secondary frontages as locations for shops (A1) together with a broader range of other town centre uses to create centres with a range of shops, services, and food, drink and entertainment uses which support the viability and vitality of the centre."*

- d. The Local Plan Proposals Map identifies the appeal site as lying on a designated secondary frontage within the Finchley Road centre. Appendix 4 of the Local Plan states that a minimum of 50% of the units on the secondary frontages in the Finchley Road centre should be retained in A1 use.
- e. The National Planning Policy Framework (NPPF) sets out the government's planning policies for England and how they should be applied. A revised version of the NPPF was published in July 2018. It identifies a presumption in favour of sustainable development. Development is sustainable when it meets the economic, social and environmental needs of a community.
- f. According to paragraph 38:

*"Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where*

*possible.”*

g. Paragraph 85 requires local authorities to:

*“define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters”*

h. It also requires them to:

*“define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre”*

## 5. Case for the Appellant

- a. There is no dispute between the parties that an A2 estate agency is a High Street use and is acceptable in principle in a town centre retail location. Policy TC2 promotes a range of retail, commercial and leisure uses in designated centres in order that they be vibrant and successful and an estate agency can make a contribution to the variety of uses available on a High Street.
- b. TC2 seeks to limit the number of non-A1 uses in any given secondary parade to no more than 50% of the parade. This is so that the A1 retail use remains dominant and there is a cluster of retail uses of a number sufficient to attract shoppers and permit comparison shopping.
- c. In this case, the relevant parade is the 12 units comprising numbers 279a to 291 Finchley Road. The uses of these units are currently:
  - 279A - Clothes Clinic (launderette and alterations – sui generis)
  - 279B - Master Class (hair school – sui generis)
  - 279C - Little Sichaun (restaurant – A3)
  - 279D - Rose Café (restaurant – A3)
  - 279E - Grill Cottage (hot foot takeaway – A5)
  - 281A - Paradigm (estate agent – A2)
  - 281 - Hair & Beauty (sui generis)
  - 283 - Frogna Estates (estate agent – A2)
  - 285 - Tony Zreik (hair salon – A1)
  - 287 - Appeal Site (A1)
  - 289 - Streets Coffee (café – A3)
  - 291 - Wok & Go (restaurant – A3)
- d. The Council argues in the officer's report that 5 of the 12 units remain in A1 retail use, meaning that the proportion already falls below the 50% threshold. The officer's report does not explain which of the units it believes to be A1. However, the list above suggests that, apart from the vacant appeal site, there is only 1 unit in A1 use, and that is a hairdresser (Tony Zreik at number 285) and not a 'true' retail use. There is not a single unit in a conventional or traditional A1 use, i.e. selling goods to the public.
- e. In the appellant's view, the retail function of this parade, which is located at the northern extremity of the designated centre, has already been lost. Retail units function best in clusters, to facilitate comparison shopping. They can

function in isolation if they have a large floor area (such as a supermarket) so that they become a destination in themselves, but the appeal unit is small in size. The intention of the 50% threshold in policy TC2 is to maintain a reasonable proportion of the units in retail use so that the retail function, vitality and viability of the parade is preserved. The policy refers explicitly to retail choice. In this case, the retail function is largely extinguished and it is not a vital or viable retail destination. TC2 is silent on what decision makers should do when the balance of retail uses is lost.

- f. It is difficult to imagine that a true retail use will open in this unit. If it must remain in A1 use, it is likely that it would only appeal to A1 uses that are not true retailers, such as a hairdresser or sandwich shop. They will contribute no more to the retail function of the parade than the proposed estate agency use.
- g. The unit is currently empty. The former A1 uses (the film shop and charity shop) closed because of weak demand and poor trading conditions. The unit has been actively marketed in A1 use for the past 6 months and has attracted no serious interest. Appendix A contains information from the commercial letting agency confirming the difficulty in finding a tenant. A vacant shop unit, especially if it is vacant for a long period of time, blights a town centre and damages its vitality and viability. The appeal proposal brings the premises back into productive use and offers benefits in terms of increased pedestrian footfall, employment and the provision of a complementary service to the town centre. Estate agents have bright and active frontages advertising properties for sale and to let.
- h. In an appeal at 2-10 Kilburn High Road, in another part of the borough, an inspector considered whether permission should be granted for a change of use of units in a secondary frontage from A1 to A3 (appeal reference: APP/X5210/A/12/2177025). In the decision (attached as Appendix B), the inspector assessed the change of use against the 50% threshold for non-A1 uses and concluded that:

*"With the exception of a supermarket towards its northern end the secondary frontage south of the core retail area is entirely occupied by non A1 uses and food and drink uses predominate. An A1 retail use of the appeal premises would be divorced from the main shopping area in the core frontage and this would reduce the attractiveness of the units for A1 businesses ... I consider that the attractiveness of the secondary frontage derives principally from its range of food and drink premises and the Library ... The proposal would conflict with the Council's detailed guidance as regards the concentration of A3 uses; however I consider that in this context it would not detract from the diversity and*



*attractiveness of Kilburn Town Centre*

- i. In a similar decision at 86 Plender Street, also within the London Borough of Camden, an inspector considered a change of use from retail (A1) to estate agency (A2) (appeal reference: APP/X5210/A/12/2170021). The decision is attached as Appendix C. Like the current proposal, the site was situated at the *"periphery of the centre"*. The inspector assessed the proposal against the 50% threshold as follows:

*"Adopting the Council's figures, which reflect the observations made during the site visit and taking into account the property's current use, none of the ground floor premises within the defined frontage are used for Class A1 purposes. If the property was used for Class A1 purposes then the percentage of such uses would be about 20%. For the frontage on the opposite side of the road, the percentage of Class A1 uses is 33%. For both frontages, the proportion of Class A1 uses does not achieve the 50% threshold for such uses which is referred to in CPG5 as the level below which changes of use would generally be resisted by the Council."*

- j. He argues that:

*"this part of the town centre does not possess a strong retail character or function."*

- k. He concludes that:

*"the current use of the property is judged not to be inconsistent with the requirements of CPG5 because the 50% threshold is not currently achieved even if the property was used for Class A1 purposes. It is judged that the non retail use of the property does not materially alter the character of either the frontage or the town centre and is not contrary to the aims of Policy DP12 of the Camden Development Policies 2010-2025 (CDP). A range of shops and other uses appropriate to a town centre will remain as required by Policy CS7 of the Camden Core Strategy 2010-2025 (CS) and the character, function, vibrancy and vitality of the town centre as a whole is not unduly harmed."*

- l. Although these appeals were decided under the previous local plan, the policies have largely carried over to the 2017 plan and the 50% threshold remains the same. The conclusions made by the inspectors are considered by the appellant to apply equally to the current case.

## 6. Conclusions

- a. The main issue is this appeal is the effect of the change of use on the function, vitality and viability of the secondary parade and the Finchley Road shopping centre. The decision notice refers to harm to the "*mix and balance*" of uses on the parade.
- b. The appeal unit is relatively small and is located towards the northern end of the designated centre. There are no true A1 units left in the retail parade of which the appeal property forms part. The parade no longer functions as a secondary shopping parade because there are no shops as such. It is not a parade that people visit to shop – there is no variety or choice.
- c. The purpose of policy TC2 is to retain A1 as the dominant use in the parade. That intention is not achievable and the forced retention of a single A1 unit, on a parade that now has a distinctly non-A1 character, does not serve the aims and objectives of the Local Plan.
- d. The former A1 use closed because trading was poor and there has been no serious interest from potential A1 occupiers since the former tenants left. If it remains as a vacant unit, it will blight the parade and contribute nothing to vitality and viability of the designated centre.
- e. For these reasons, the appellant contends that the appeal proposal represents sustainable development of the kind encouraged by the NPPF and respectfully requests that the appeal be allowed.



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