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# Appeal Decision

Site visit made on 25 September 2012

by **Clive Tokley MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 October 2012

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## Appeal Ref: APP/X5210/A/12/2177025

### Units 1-4 Regents Plaza, 2-10 Kilburn High Road, London, NW6 5TR.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Plaza Pension Scheme against the decision of the Council of the London Borough of Camden.
  - The application Ref 2011/3170/P, dated 14 June 2011, was refused by notice dated 23 March 2012.
  - The development proposed is change of use of units to Class A3 (Restaurant).
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## Decision

1. The appeal is allowed and planning permission is granted for the change of use of units to Class A3 (Restaurant) at Units 1-4 Regents Plaza, 2-10 Kilburn High Road, London, NW6 5TR. The permission is in accordance with the terms of the application Ref 2011/3170/P dated 14 June 2011 and is subject to the following conditions:
    - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
    - 2) The use hereby permitted shall not be open to customers outside the hours of 11:00 to 23:30.
    - 3) Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises, to include any air conditioning plant, (including a noise assessment and attenuation measures) shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented prior to the first use of the premises for A3 purposes. No other air conditioning or ventilation plant shall be installed without the prior approval of the local planning authority and all equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the approved scheme and the manufacturer's specification.
    - 4) The development hereby permitted shall be carried out in accordance with drawing number 2011-64/PL001.
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## **Main Issues**

2. The main issues are the effect of the proposal on the diversity and attractiveness of Kilburn Town Centre and its effect on the living conditions of nearby residents as regards noise and disturbance.

## **Reasons**

### *Effect on Kilburn Town Centre*

3. Kilburn High Road has the character of a busy town centre with both sides of the road being occupied by retail, food and drink, entertainment and other local services. The road marks the administrative boundary between the London Borough of Brent to the west and Camden to the east. Camden Local Development Framework (November 2010) (the LDF) includes the Council's Core Strategy and Development Policies and identifies the east side of the High Road from Kilburn underground station to its junction with Kilburn Priory as *Kilburn Town Centre*.
4. The appeal site forms part of the ground floor of a mixed use development dating from the 1990s. The development occupies a triangular site at the southern extremity of the Town Centre and is in an area identified in the LDF as a secondary frontage. About half of the High Road frontage of the block (to the south of the appeal site) is occupied by a hotel reception and restaurant. The two frontage units to the north of the hotel service entrance are occupied by an accountants' office and an advertising window for a health club and the High Road frontage is completed by the vacant appeal units.
5. On the original planning permission the appeal units were indicated to be for uses within classes A1 to A3 with a condition requiring that a proportion of the floorspace of units 1 and 4 would be A1 retail. The appellant advises that none of the units has ever been used for A1 and the lawful use of the appeal units has been certified to be a community hall/synagogue (Class D1) (*Certificate of Lawful Use Ref 2011/6444/P dated 20 February 2012*).
6. LDF Policy CS7 seeks to ensure that Camden's retail centres are protected and enhanced and Policy DP12 sets out specific criteria for the consideration of food and drink proposals. These policies are supported by *Camden Planning Guidance 5* (adopted by the Council in 2011). This indicates that within secondary frontages the Council will generally resist proposals that would result in less than 50% of premises being in retail use and will seek to prevent more than three consecutive premises being in non-retail use. The objectives of these policies and guidance are consistent with the National Planning Policy Framework which seeks to ensure the vitality of town centres and I therefore give them full weight.
7. 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. The Council's evidence refers to the need for retail uses in this locality to serve the local community; however the supermarket to the north provides a full range of day-to-day goods and there is a small newsagent/general store to the south on the

opposite side of the road accessed via a pedestrian crossing with more local shops further to the south. The Council refers to the value of small units for new businesses; however a number of small units on the western side of the High Road to the north of the appeal units appeared to be unoccupied.

8. The east side of the High Road to the north of the appeal site gives the impression of a thriving centre and at the time of my visit only the appeal units were vacant. I consider that the attractiveness of the secondary frontage derives principally from its range of food and drink premises and the Library. The original planning permission envisaged a mix of A1, A2 and A3 uses and the principle of an A3 use within the units has therefore been accepted by the Council. 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 and would therefore not conflict with the overall objectives of LDF Policies CS7 and DP12.

#### *Living conditions*

9. The original planning permission (PL/9300159) allowed for uses within Class A3 at a time when that class included restaurants, public houses and hot food takeaway uses (*Town and Country Planning Use Classes Order 1987*). The principle of "old style" A3 uses below the residential accommodation has therefore been accepted by the Council and the original permission had no condition limiting the opening hours of the A3 use. The current Order (2005 Amendment) restricts A3 uses to restaurants and cafes and the appellant confirms that there would be no takeaway use. The application form indicates that the premises would be open from 11.00 to 23.30 seven days a week.
10. The Council considers that the increased foot fall from customers would result in unacceptable levels of noise and disturbance being experienced by residents. However I consider that on this busy main route into London with its range of restaurants, public houses and takeaway food premises it is unlikely that visitors to the proposed restaurant would have a materially harmful effect on living conditions. The Council report indicates that a commercial extraction unit was installed during the construction of the units and subject to the use of appropriate ventilation equipment the proposal would not result in unacceptable odours.
11. Whilst the floor area of the proposal would exceed that originally envisaged for A3 use the access and servicing arrangements would be unchanged. I consider that the limitations on the use now proposed would prevent it from having an adverse effect on the living conditions of nearby residents. In this respect the proposal would accord with LDF Policies CS7 and DP12 which seek to ensure that food and drink uses do not have a harmful effect on living conditions.
12. Taking account of the limitations on the proposed use I conclude that it would not have an unacceptably harmful effect on the living conditions of nearby residents as regards noise and disturbance.

#### **Conditions**

13. In addition to the usual conditions relating to the commencement of development and the identification of the approved drawing I have considered

the imposition of conditions as suggested by the Council to safeguard the living conditions of nearby residents. The Council's suggested condition that prevents opening on Sundays and public holidays conflicts with the terms of the application. I have seen no justification for that restriction and I have imposed a condition that limits the times of opening only.

14. The red line identifying the application site is drawn tightly around the building and there are no external areas either within the site or indicated to be within the appellant's control. I therefore see no need for a condition prohibiting the provision of outside tables and seating.
15. The Council's recommended condition 5 requires the submission of details of the extraction and air conditioning plant to include a noise assessment. Taking account of the nearby residential properties I consider that such a condition is necessary. I have therefore imposed a condition to that effect adding a clause to require the implementation of the scheme prior to the commencement of the use.
16. The Council recommends a further condition that seeks to limit noise levels at "sensitive facades"; however this term is not defined and as a consequence of its imprecision that condition fails the tests of DOE Circular 11/95 (*The Use of Conditions in Planning Permissions*). The Council has provided no justification for the specific requirements of this condition and I consider that my condition 3 would be sufficient to safeguard living conditions.

### **Conclusions**

17. Taking account of all matters I have concluded that the proposal would not be harmful to the diversity or attractiveness of Kilburn Town Centre and it would not harm the living conditions of nearby residents as regards noise and disturbance. I have concluded that the appeal should succeed.

*Clive Tokley*

INSPECTOR