

Unit 18, Brunswick Centre, London, WC1N 1AE
Ovelshield Ltd t/a ICCO
Stephen Matthews
21/08/2018



**GROUNDS OF APPEAL AND
 STATEMENT OF CASE ON BEHALF OF
 THE APPELLANT**

**PROPOSED CHANGE OF USE FROM RETAIL
 TO RESTAURANT/CAFÉ AND ANCILLARY
 TAKE AWAY SALES; TOGETHER WITH
 ASSOCIATED INTERNAL AND EXTERNAL
 ALTERATIONS, INSTALLATION OF PLANT
 AND DISPLAY OF SIGNAGE**

1.0 Introduction

1.1 This statement has been prepared by Bidwells LLP, a leading multi-disciplined property consultancy with Chartered Town Planners based in Oxford, on behalf of the appellant, Ovelshield Ltd.

1.2 The appeal site comprises a property at Unit 18, Brunswick Centre, London, WC1N 1AE.

1.3 An application for planning permission for the change of use of ground floor unit from retail (Use Class A1) to restaurant (Use Class A3) with ancillary take away sales, and installation of new extract vent to rear was submitted to the LPA on 21/03/2018 and registered as a valid application by the LPA on the same date (LPA reference: 2018/1447/P). Planning permission was subsequently refused for the proposed use by notice dated 01/06/2018 for the following reasons:

1. The proposed development, by reason of the size of the proposed restaurant and its location in close proximity to residential dwellings and other food, drink and entertainment uses in the vicinity, would result in an overconcentration of food, drink and entertainment uses which would have a significant adverse impact on the character and function of the designated Neighbourhood Centre and the amenities of neighbours, contrary to policies A1, A4, TC2 and TC4 of the Camden Local Plan (2017).

2. The applicant has failed to demonstrate, by way of a suitably comprehensive acoustic survey & impact assessment and a risk-based odour control & impact assessment, that all plant equipment, when operating at full capacity, would be capable of doing so without causing noise disturbance and harm to local amenity, contrary to policies A1, A4, TC2 and TC4 of the Camden Local Plan (2017).

1.4 An associated application for listed building consent for internal and external alterations to the ground floor unit including installation of illuminated fascia behind glazed shopfront; creation of opening in rear elevation and installation of extract louvre; and installation of internal air handling equipment was also submitted to the LPA on 21/03/2018 and registered as a valid application by the LPA on the same date (LPA reference: 2018/1658/L). Listed building consent was subsequently refused for the proposed works by notice dated 01/06/2018 for the following reason:

1. The proposed development, by reason of the illuminated signage which would be overly visually prominent and would result in visual clutter, would fail to preserve the building's special architectural and historic interest, contrary to policy D2 of the Camden Local Plan (2017).

1.5 An associated application for advertisement consent for the display of one internally-illuminated fascia sign behind glazed shopfront and one internally illuminated projecting sign onto existing shopfront was also submitted to the LPA on 21/03/2018 and was registered as a valid application

by the LPA on the same date (LPA reference: 2018/1448/A). Advertisement consent was subsequently refused for the proposed signage by notice dated 01/06/2018 for the following reason:

1. The proposed projecting sign and internal fascia sign, by reason of the proposed illumination, would be overly prominent and out of character with the predominantly non-illuminated signage within the wider Brunswick Centre resulting in visual clutter that would detract from the visual amenity of the area, the special character of the listed building and the character and appearance of this part of the Bloomsbury Conservation Area, contrary to policies D1, D2 and D4 of the Camden Local Plan (2017).

1.6 In the light of the reasons for refusal of planning permission, listed building consent and advertisement consent for the above proposals, the appellant considers that there are six principal issues relevant to this appeal, as follows:

- i) Would the proposed use of the appeal premises result in an overconcentration of food, drink and entertainment uses which would have a significant adverse impact on the character and function of the designated Neighbourhood Centre and the amenities of neighbours?
- ii) Would the proposed use of the plant/equipment, when operating at full capacity, be capable of doing so without causing noise disturbance and harm to local amenity?
- iii) Would the illuminated signage be overly visually prominent and result in visual clutter, which would fail to preserve the building's special architectural and historic interest?
- iv) Would the proposed projecting sign and internal fascia sign, by reason of the proposed illumination, be overly prominent and out of character with the predominantly non-illuminated signage within the wider Brunswick Centre and result in visual clutter that would detract from the visual amenity of the area, the special character of the listed building and the character and appearance of this part of the Bloomsbury Conservation Area?
- v) Are the proposals in conflict with any other planning policy?
- vi) Are there any other material considerations?

1.7 The appellant seeks to demonstrate that: the appeal proposals would not result in an overconcentration of food, drink and entertainment uses which would have a significant adverse impact on the character and function of the designated Neighbourhood Centre and the amenities of neighbours; that the proposed use of the plant/equipment, when operating at full capacity, would be capable of doing so without causing noise disturbance and harm to local amenity; the illuminated signage would not be overly visually prominent and would not result in visual clutter, and would preserve the building's special architectural and historic interest; the proposed

projecting sign and internal fascia sign would not be overly prominent nor out of character with the existing signage within the wider Brunswick Centre and would not result in visual clutter and would not detract from the visual amenity of the area, or the special character of the listed building, or the character and appearance of this part of the Bloomsbury Conservation Area; and there is no material conflict with any relevant planning policy. There are also other material considerations that justify approval.

1.8 The remainder of this statement is set out as follows:

2.0 Site & Surroundings

3.0 Proposed Development & Relevant Planning History

4.0 Relevant Planning Policy

5.0 Case for the Appellant

6.0 Summary & Conclusions

List of Appendices

List of Documents

2.0 Site & Surroundings

- 2.1 The appeal site comprises a ground floor commercial unit with upper and lower basement accommodation located within the mixed-use complex of the Brunswick Centre.
- 2.2 The Brunswick Centre comprises a complex of commercial retail and food and drink-led businesses with residential accommodation above. The local area is characterised by a variety of commercial uses, as is typical of a mixed-use urban area. The wider local area contains a variety of building styles and heights.
- 2.3 The Brunswick Centre is a grade II listed complex and lies within the designated Bloomsbury Conservation Area. The Brunswick Centre was built between 1967 and 1972 to the design of Patrick Hodgkinson and is recognised as the pioneering example of a megastructure in England and an example of low-rise, high-density living. The Brunswick Centre comprises two linked blocks of 560 flats that incorporate two rows of shops at raised ground level over basement car parking on two levels and a cinema. The complex is principally formed from concrete walls and metal framed glazing. Historic England's listing description states that the interior finishes of the flats, shops and cinema have been inspected and are not of special interest. The Brunswick Centre was listed on 14/09/2000, whilst the Bloomsbury Conservation Area was designated on 01/03/1984.
- 2.4 The appeal site is located within a highly accessible urban location within the borough of Camden, where transport options are excellent. The appeal site has a PTAL rating of 6b (the most accessible).

3.0 Proposed Development & Relevant Planning History

- 3.1 The appeal proposals involve the change of use of this unit from retail use to a restaurant/café use with ancillary take away sales; together with associated internal and external alterations, the installation of plant and the display of signage. The proposed use is more fully explained within Section 3.0 of the Statement in Support of Planning Application and the Operational Management Plan. These documents comprised parts of the formal planning, listed building consent and advertisement consent applications submitted to the LPA (and are included as part of the appeal documents submitted to PINS).
- 3.2 The proposed occupier of the appeal premises would be Overshield Ltd, trading as 'ICCO', who operate as a traditional Italian pizzeria. ICCO first opened in 1999 and since then have built a solid reputation with customers, reviewers and bloggers. Their concept centres on serving delicious fresh pizzas with prices that offer exceptional value for money and they have built up an army of loyal customers, with over 300,000 pizzas sold from their two existing branches in 2017. The applicant opened ICCO because they wanted to prove that it was possible to serve fresh, authentic and delicious pizzas at reasonable prices.
- 3.3 The appellant would only use electric pizza ovens, vented with special filters via an extraction hood, as detailed within the extraction plans and details which accompanied the appeal planning application; including technical specification details of these ovens and the other associated plant. There would therefore be no associated noises or smells nuisances created as a result of the preparation and sale of food on site. These appeal applications were also accompanied by an Operational Management Plan and a Servicing and Waste Management Plan, which more fully explained the appellant's intended operation of the appeal unit and their intended management of servicing and waste matters. The Planning Support Statement and its appendices have been reproduced as part of the appeal documentation.
- 3.4 The appeal premises primarily comprise the ground floor accommodation, but the appeal unit has back of house accommodation at lower and upper basement levels. The ground floor accommodation is proposed to be laid out with the main entrance and customer seating area to the front of the appeal premises. A service counter, drinks counter, display refrigerators and a customer toilet is proposed to be located within the central area. To the rear would be kitchen and preparation areas. Cold rooms, a staff office and staff changing facilities would be provided at upper basement level, whilst the lower basement level would be used for deliveries.
- 3.5 The proposed external alterations would be limited to the installation of one plant grill on the rear elevation and two hidden plant grilles on the front elevation; together with the installation of one internal fascia sign located behind the existing shopfront glazing above the main entrance doors and two external projecting signs at either end of the existing shopfront. Despite what the LPA

maintain within their assessment of the signage proposals through the advertisement consent application, it is clearly the case that the internal fascia sign benefits from deemed consent by virtue of Class 12 of the advertisement regulations. Consequently, the fascia sign only requires listed building consent. On the ground floor the internal alterations propose the installation of fixed customer seating, the relocation of one toilet and the reconfiguration of another toilet, the removal of some existing modern partition walling, the relocation of a partition wall, the installation of new doors to the rear emergency exit, the installation of counters and kitchen equipment and the installation of the associated plant. On the upper basement level, the proposed internal alterations comprise the installation of partition walling to create a staff office, a staff changing area and two cold rooms. It is also proposed to install wall shelving. No internal alterations are proposed on the lower basement level.

- 3.6 The appellant's proposed trading opening hours within the appeal planning application were between 0700 to 2300 hours on Mondays to Fridays and 0900 to 2300 hours on Saturdays and Sundays. As shall be discussed in more detail below, the appellant is willing to accept reduced trading hours on Sundays to Thursdays of a 2200 hours closing; with Friday and Saturday closing remaining at 2300 hours; should the Inspector consider it to be reasonable and necessary to limit the proposed trading hours accordingly. The appellant's trading hours would be to serve the meal times of local residents, shoppers, workers and visitors to the area. The proposed use would involve no sales of alcohol at all. Music would only be played at background levels during the customer trading times and would be inaudible outside of the unit.
- 3.7 Prior to the submission of the appeal planning, listed building consent and advertisement consent applications, the LPA's on-line records indicate no planning history for this unit. The planning, listed building consent and advertisement consent applications, which are the subjects of these appeals, were submitted to the LPA on 21/03/2018 and were registered as valid applications by the LPA on the same date. The LPA subsequently refused planning permission, listed building consent and advertisement consent on 01/06/2018, for the reasons reproduced above in paragraphs 1.3, 1.4 and 1.5.

4.0 Relevant Planning Policy

- 4.1 The appellant's assessment of the key relevant national and local planning policy context for considering the appeal proposals has already been provided in detail within the Planning Support Statement that accompanied the appeal applications. The Inspector's attention is respectfully drawn to this document, which forms part of the accompanying appeal documentation. Since the determination of the appeal applications, the new NPPF (July 2018) has been published.
- 4.2 The 2018 Framework reiterates the presumption in favour of sustainable development (paragraph 11) which requires development proposals that accord with an up-to-date development plan to be approved without delay. Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless in conflict with the 2018 Framework. The 2018 Framework also requires LPAs to approach decisions on proposed development in a positive and creative way and to 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 (all paragraph 38).
- 4.3 The 2018 Framework requires planning policies and decisions to help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (all paragraph 80).
- 4.4 The 2018 Framework states that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should promote the long-term vitality and viability of town centres and allow them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries and allow for a suitable mix of uses (all paragraph 85).
- 4.5 The 2018 Framework requires planning policies and decisions to promote social interaction and opportunities for meetings between people who might not otherwise come into contact with each other (paragraph 91). The 2018 Framework adds that in order to provide the social and recreational facilities and services the community needs, planning policies and decisions should plan positively for the provision and use of shared spaces and meeting places, such as public houses (paragraph 92).
- 4.6 The 2018 Framework states that good design is a key aspect of sustainable development (paragraph 124). Planning policies and decisions should ensure that developments function well and add to the overall quality of the area; are visually attractive; are sympathetic to local character and history, while not preventing or discouraging appropriate innovation or change; create attractive, welcoming and distinctive places; optimise the potential of the site to accommodate and

sustain an appropriate amount and mix of development and support local facilities and transport networks; and create safe, inclusive and accessible places that do not undermine the quality of life or community cohesion and resilience (all paragraph 127). Specifically, with regard to advertisements, the 2018 Framework states that the control of advertisements should be operated in a way which is simple, efficient and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts (all paragraph 132).

- 4.7 The 2018 Framework requires that heritage assets are conserved in a manner appropriate to their significance (paragraph 184). Heritage assets should be put to viable uses consistent with their conservation and development should make a positive contribution to local character and distinctiveness (paragraph 185). Development proposals should avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal (paragraph 190). In determining applications, LPAs should take account of: the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness (paragraph 192). When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (paragraph 193). Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification (paragraph 194). Where a development would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (paragraph 196).
- 4.8 For all of the reasons advanced throughout this Statement of Case, the appellant considers that the appeal proposals fully accord with the relevant requirements of the 2018 Framework. The appeal proposals are therefore considered to be actively supported by the 2018 Framework.
- 4.9 The remainder of this section of the appellant's Grounds of Appeal/Statement of Case is only intended to address the Camden Local Plan 2017 policies cited by the LPA in their refusal reasons.
- 4.10 Policy A1 concerns managing the impacts of development and states that the Council will seek to protect the quality of life of occupiers and neighbours and will grant permission for development unless this causes unacceptable harm to amenity. The Council will seek to ensure that the amenity of communities, occupiers and neighbours is protected and seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities; whilst resisting development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network and require mitigation measures where necessary.

Supporting paragraph 6.3 adds that protecting amenity is a key part of successfully managing Camden's growth and ensuring its benefits are properly harnessed. This paragraph adds that the Council will expect development to avoid harmful effects on the amenity of existing and future occupiers and nearby properties or, where this is not possible, to take appropriate measures to minimise potential negative impacts. Supporting paragraph 6.21 states that odours, fumes and dust can be generated from commercial cooking. Supporting paragraph 6.22 continues that the Council will require all development likely to generate nuisance odours to install appropriate extraction equipment and other mitigation measures. These should be incorporated within the building where possible. External extraction equipment and ducting should be sited sensitively, particularly on listed buildings and within conservation areas.

4.11 Policy A4 specifically addresses noise and vibration and states that the Council will seek to ensure that noise and vibration is controlled and managed. The Council will only grant permission for noise generating development, including any plant and machinery, if it can be operated without causing harm to amenity and the Council will also seek to minimise the impact on local amenity from deliveries. Supporting paragraph 6.99 adds that planning conditions will be imposed to require that plant and equipment which may be a source of noise is kept working efficiently and within the required noise limits and time restrictions. Air conditioning will only be permitted where it is demonstrated that there is a clear need for it after other measures have been considered (cross-referring to Policy CC2, which addresses adapting to climate change). Conditions may also be imposed to ensure that attenuation measures are kept in place and are effective throughout the life of the development. Supporting paragraph 6.102 adds that assessments for noise and vibration from entertainment and leisure premises must include consideration of amplified and unamplified music, human voices, footfall and vehicle movements and general activity. The impact of noise and vibration from food, drink and entertainment uses is outlined in Policy TC4 (town centre uses). Generally, these uses and noise from leisure uses alter the noise environment through audio devices, amplified and unamplified music, footfall, congregations of people, plant and equipment, deliveries and transport and can be particularly evident when the background noise level is quieter. Supporting paragraph 6.103 continues that where such uses are considered acceptable, planning conditions restricting opening hours will be imposed to ensure that they do not adversely impact nearby noise sensitive uses. Supporting paragraph 6.104 adds that deliveries, collections and the loading and unloading of goods and refuse can be a source of disruption and cause noise nuisance to nearby residential properties, particularly when undertaken at night. Therefore, to manage potential noise issues from deliveries, conditions will usually be applied to require deliveries, collections and the loading and unloading of goods and refuse take place between the hours of 08:00 to 20:00.

4.12 Policy TC2 addresses Camden's centres and other shopping areas and states that the Council will promote successful and vibrant centres throughout the borough to serve the needs of residents, workers and visitors. This policy states that the Council will: seek to protect and enhance the role and unique character of each of Camden's centres, ensuring that new development is of an

appropriate scale and character for the centre in which it is located; 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; make sure that food, drink, entertainment and other town centre uses do not have a harmful impact on residents and the local area; support and protect Camden's Neighbourhood Centres, markets and areas of specialist shopping, local shops; and pursue the individual planning objectives for each centre, as set out in supplementary planning document Camden Planning Guidance on town centres and retail, and through the delivery of environmental, design, transport and public safety measures. The Council's expectations for the mix and balance of uses within frontages for each designated centre are set out in Appendix 4. 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.

- 4.13 Appendix 4 of the Local Plan states that Neighbourhood Centres will be considered suitable locations for food and drink uses of a small scale (generally less than 100sqm) that serve a local catchment, provided they do not harm the surrounding area. Specifically, with regard to the Brunswick Centre, Appendix 4 of the Local Plan states that the minimum proportion of Class A1 uses should be 50%, whilst the maximum proportion of Classes A3, A4 and A5 food, drink and entertainment uses should not exceed 25%. The other listed restrictions include setting a maximum floorspace figure of 100 square metres with no more than 2 consecutive Classes A3, A4 and A5 uses located together.
- 4.14 Supporting paragraph 9.21 to Policy TC2 states that Camden has 37 neighbourhood centres which cater for the day to day shopping and service needs of their local populations. The neighbourhood centres are spread across the borough and vary in size and in role. They contain a range of uses including shops, food and drink uses, doctor and dentist surgeries and financial and professional services and often have housing on upper floors. Supporting paragraph 9.23 adds that the Council will seek to retain a strong element of convenience shopping for local residents in Camden's neighbourhood centres and ensure that any development in them does not harm the function, character or success of that centre. The Council will take into account the individual character of the centre when assessing development proposals but, as a guide, the Council will resist schemes that would result in less than half of ground floor premises in a neighbourhood centre from being in retail use or in more than three consecutive premises being in non-retail use. The Council will also take into account any history of vacancy in shop units and the prospect of achieving an alternative occupier for vacant premises. Applications for food, drink and entertainment uses will be carefully assessed to minimise the impact on local residents and the local area.
- 4.15 Policy TC4 of the Local Plan concerns town centre uses and states that the Council will ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. The Council considers: a. the effect of development on shopping

provision and the character of the centre in which it is located; b. the cumulative impact of food, drink and entertainment uses, taking into account the number and distribution of existing uses and non-implemented planning permissions and any record of harm caused by such uses; c. the Council's expectations for the mix and balance of uses within frontages for each centre are set out in Appendix 4; d. the individual planning objectives for each centre, as set out in the supplementary planning document Camden Planning Guidance on town centres and retail; e. impacts on small and independent shops and impacts on markets; f. the health impacts of development; g. the impact of the development on nearby residential uses and amenity and any prejudice to future residential development; h. parking, stopping and servicing and the effect of the development on ease of movement on the footpath; i. noise and vibration generated either inside or outside of the site; j. fumes likely to be generated and the potential for effective and unobtrusive ventilation; and k. the potential for crime and antisocial behaviour, including littering. This policy adds that in order to manage potential harm to amenity or the local area, the Council will, in appropriate cases, use planning conditions and obligations to address the following issues: l. hours of operation; m. noise/vibration, fumes and the siting of plant and machinery; n. the storage and disposal of refuse and customer litter; o. tables and chairs outside of premises; p. community safety; q. the expansion of the customer area into ancillary areas such as basements; r. the ability to change the use of premises from one food and drink use or one entertainment use to another (within Use Classes A3, A4, A5 and D2); and s. the use of local management agreements to ensure that the vicinity of premises are managed responsibly to minimise impact on the surrounding area. Contributions to schemes to manage the off-site effects of a development, including for town centre management, will be sought in appropriate cases.

- 4.16 Paragraph 9.29 states that Camden's image as a dynamic and attractive place is in part due to the number and quality of restaurants, bars and entertainment venues in the borough. These uses play an important part in the night time economy of Camden and of London, socially, economically and in terms of job provision. Paragraph 9.30 adds that conflicts can arise as, due to the borough's densely developed, mixed use nature, much night-time activity occurs close to places where people live. In addition, large numbers of such uses can change the character of the area in which they are located and reduce its range of shops or the quality of the shopping environment. Conflicts can be made worse where a particular location becomes a focus for late night activity. Paragraph 9.31 continues that eating, drinking and other leisure uses provide a key role in the attractiveness of Camden's centres. However, food, drink and entertainment uses can affect the overall viability and vitality of a centre by eroding the retail offer and can have an impact on amenity through noise and other impacts. In order to protect the primarily retail role of core frontages, the preferred location of food, drink and entertainment uses is secondary frontages. Paragraph 9.32 adds that town centre uses include cafes and restaurants (A3) and hot food takeaways (A5).
- 4.17 Supporting paragraph 9.35 states that new shops, services, food, drink and entertainment uses can add to the vitality and vibrancy of Camden's centres and local areas. However, they can also have other impacts such as diverting trade and displacing existing town centre functions. As a

result, the Council will seek to guide such uses to locations where their impact can be minimised. When assessing proposals for these uses, the Council will seek to protect the character and function of these centres. The Council will prevent any reduction in vitality and viability of the centres by requiring sequential assessments and impact assessments where appropriate (in accordance with the National Planning Policy Framework) and through implementing this policy. Supporting paragraph 9.36 adds that the Council will not grant planning permission for development that it considers would cause harm to the character, amenity, function, vitality and viability of a centre or local area. The Council will consider that harm is caused when an impact is at an unacceptable level, in terms of: trade and turnover; vitality and viability; the character, quality and attractiveness of a centre; levels of vacancy; crime and antisocial behaviour; the range of services provided; and a centre's character and role in the social and economic life of the local community.

- 4.18 Supporting paragraph 9.38 states that the supplementary planning document Camden Planning Guidance on town centres and retail provides detailed guidance on how the Council will treat planning applications for shops, food, drink and entertainment uses in particular centres, taking into account their specific circumstances. Camden Planning Guidance on town centres and retail also provides information on when the Council considers that concentrations of food, drink and entertainment uses, and reductions in the proportion of premises in retail use, would be likely to cause harm to the character, function, vitality and viability of a centre. The Council will take these and any other relevant supplementary guidance into account when the Council assesses applications in these locations. The Council will also take into account any history of vacancy in shop units and the prospect of achieving an alternative occupier for vacant premises when considering proposals that involve the loss of retail premises.
- 4.19 Supporting paragraph 9.39 adds that within each of Camden's centres, the Council will seek to prevent concentrations of uses that would harm an area's attractiveness to shoppers or its residential amenity. The Council wishes to see a wide range of entertainment uses within its centres, not just those that primarily involve drinking and will encourage suitable uses that contribute towards this. Supporting paragraph 9.40 adds that where food, drink and entertainment uses are permitted, they will need to be managed to protect the amenity of residents. To ensure such uses do not harm amenity or the character of an area, either individually or cumulatively, the Council will consider applying controls on: hours of operation; refuse and litter; noise/vibration; fumes; customer area; local management issues; and changes of use. Supporting paragraph 9.43 adds that the supplementary planning document Camden Planning Guidance on town centres and retail provides further advice on the impact of food, drink and entertainment uses and provides detailed guidance on how we will consider applications for such uses in each centre.
- 4.20 Supporting paragraph 9.46 addresses health impacts and states that, in line with the National Planning Policy Framework, the Council believes that the planning system can play an important role in facilitating healthy communities. One issue of particular importance in the borough is

childhood obesity. The Council seeks to tackle this issue and encourage healthy eating habits. The Council is undertaking a range of programmes aimed at improving the food environment in the borough. While the causes of obesity are complex there is evidence to support that energy dense fast food is one of a number of contributing factors to obesity. The Council will therefore consider the health impacts of the development of new hot food take aways in the borough.

- 4.21 Policy D1 concerns design and states that the Council will seek to secure high quality design in development, requiring that development: respects local context and character; preserves or enhances the historic environment and heritage assets in accordance with Policy D2 Heritage; is sustainable in design and construction, incorporating best practice in resource management and climate change mitigation and adaptation; is of sustainable and durable construction and adaptable to different activities and land uses; comprises details and materials that are of high quality and complement the local character; integrates well with the surrounding streets and open spaces, improving movement through the site and wider area with direct, accessible and easily recognisable routes and contributes positively to the street frontage; is inclusive and accessible for all; is secure and designed to minimise crime and antisocial behaviour; and carefully integrates building services equipment. The policy adds that the Council will resist development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- 4.22 Policy D2 specifically address heritage and states that the Council will preserve and, where appropriate, enhance Camden's heritage assets and their settings, including conservation areas and listed buildings. In terms of designed heritage assets, including conservation areas and listed buildings, the Council will not permit the loss of or substantial harm to designated heritage assets, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. The Council will not permit development that results in harm that is less than substantial to the significance of a designated heritage asset unless the public benefits of the proposal convincingly outweigh that harm. The Council will require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area. To preserve or enhance the borough's listed buildings, the Council will resist proposals for a change of use or alterations and extensions to a listed building where this would cause harm to the special architectural and historic interest of the building.
- 4.23 Policy D4 specifically addresses advertisements and states that the Council will require advertisements to preserve or enhance the character of their setting and host building. Advertisements must respect the form, fabric, design and scale of their setting and host building and be of the highest standard of design, material and detail. The Council will support advertisements that: preserve the character and amenity of the area; and preserve or enhance heritage assets and conservation areas. The Council will resist advertisements that: contribute to an unsightly proliferation of signage in the area; contribute to street clutter in the public realm; cause light pollution to nearby residential properties or wildlife habitats; have flashing illuminated

elements; or impact upon public safety. The Council will resist advertisements on shopfronts that are above fascia level or ground floor level, except in exceptional circumstances. Supporting paragraph 7.87 adds that generally shopfront advertisements will only be acceptable at the ground floor level, at fascia level or below. Fascia in this context refers to the signboard on the upper part of a shopfront showing the name of the shop. Advertisements above fascia level can appear visually obtrusive and unattractive and, where illuminated, they can cause light pollution to neighbouring residential properties.

5.0 Case for the Appellant

- 5.1 The appellant considers that the refusal of planning permission, listed building consent and advertisement consent in this case is not justified. The proposed use would help enhance the character, function, vitality and viability of the Brunswick Neighbourhood Centre as part of the wider vibrant, mixed-use nature of this Centre and would help provide for the day-to-day food needs of local residents, workers, shoppers and visitors. The proposed use would also provide enhanced local employment and would provide an attractive, food-led, service use which would add significantly to footfall and customer spend within the local area. The proposed trading hours would be longer than the past conventional retail use of the site, both at the beginning and at the end of the trading day. Consequently, these additional hours of activity would add to the vitality of the Centre, but would also be modest in extent and would be respectful of the living environment of local residents that neighbour the appeal site. The appeal site also benefits from excellent public transport infrastructure and is within a highly accessible and sustainably located area which has a PTAL rating of 6b (the most accessible).
- 5.2 The appellant considers that, in reality, the proposed use of the appeal site would not result in an overconcentration of food, drink and entertainment uses and that the appeal use would not have any significant, adverse impact on the character and function of the designated Neighbourhood Centre and the amenities of neighbours. Residential amenity would, in reality, not be materially affected. Furthermore, in reality it would have only a modest active trading area of part of the ground floor space. The ground floor area comprises 175 square metres of accommodation and around half of this floorspace would also be 'back-of-house' accommodation. The appellant has estimated that the maximum number of covers achieved by their proposed layout and use of the ground floor accommodation of the appeal premises would be around 58. The appellant is comfortable to have this estimated maximum number of covers figure included within a suitably worded planning condition restriction, together with a restriction on any use of the upper and lower basement levels for customer seating, if the Inspector considers it reasonable and necessary to do so, which would provide a further control on the true intensity of the use of the floorspace of the appeal premises. The proposed use of the plant/equipment, when operating at full capacity, would be capable of doing so without causing noise disturbance and harm to local amenity.
- 5.3 The appellant considers that the illuminated signage would not be overly visually prominent and would not result in visual clutter and would preserve the building's special architectural and historic interest. The proposed projecting sign and internal fascia sign would not be overly prominent nor out of character with the existing signage within the wider Brunswick Centre and would not result in visual clutter and would not detract from the visual amenity of the area, or the special character of the listed building, or the character and appearance of this part of the Bloomsbury Conservation Area. The proposed signage and very modest additional external plant would both preserve the

building's special architectural and historic interest and respect the character and appearance of the Bloomsbury Conservation Area. The character and appearance of the conservation area would also be enhanced by the increased pedestrian footfall and activity within and around the appeal site.

5.4 The appellant considers that planning permission, listed building consent and advertisement consent should be granted. Each of the six principal issues relevant to this appeal, rehearsed in paragraph 1.6 above, are considered below.

i) **Would the proposed use of the appeal premises result in an overconcentration of food, drink and entertainment uses which would have a significant adverse impact on the character and function of the designated Neighbourhood Centre and the amenities of neighbours?**

5.5 The LPA's refusal reasons cite Camden Local Plan Policies A1, A4, TC2 and TC4 to support the LPA's conclusion that the appeal proposals would have a significant adverse impact on the character and function of the designated Neighbourhood Centre and the amenities of neighbours as a result of an overconcentration of food, drink and entertainment uses. The LPA's assessment of the existing distribution of food, drink and entertainment uses is provided within paragraph 3.5 to 3.12 and Appendices 1 to 3 inclusive of their delegated report (which is reproduced as Appendix 1 to this Statement of Case). Whilst the LPA's own assessment within their delegated report concludes that the majority of the LPA's own policy thresholds and guidance are met by the proposed appeal use, the LPA consider that:

"Although the proposal would seem to align with the majority of the planning guidance thresholds, officers raise concerns within regard to the size of the restaurant proposed, the subsequent concentration of food uses and the resulting effect upon the character and function of the neighbourhood centre." (paragraph 3.6).

5.6 Setting aside the LPA's 100 square metres policy guidance floorspace threshold for food, drink and entertainment uses within the Brunswick Neighbourhood Centre for now, which shall be returned to below, the LPA's assessment in their delegated report is that:

"When looking at the distribution of lawfully permitted restaurant uses (A3) within the centre (see appendix two), it becomes clear that this particular use has become increasingly concentrated and that now a significant number of the larger units across the centre are occupied by restaurant chains. Although the overall percentage of units remains slightly below the 25% Local Plan target, it is noted that a number of the existing restaurant operators occupy units which have combined multiple units, giving them their significant size and presence within the centre. The number and size of the existing restaurants within the centre is larger than necessary to serve the needs of the local population and instead attracts customers from further afield. Whilst this is not necessarily harmful in isolation, due to the number and size of restaurant units already permitted, the character

and function of the centre has been fundamentally altered to now appear more as a destination for food, drink and entertainment, rather than a centre for convenience shopping to serve the local population. This change in character and function is considered detrimental to the Neighbourhood Centre, with the proposed change of use exacerbating this situation.” (paragraph 3.9).

- 5.7 The LPA’s assessment within their delegated report continues their consideration of the issue of any existing overconcentration of food, drink and entertainment uses within the Brunswick Centre by including certain authorised Class A1 uses within their deliberations. Paragraph 3.10 states:

“Further to the above, officers note that a large number of units permitted as retail use (A1) are currently occupied by businesses whose primary function is the sale of hot and cold foods for consumption off premises but which retain areas for seating. Successive enforcement investigations have determined that these units technically remain within the A1 use class by virtue of their lack of primary cooking and limited amounts of seating (see appendix one). However, when one considers both the lawful restaurant uses (A3 use) and the proportion of ‘food stores’ operating under an A1 use class together (see appendix three) the resulting effect upon the character and function of the NC as a result of the concentration of such uses is clearly evident. At present the shopping offer of the NC, in particular for convenience shopping, is very poor with only 19 out of 43 units (44%) offering any form of convenience shopping compared with the 16 out of 43 units (37%) units which are either restaurants or are a retail ‘food store’ whose prime function is the sale of prepared foods and drinks. This results in the aforementioned detrimental impacts caused by the lawful A3 units upon the NC being significantly worsened. Although officers note that the ‘food stores’ outlined in appendix three remain within the A1 use class and could therefore return to a convenience retail use without permission, this does not change the fact that at present, the centre has limited attraction for local residents needing day-to-day shopping convenience provision.”

- 5.8 To include authorised Class A1 uses within their assessment of whether or not there is an overconcentration of food, drink and entertainment uses is considered to be perverse logic by the LPA. The appellant considers that Appendix Two of the LPA’s delegated report reflects the realistic position with regard to the proposed distribution of food, drink and entertainment uses within the Brunswick Centre and that Appendix Three of the LPA’s delegated report in an unreasonable and unhelpful fabrication by the LPA. It is also considered flawed logic by the LPA to conclude that the existing, authorised Class A1 uses which sell food do not contribute towards meeting the day-to-day shopping needs of local residents. The resulting distribution of food, drink and entertainment uses, should these appeals be allowed, are as shown within Appendix Two of the LPA’s delegated report. No reasonable and proportionate assessment of this distribution could conclude that this would represent an overconcentration of food, drink and entertainment uses; especially given the compliance of the appeal proposals with Camden Local Plan Policy TC2 and Local Plan Appendix 4 on the overall Class A1 to food, drink and entertainment uses percentage criteria and the avoidance of a continuous non-Class A1 frontage with the adjoining units, as the

LPA themselves recognise within their delegated report (see paragraphs 3.6 and 3.9 of the LPA's delegated report in Appendix 1 of the Statement of Case).

- 5.9 The LPA state within paragraph 3.11 of their delegated report that: *'no evidence of the unsuccessful retail marketing campaign have (sic) been forthcoming'*. The Inspector will note that paragraph 5.13 of the Planning Support Statement that accompanied the appeal applications provided a summary of the marketing reality of the appeal premises. Furthermore, the Inspector will note from the detailed and protracted e-mail correspondence between the LPA and the appellant's agent during the processing of the appeal applications (which accompanies these appeals) that the LPA did not at any time request any such further information about the marketing of the appeal premises. In addition, the issues which form the basis of the LPA's refusal reasons were only raised by the LPA on 25/05/2018 at 1603 hours, when the LPA also advised that refusal was imminent unless the applications were withdrawn by the afternoon of the 29/05/2018 (effectively a half working day's notice to withdraw the applications or have them refused, given the bank holiday weekend). Despite the request of the appellant's agent, also sent on 25/05/2018, to allow time for the appellant to address these additional, late issues raised by the LPA, the LPA did not allow the appellant the opportunity to address these. The only reply to the appellant's agent's request for the chance to address the additional, late issues raised by the LPA was the final response of the LPA on 04/06/2018, which also attached the refusal notices, backdated to 01/06/2018. This is considered to be unreasonable behaviour by the LPA, which prevented the appellant the opportunity to address the additional and late issues raised by the LPA, which could have saved time considering these issues at appeal.
- 5.10 Despite the opening passing comments in paragraph 3.11 of the LPA's delegated report, the LPA also fails to properly consider the changing shopping habits and spending patterns and what their implications are for the genuine requirements for convenience shopping for local residents. The LPA appear to be wedded to a now outdated concept of what are the genuine convenience shopping needs of local residents now; especially with the significant growth of the on-line sector; and what shopping and service centres, such as the Brunswick Centre, now need to do to remain economically viable and commercially relevant to providing the shopping and servicing needs of local residents. The Inspector's attention is drawn to Section 5.0 of the appellant's Planning Support Statement that accompanied the appeal applications.
- 5.11 The clear goals of Camden Local Plan Policy TC2 include the promotion of successful and vibrant centres that serve the needs of residents, workers and visitors; the protection and enhancement of the role of the centres; and the provision and maintenance of a range of shops and services, including food, drink and entertainment uses, which promote variety, vibrancy and choice. The LPA's expectations for the mix and balance of uses for each designated centre is set out in Appendix 4 of the Local Plan (see paragraph 4.5 above). Supporting paragraph 9.21 to Camden Local Plan Policy TC2 explicitly states that the LPA will take into account any history of vacancy in shop units and the prospect of achieving an alternative occupier for the vacant premises (see

paragraph 4.7 above). The LPA's decision to refuse the appeal use at this site is actually counter-productive to these aims and aspirations of Camden Local Plan Policy TC2. The LPA itself accepts that their expectations for the mix and balance of uses at the Brunswick Centre are complied with by the appeal proposals (see the LPA's delegated report in Appendix 1) and the appellant maintains that their proposed use of the appeal site would help promote variety, vibrancy and choice and help ensure that the Brunswick Centre remains successful and vibrant and provides and maintains a suitable mix of shops, services and food, drink and entertainment uses that serve the needs of residents, shoppers, workers and visitors. As already rehearsed above, the appellant was also denied by the LPA the opportunity to provide additional supporting information concerning the vacancy and marketing situation at these premises.

- 5.12 Camden Local Plan Policy TC4 provides a list of criteria that the LPA considers when assessing proposed town centre uses and their implications for the character, function, vitality and viability of a designated centre. The criteria of Policy TC4 are summarised in paragraph 4.8 above. Criteria a and b concern the effect on shopping provision and the cumulative impact of food, drink and entertainment uses. These criteria must be read against the requirements of criteria c and d, which state that the LPA's expectations for the mix and balance of uses for each centre, together with the individual planning objectives for each centre, are set out in the supplementary planning document Camden Planning Guidance on town centres and retail. Although this CPG document did not form part of the LPA's refusal reasons, the appellant's Planning Support Statement, which formed part of the appeal applications and which is included within the appeal documents, did assess the town centres and retail CPG document (the Inspector's attention is respectfully drawn to paragraphs 4.47 to 4.56 of that document). The same percentage proportions of uses and avoidance of consecutive frontages criteria are used within this CPG document as appears within Appendix 4 of the Camden Local Plan. It is reiterated that the LPA has accepted that these required percentage proportions of uses and avoidance of continuous frontages within the Brunswick Centre are met by the appeal proposals. Accordingly, there is no policy conflict with these criteria of Camden Local Plan Policy TC4 either (the 100 square metre policy guideline figure for food, drink and entertainment uses with the Brunswick Centre is dealt with separately below). The criteria of Policy TC4 also includes a consideration of amenity impacts on neighbours (criterion g) and noise and vibration generated either inside or outside of the site (criterion i) and the potential for crime and antisocial behaviour (criterion k). These issues will be considered separately below. None of the other criteria of Policy TC4 cover issues that are cited within the LPA's refusal reasons. Furthermore, the list of potential conditions contained within Policy TC4 include the hours of operation (criterion l) and the details of the plant and machinery (criterion m). As shall be rehearsed below, the LPA chose to not enter into a dialogue with the appellant about the proposed hours of use and chose not to condition the details of the associated plant and machinery, but instead chose to not allow the appellant an opportunity to even address the late concerns of the LPA about the kitchen extract plant.

- 5.13 Supporting paragraph 9.29 to Camden Local Plan Policy TC4 recognises the contribution that restaurants make to the dynamism and attractiveness of Camden and that they play an important part on the night time economy. Supporting paragraph 9.30 acknowledges the need to balance the provision of food, drink and entertainment uses with the protection of the residential amenities of neighbours and the range and quality of shops; whilst supporting paragraph 9.35 states the need to protect the character and function of the centres. Supporting paragraph 9.36 adds that the LPA will not grant planning permission that would harm the character, amenity, function, vitality and vibrancy of a centre. Supporting paragraph 9.39 seeks to prevent concentrations of uses that would harm an area's attractiveness to shoppers or its residential amenity and wishes to see a wide range of entertainment uses within centres, not just those that primarily involve drinking. Supporting paragraph 9.40 refers to the potential use of conditions to control such matters as the hours of operation, noise/vibration and fumes in order to protect residential amenity. Supporting paragraph 9.31 stresses the importance of the viability and vitality of Camden's centres, with secondary frontages being the preferred location for food, drink and entertainment uses. Supporting paragraph 9.35 accepts that new food, drink and entertainment uses can add to the vitality and vibrancy of Camden's centres and local areas. Supporting paragraph 9.32 acknowledges that restaurants are town centre uses. Supporting paragraphs 9.38 and 9.43 refer to the CPG on town centres and retail as the source of information about what the LPA considers the proportions of retail to food, drink and entertainment uses should be for each centre and where the LPA sees this balance being struck. Supporting paragraph 9.38 also refers to taking into account any history of vacancy in shop units and the prospect of achieving an alternative occupier for vacant premises. The concerns raised in supporting paragraph 9.46 were not raised within the LPA's refusal reasons. As already reiterated above, the LPA itself accepts that their expectations for the mix and balance of uses at the Brunswick Centre are complied with by the appeal proposals (see the LPA's delegated report in Appendix 1) and the appellant maintains that their proposed use of the appeal site would respect and support the character, amenity, function, vitality and vibrancy of the Brunswick Centre and would provide an appropriate food use which does not involve any sales of alcohol at all. As already rehearsed above, the appellant was also denied by the LPA the opportunity to provide additional supporting information concerning the vacancy and marketing situation at these premises. Furthermore, the LPA chose not to use suitable planning conditions to control the hours of operation, noise/vibration and fumes.
- 5.14 To provide further evidence for these appeals, the Brunswick Centre's landlord has provided information about the genuine marketing and vacancy situation within the Brunswick Centre and the reasons why the Brunswick Centre needs to adapt to this radically changed commercial environment, in order to keep commercial units open and trading and helping to meet the shopping and servicing needs of local residents. The landlord's marketing and vacancy document is attached as Appendix 2 to this Statement of Case. The appeal premises were let to 'LK Bennett Limited' on a lease running from 29 September 2006 to 28 September 2016. At the expiry of this lease a further short-term lease was agreed with 'LK Bennett Limited'. This short-term lease ran

for the period from 29 September 2016 to 28 September 2017 and contained provisions allowing either party to terminate the lease on giving one month's notice. This was in order to allow a break in the lease, if a long-term tenant became interested in the appeal premises. The unit was marketed during this period, as agreed with 'LK Bennett Limited'. A notice was received by the landlord from 'LK Bennett Limited' terminating their lease on 25 August 2017 and the appeal premises remained vacant since that date until the short-term lease of part of the unit which commenced on 16/08/2018 (as explained within the landlord's Leasing History Addendum document, also attached as part of Appendix 2 to this Statement of Case, which is addressed below in paragraph 5.15). During the course of 2016, and approaching the expiry of the 'LK Bennett Limited' lease, the appeal premises were under offer to 'Clarks'. However, following the referendum vote in favour of the UK leaving the EU, this interest from 'Clarks' was terminated, with the reason cited being the significant fall in the strength of the pound sterling against the US dollar, which resulted in increasing costs to retailers for purchased stock, which they are unable to fully pass on to their customers. The landlord's marketing and vacancy document elaborates upon the specific marketing of the appeal premises and the other vacant units within the Brunswick Centre. In summary, the appeal premises have been available and marketed from before the expiry of the 'LK Bennett Limited' lease, as evidenced by the fact that it was under offer to 'Clarks' at that time. When the 'Clarks' offer fell through, the appeal premises have continued to be marketed through well respected letting agents who are active in the Central London retail market. The appeal premises have also been marketed by non-traditional means, in an attempt to secure short-term interest, which would at least provide some commercial activity at the appeal site and within the wider Brunswick Centre. However, the proposed occupation by 'ICCO', which is subject of these appeals, was the only offer which the landlord has received on the appeal premises since the interest from 'Clarks' was withdrawn, until the short-term let of part of the premises which commenced on 16/08/2018.

- 5.15 The landlord's Leasing History Addendum document, also attached as part of Appendix 2 to this Statement of Case, updates the landlord's marketing and vacancy document. Immediately prior to the submission of these appeals, the landlord successfully let part of the appeal premises on a short-term let which commenced on 16/08/2018 and which is to run until 30/01/2019. The landlord was able to persuade an unsuccessful bidder for the tenancy of the smaller Unit 36 to instead take on a short-term lease of part of the appeal premises, in order to at least secure some commercial activity at the appeal site, whilst the appeal process is undertaken. This short-term tenancy of part of the appeal premises is only covering the service charge and business rates generated by the appeal unit and should not be seen as a permanent Class A1 occupation of the appeal premises. The appeal premises are too large for the short-term occupier and are unsuitable for their longer-term occupation. The temporary tenant is instead using the short-term lease of part of the appeal unit to test their start-up business which, if successful, would look for alternative, more suitable premises. This short-term lease is simply to secure some activity at part of the appeal premises

to cover the service charge and business rates costs of the unit and does not represent a genuine long-term solution for the retail occupancy of this unit.

- 5.16 Furthermore, commercial shopping and service centres, such as the Brunswick Centre, cannot now simply just rely upon provision towards meeting the convenience shopping needs of local residents in order to remain commercially viable; despite this appearing, from the LPA's assessment within their delegated report, to be the LPA's approach. Such centres need to attract custom from further afield if they are to remain commercially viable and vibrant to meet the needs of all local residents, visitors, shoppers and workers within the wider catchment area served by the Brunswick Centre. The alternative to allowing this necessary adaptation to take place is permanently vacant commercial units plagued by a series of short term lets at discounted rental rates, which would further undermine the commercial upkeep and attractiveness of centres such as the Brunswick Centre and would not assist in the on-going upkeep and maintenance of listed buildings such as the Brunswick Centre complex.
- 5.17 The landlord's own marketing and vacancy document (see Appendix 2 of this Statement of Case) provides an outline of the commercial reality at the Brunswick Centre, based directly on the landlord's own knowledge and experience of running the Brunswick Centre. The landlord acquired the Brunswick Centre in November 2014. The letting agents at this time were 'JLL' and 'Bruce Gillingham Pollard'. Both companies are well respected and have extensive experience of letting properties within central London and also within shopping centres. As a result of their work at the Brunswick Centre, lettings were secured on the following units: Unit 2 ('Leon' took on the unit formerly occupied by 'French Connection' in June 2016); Unit 4 ('Tossed' took over the unit formerly occupied by 'Space NK' in October 2016, following 'Space NK' vacating in June 2016); Unit K2 (initially let to 'The Fragrance Shop' in October 2016, who traded poorly. The lease was surrendered and then let to 'Revital' from July 2017. Prior to that the unit had been vacant since June 2015); Unit 38B (let to 'Ben's Cookies' following a surrender of the previous occupier's lease in May 2017); and Unit 52 (let to 'The Fitness Space' in November 2017, who operate a gym at the unit. This unit was previously occupied by 'Halifax', who vacated in November 2016. In order to let this unit, a change of use planning permission was required from the LPA, to allow the unit to trade as a gym).
- 5.18 There are currently three other units at the Brunswick Centre which remain vacant. These are: Unit 8 (formerly 'Baby Gap') which has been vacant since 07 January 2017; Unit 10 (which formerly traded as 'Benetton') which has been vacant since 24 June 2016, but has been let to a temporary occupier at a reduced rent from 18 May 2017; and Unit 22 (formerly occupied by 'Joy', who went into administration) which has been vacant since 21 April 2017. The letting agents produced marketing details for these units, including the appeal site, which were used to promote the units and the Brunswick Centre as a whole. The letting agents were also constantly in discussion with retailers across a variety of instructions and targeted active retailers, who they felt would be appropriate for the Brunswick Centre, based on their size requirements and target markets. The

marketing of all vacant units at the Brunswick Centre is an ongoing process. In addition to the marketing through agents, vacant units, including the appeal site, are also listed on the 'Appear Here' website, which specialises in short to medium term leases. Despite various levels of interest in the appeal premises from this source, no firm offer has been received by the landlord (except the very recent short-term let of part of the appeal premises rehearsed above). Having let units 2, 4, K2, 38B and 52, but with then five units remaining vacant, including the appeal site at that time, (the much smaller unit 36 had been vacant since 02 May 2018, following the previous tenant going into administration, but this unit has very recently been let) the landlord wanted a change of impetus regarding the letting agents. This coincided with a restructuring of the 'JLL' team and the landlord decided to review the letting agency position. The landlord invited pitches from three letting agents and from these selected 'Savills' and 'CWM' to replace 'JLL' and 'Bruce Gillingham Pollard'. The new letting agents were appointed with effect from 5 February 2018. Since the change in appointed letting agents, there have been expressions of interest in the vacant units from a variety of parties. However, these have tended to be at the lower end of the size range, as demonstrated by the recent letting of unit 36, which is much smaller than the appeal premises, and the very recent short-term let of part of the appeal premises, which needed to be sub-divided for this short-term lease.

- 5.19 The landlord's marketing and vacancy document is clear that the retail and casual dining markets have been going through a period of uncertainty, with a number of outright retail failures and also some restructuring through Corporate Voluntary Arrangements (CVA's). This has seen brands such as 'New Look' and 'Carluccio's', who are represented at the Brunswick Centre, restructure their property portfolios. The landlord identifies some of the factors which have contributed to the current position in the retail and casual dining markets. There was a dramatic increase in business rates in 2017, when retailers were faced with an increase in the rateable value of property. In respect of the appeal premises, the rateable value increased from £44,500 to £83,000 - an increase of 86.5%. Also, there has been the impacts upon the exchange rate following the UK referendum decision to leave the EU, with a resulting fall in value of the pound sterling against the US dollar, which has increased input costs for retailers and restaurateurs for their products. In addition, the increases in the minimum wage and the employer's contribution to auto enrolment pensions have increased the labour costs for physical stores. Finally, there is the impact of online sales. According to a Financial Times article from January 2018, over the past five years online sales have increased their share of the non-food market from 11.6% to 24.1%.
- 5.20 The landlord's marketing and vacancy document concludes with what they see as the very real benefits of allowing the appeal site to be occupied by the proposed restaurant use. These benefits identified by the landlord of the Brunswick Centre include: the attraction of pedestrian footfall, which would benefit all commercial operators at the Brunswick Centre; the benefits to the profile of the Brunswick Centre itself; the appeal use would introduce a popular food choice which is not currently offered at the Brunswick Centre; and the proposed restaurant occupation of the appeal site would avoid it remaining an unattractive, vacant space, plagued by short-term lets, and would

instead help to attract other commercial occupiers to the other vacant units at the Brunswick Centre.

- 5.21 The appellant therefore maintains that no reasonable and proportionate assessment of the true distribution and realistic position regarding the proposed distribution of food, drink and entertainment uses within the Brunswick Centre could conclude that this would represent an overconcentration of food, drink and entertainment uses; especially given the compliance of the appeal proposals with Camden Local Plan Policy TC2 and Local Plan Appendix 4 on the overall Class A1 to food, drink and entertainment uses percentage criteria and the avoidance of a continuous non-Class A1 frontage with the adjoining units, as the LPA themselves recognise within their delegated report. Furthermore, as rehearsed above, there is, in reality, no material conflict with the relevant requirements of the criteria of Policy TC4 and its supporting paragraphs. The appellant also considers that the inclusion of authorised Class A1 uses within the LPA's assessment of whether or not there is an overconcentration of food, drink and entertainment uses is perverse logic by the LPA. The appellant also considers it to be flawed logic by the LPA to conclude that the existing, authorised Class A1 uses which sell food do not contribute towards meeting the day-to-day shopping needs of local residents. The LPA's 100 square metre policy guideline figure for food, drink and entertainment uses within the Brunswick Centre is specified by the LPA, within their adopted planning policy documents, as solely being in order to protect residential amenity. The appellant addresses this specific issue below, within their assessment of the true implications for residential amenity.
- 5.22 The LPA's first refusal reason on appeal application 2018/1447/P also stated that the alleged overconcentration of food, drink and entertainment uses would have a significant adverse impact on the amenities of neighbours. Section 4 of the LPA's delegated report deals with the issue of residential amenity raised by the appeal planning application. The assessment of this issue within the LPA's delegated report is contained within paragraphs 4.1 to 4.7. Setting aside the alleged implications of the proposed plant upon residential amenity (which is covered by separate refusal reason 2 on appeal application 2018/1447/P and the latter part of Section 4 of the LPA's delegated report; and which the appellant will address in section ii below) the LPA's assessment that the alleged overconcentration of food, drink and entertainment uses would have a significant adverse impact on the amenities of neighbours would appear to be based upon the following issues: that it exceeds the LPA's 100 square metre floorspace policy guideline; that there would be a concentration of food, drink and entertainment uses that would give rise to numerous concerns in terms of disturbances for residential occupiers, including potential breakout noise from customer ingress and egress; and that a previous appeal decision at Unit 5 in 2011 dismissed a proposed change of use of that unit from Class A1 to Class A3 use.
- 5.23 The LPA's delegated report paragraph 4.3 elaborates upon these concerns by referring to: '*..a sizeable internal area and capacity for a large number of covers...*' and: '*It is therefore anticipated*

that there would be a significant amount of trip generations to and from the proposed restaurant, extending into the evening (proposed to operate up until 23:00pm daily).’ Paragraph 4.6 adds:

“The dismissed appeal established that large scale restaurant uses operating into the late evening have already resulted in disturbances from break out noise, particularly in the southern cluster of restaurants. The application unit is in close proximity to 5 large units with existing lawful A3 uses (Carluccios, Starbucks, Hare & Tortoise, Las Iguanas and Giraffe). Many of these feature similar hours of operation and the units have a combined capacity for a very large number of customers. Given the aforementioned proximity to residential dwellings, the intensity of use proposed, size of the application unit and the concentration of other A3 uses in the vicinity, the change of use is thus considered to result in an overconcentration of A3 uses which would have a significant adverse impact on the amenities of neighbours. It should also be noted that should permission be granted, the Council would have limited controls to restrict future occupiers from relocating the kitchen equipment to a lower level, increasing the area for service (and resulting intensity of use) which would exacerbate this issue.”

5.24 The LPA’s concerns about the implications of the proposed appeal use on the amenities of local residents would therefore appear to be based upon 4 factors. These are: the proximity to residential units; the intensity of the proposed use; the size of the appeal unit; and the concentration of other Class A3 uses within the vicinity. The first three of these points are addressed by the appellant below. In terms of the final point, for the reasons already rehearsed above, the appellant does not consider that the appeal proposals would genuinely result in an overconcentration of food, drink and entertainment uses. Furthermore, and as already rehearsed above, during the extensive correspondence with the appellant’s agent prior to determining the appeal applications, the LPA did not at any point raise any concerns about the potential implications upon the residential amenities of neighbouring properties arising from the proposed use, until the *‘fait accompli’* e-mail issued to the appellant’s agent on 25/05/2018. Despite a specific request by the appellant’s agent, the LPA denied the appellant any opportunity to address these additional and late concerns of the LPA.

5.25 The relevant policies of the Camden Local Plan that were cited by the LPA within their refusal reasons to support their refusal of planning permission on amenity grounds were Policies A1, A4, TC2 and TC4. Policy A1 seeks to protect the amenity of communities, occupiers and neighbours. Supporting paragraph 6.3 adds that the LPA will expect development to avoid harmful effects on amenity and take appropriate measures to minimise potential negative impacts. Supporting paragraph 6.21 addresses odour and fumes from commercial cooking and supporting paragraph 6.22 adds that the LPA will require all development likely to generate odours to install appropriate extraction equipment, which should be sited sensitively on listed buildings and within conservation areas (see paragraph 4.3 above). Policy A4 and its supporting paragraphs are principally concerned with noise and vibration from plant and machinery. Supporting paragraph 6.102 does address noise assessments and states that, in addition to plant and machinery, these need to

consider amplified music, voices, footfall, vehicle movements and general activity. Supporting paragraph 6.103 addresses the use of planning conditions to restrict opening hours and supporting paragraph 6.104 addresses the use of planning conditions to restrict deliveries, collections, unloading and loading of goods (see paragraph 4.4 above). Policy TC2 includes the avoidance of harmful impacts on residents and the local area within its wider criteria (see paragraph 4.5 above). The criteria of Policy TC4 also includes a consideration of amenity impacts on neighbours (criterion g) and noise and vibration generated either inside or outside of the site (criterion i) and the potential for crime and antisocial behaviour (criterion k). As rehearsed below, the LPA chose not to impose appropriate planning conditions covering opening hours, servicing, deliveries and collections. The appellant addresses these policy criteria below, as part of their rebuttal of the LPA's conclusion that the proposed restaurant would cause substantial harm to residential amenity. As already stated above, the appellant will set aside the alleged implications of the proposed plant upon residential amenity, which is covered by separate refusal reason 2 on appeal application 2018/1447/P and this is addressed below in section ii.

- 5.26 As already rehearsed above in Section 3.0, the appellant's proposed trading opening hours within the appeal planning application were between 0700 to 2300 hours on Mondays to Fridays and 0900 to 2300 hours on Saturdays and Sundays. The appellant is willing to accept reduced trading hours on Sundays to Thursdays of a 2200 hours closing; with Friday and Saturday closing remaining at 2300 hours; should the Inspector consider it to be reasonable and necessary to limit the proposed trading hours accordingly. The appellant's trading hours would be to serve the meal times of local residents, shoppers, workers and visitors to the area. The proposed use would involve no sales of alcohol at all. Music would only be played at background levels during the customer trading times and would be inaudible outside of the unit.
- 5.27 These appeals are accompanied by an environmental noise impact assessment, which considers and addresses the potential implications of both the proposed use and its associated activities and the proposed associated plant upon the residential amenities of local residents. Unlike the unsubstantiated assessment provided by the LPA within their delegated report, the appellant's environmental noise impact assessment objectively measures and assesses whether or not the proposed restaurant would give rise to disturbances for residential occupiers, including potential noise from customer ingress and egress, as well as from delivery activities. The Inspector's attention is therefore respectfully drawn to this noise impact assessment, which provides a thorough, detailed and evidenced assessment of the existing ambient noise environment around the appeal site and an assessment of the noise implications of the proposed plant; together with a surveyed assessment of the existing noise environment generated by the operation of one of the appellant's existing restaurants, to inform its assessment of the likely noise impacts of both the proposed use and its associated plant. The detailed assessment provided by the accompanying noise impact assessment concludes that the appeal proposals would not adversely impact upon residential amenity given that: activity will be contained by the building (and no remedial works are required to the existing building); plant noise would be compliant with the LPA's own adopted policy

and would be contained in an area that is substantially separated from residential properties; operational practices to control noise would be implemented; and patron departures would be relatively early in the evening, in small numbers, as is typical for restaurants such as is proposed, into an area well-served by public transport.

- 5.28 The LPA's first point about amenity impacts is the proximity to residential units. The fact that the appeal site lies within a mixed-use complex that includes residential units, does not in itself provide reasonable grounds to simply refuse planning permission on the basis of proximity; otherwise mixed-use development would simply not occur. Instead, an objective and reasonable assessment should be undertaken of the true, likely implications that would be raised for residential amenity and consideration should be given to what suite of appropriate planning conditions are at hand to reasonably control and limit any such impacts. Furthermore, the Council's own environmental protection officer, in their consultation advice on the appeal planning application, did not raise any environmental health objection or concern about the proposed use itself; but instead sought additional environmental impact information only about the associated plant. As already rehearsed above, the appellant's environmental noise impact assessment provides a detailed, evidenced assessment of the true likely noise implications raised by the operation of the proposed use at the appeal site. This concludes that there would be no substantial harm caused to residential amenity by the appeal proposals.
- 5.29 The LPA's second and third points about amenity impacts are the linked issues of the intensity of the proposed use and the size of the appeal unit. The overall floorspace of the appeal premises does exceed the LPA's 100 square metres policy guidance floorspace threshold for food, drink and entertainment uses within the Brunswick Neighbourhood Centre. This requirement of the LPA's adopted policy is understood to be solely concerned with the protection of residential amenities. The overall unit floorspace is 325 square metres, but nearly half of this floorspace is formed from the upper and lower basement accommodation, which is only to be used for the back-of-house operations. The ground floor area comprises 175 square metres of accommodation and around half of this floorspace would also be back-of-house accommodation. Therefore, whilst the appeal unit exceeds the 100 square metre policy threshold figure, it is certainly well below the large scale licensed entertainment threshold of 1,000 square metres deemed generally inappropriate within Neighbourhood Centres (Part 4 of Policy CPG5 of the Camden Local Plan 2017) and the active area of restaurant used for customer seating would be below the LPA's 100 square metre guideline policy figure.
- 5.30 Furthermore, the appellant has estimated that the maximum number of covers achieved by their proposed layout and use of the ground floor accommodation of the appeal premises would be around 58. As previously stated above, the appellant is comfortable to have this estimated maximum number of covers figure, together with a restriction on any use of the upper and lower basement levels for customer seating, included within a suitably worded planning condition restriction, if the Inspector considers it reasonable and necessary to do so, which would provide a

further control on the true intensity of the use of the ground floor accommodation. Provided that suitable measures are in place in order to ensure that residential amenity is adequately protected, which is the sole reason for the LPA's adoption of this 100 square metre guideline floorspace figure, then pragmatism should be exercised with regard to the application of this 100 square metre policy threshold figure in this case. At no point during their consideration of the appeal applications did the LPA offer the appellant an opportunity to discuss any limitations on the number of covers provided within the appeal premises. 58 covers are not considered to represent an overly large restaurant size for this location within a designated Neighbourhood Centre and applying such a condition would ensure that there would be no rearrangement of the internal accommodation within the appeal premises to increase the number of covers. Hence the true size and level of intensity of use of the proposed restaurant would be modest and appropriate and is capable of being controlled by the LPA through suitable planning conditions. Such a condition would be a relatively straight-forward and accepted way of addressing these amenity concerns of the LPA.

5.31 At no point during their consideration of the appeal applications did the LPA offer the appellant an opportunity to discuss the proposed opening hours, despite this being a specific criterion of Camden Local Plan Policy TC4, as already rehearsed above. As previously stated, the appellant is comfortable with the Planning Inspector restricting the Sundays to Thursdays opening hours to until 2200 hours only, should the Inspector consider this reasonable and necessary to do so. This would ensure that the proposed restaurant use would not be trading as late as other food, drink and entertainment uses within the Brunswick Centre during the week and on Sundays and would only open until 2300 hours on Fridays and Saturdays only. This would provide a further, additional control to ensure that the residential amenities of local residents were respected. For all of the above reasons, the appellant therefore considers that no reasonable and proportionate assessment of the appeal proposals against the criteria to protect residential amenity contained within Camden Local Plan Policies A1, A4, TC2 and TC4 would conclude that the proposed restaurant would compromise these planning policy criteria. The proposed restaurant clearly and demonstrably would not result in any significant adverse impacts upon the amenities of neighbours.

5.32 Paragraph 4.5 of the LPA's delegated report states:

"In considering an appeal for the refusal of permission for the change of use from A1 to A3 at Unit 5, the inspector stated that: "I consider that it would be likely that noise and activity generated by customers of the appeal site would be intrusive to those neighbouring residents and the separation involved would be insufficient to reduce this to an acceptable level. This view is strengthened by the existence of other premises which may generate such activity; the proposal would result in an unacceptable concentration of such uses" (para.10 – ref. 2011/2298/P). This appeal site was situated approximately 40m from the application unit and since this decision there has been no reduction in the number of FD&E units."

- 5.33 The appellant contends that there are material differences between Unit 5 and the appeal site and between the nature of the proposals in both cases. The LPA's selective quoting from the appeal decision letter for Unit 5 omits the consideration of the context that the Inspector applied in that case. A copy of the full decision letter is therefore appended as Appendix 3 to this Statement of Case. The Inspector will note that in the Unit 5 appeal decision the Inspector referred to there being a large restaurant to the right of the appeal premises, which also had associated external seating, and that there were café and café/bar premises to the left (paragraph 6). Furthermore, the Inspector will note that in the Unit 5 appeal decision the Inspector referred to there being an existing concentration of food and drink uses within the immediate vicinity of the appeal site, some of which also had associated external seating; and that the appellant had resisted the suggested LPA's opening hours restrictions and pushed instead for a 2330 hours closing, presumably on a daily basis (paragraph 8). In addition, the Inspector will note that in the Unit 5 appeal decision the Inspector referred to viewing the interior of the appeal premises, which they considered to be a sizeable floorspace capable of accommodating a considerable number of customers, and that no estimates of the number of covers of the proposed restaurant were provided (paragraph 9).
- 5.34 There are therefore considered to be material differences between the two appeal proposals. Unit 18 does not lie within any existing concentration of food, drink and entertainment premises (as the LPA themselves recognise within their delegated report), but Unit 5 did, with a large restaurant premises immediately adjoining that unit. There were also existing external customer seating areas neighbouring Unit 5, whereas the Unit 18 appeal does not propose any external customer seating areas and is not adjoined by any. Unit 18 would also have only 58 covers and would involve around only half of the 175 square metre ground floor area being actively used for customer seating, whereas, from the LPA's records, Unit 5 has a floor area of 392.5 square metres, did not provide any indicative number of covers, and appears to have not provided any detailed proposed layout plans. In addition, in this Unit 18 appeal, the appellant would accept a 2200 hours closing on Sundays to Thursdays and 2300 hours closing on Fridays and Saturdays, whereas in the Unit 5 appeal, the appellant wanted a daily 2330 hours closing. It would also appear from the LPA's records that the appeal at Unit 5 did not provide any site management measures, through an Operational Management Plan, and that their noise assessment concerned only the associated plant and did not consider the use itself as well. It is also the case that each planning proposal ought to be considered on its own individual merits.
- 5.35 The appellant contends that any reasonable and proportionate assessment of the appeal proposals would conclude that they would not result in an overconcentration of food, drink and entertainment uses and would not have a significant adverse impact on the character and function of the designated Neighbourhood Centre and the amenities of neighbours and that there is no genuine nor material conflict with the requirements of Camden Local Plan Policies A1, A4, TC2 and TC4 and their supporting paragraphs and Appendix 4 of the Local Plan.

ii) Would the proposed use of the plant/equipment, when operating at full capacity, be capable of doing so without causing noise disturbance and harm to local amenity?

5.36 The LPA's second refusal reason on appeal application 2018/1447/P stated that the appellant had failed to demonstrate, by way of a suitably comprehensive acoustic survey and impact assessment and a risk-based odour control and impact assessment, that all plant equipment, when operating at full capacity would be capable of doing so without causing noise disturbance and harm to local amenity. Camden Local Plan Policies A1, A4, TC2 and TC4 were cited within the LPA's refusal reason to support this concern. Section 4 of the LPA's delegated report deals with the issue of residential amenity raised by the appeal planning application. The assessment of this issue within the LPA's delegated report is contained within paragraphs 4.8 to 4.15 (see Appendix 1).

5.37 The LPA's delegated report states that an acoustic report is required, in order to ensure neighbouring amenity is not harmed (paragraph 4.9 of the LPA's delegated report). The LPA's delegated report adds that no environmental noise survey was undertaken to determine existing background noise levels or a noise emission limit for the proposed mechanical plant operation; and no noise predictions were undertaken to demonstrate that the proposed plant complies with the LPA's relevant noise limits (paragraph 4.10 of the LPA's delegated report). The LPA's delegated report also considers potential odours and fumes. The LPA's delegated report adds that it expects all development likely to generate nuisance odours to install appropriate extraction equipment and other mitigation measures, which should be incorporated within the building where possible. Whilst the appellant's menu would be limited and may not include the need for kitchen equipment such as fryers, the intensity of primary cooking on site was considered by the LPA to raise significant concerns in terms of the handling of odour and fumes (paragraph 4.12 of the LPA's delegated report). The LPA's delegated report states that an assessment in line with Annex C of "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems, Defra (2005)" is required (paragraph 4.13 of the LPA's delegated report: This section of the LPA's delegated report concludes:

"In light of the above, the proposed kitchen extract is considered likely to result in a concentration of odour and fumes within this enclosed space, which would in turn be likely to permeate upwards from the open access points to the basement levels towards residential units above as well as to public footways. In the absence of full information this would be the case for the proposed kitchen equipment, but it should also be noted that if approved the Council would have limited control to restrict more disruptive forms of cooking from commencing onsite as permission is sought for an A3 use and the submitted OMP is deficient of detailed information. Similarly, were permission granted the relocation of the kitchen at a later date to a lower basement level (allowing greater space for covers) would also not require further permission, meaning that the use could intensify further without express consent. In light of the above, in the absence of comprehensive reporting assessing the suitability of the discharge point and evidence of exceptional levels of odour control to avoid the fumes rising up and affecting residents and the amenity of the area, this equipment

cannot be found to satisfy the requirements of policy A1." (paragraph 4.15 of the LPA's delegated report – see Appendix 1 of this Statement of Case).

- 5.38 The relevant policies of the Camden Local Plan that were cited by the LPA within their second refusal reason on appeal application 2018/1447/P were Policies A1, A4, TC2 and TC4. Policy A1 seeks to protect the amenity of communities, occupiers and neighbours. Supporting paragraph 6.3 adds that the LPA will expect development to avoid harmful effects on amenity and take appropriate measures to minimise potential negative impacts. Supporting paragraph 6.21 addresses odour and fumes from commercial cooking and supporting paragraph 6.22 adds that the LPA will require all development likely to generate odours to install appropriate extraction equipment, which should be sited sensitively on listed buildings and within conservation areas (see paragraph 4.3 above). Policy A4 and its supporting paragraphs are principally concerned with the management of potential noise and vibration from plant and machinery (see paragraph 4.4 above). Policy TC2 includes the avoidance of harmful impacts on residents and the local area within its wider criteria (see paragraph 4.5 above). The criteria of Policy TC4 also includes a consideration of amenity impacts on neighbours (criterion g) and noise and vibration generated either inside or outside of the site (criterion i) and fumes likely to be generated and the potential for effective and unobtrusive ventilation (criterion j). The appellant addresses these policy criteria below, as part of their rebuttal of the LPA's conclusion that the appellant has failed to demonstrate that the proposed plant equipment would not harm residential amenity.
- 5.39 As already rehearsed above, during the extensive correspondence with the appellant's agent prior to determining the appeal applications, the LPA did not at any point raise any concerns about the potential implications upon the residential amenities of neighbouring properties arising from the operation of the proposed plant equipment, until the *'fait accompli'* e-mail issued to the appellant's agent on 25/05/2018. Despite a specific request by the appellant's agent, the LPA denied the appellant any opportunity to address these additional and late concerns of the LPA. These appeals are therefore the first opportunity that the appellant has had to address these concerns.
- 5.40 As already rehearsed above, these appeals are accompanied by an environmental noise impact assessment, which considers and addresses the potential noise implications of the proposed plant equipment upon the residential amenities of local residents. The noise impact assessment considers the noise implications of the proposed plant, set within the existing ambient noise environment around the appeal site, and concludes that the appeal proposals would not adversely impact upon residential amenity given that plant noise would be compliant with the LPA's own adopted policy and would be contained in an area that is substantially separated from residential properties.
- 5.41 Furthermore, these appeals are also accompanied by a detailed odour assessment. The Inspector's attention is therefore respectfully drawn to this odour assessment, which has been produced in line with DEFRA guidelines. The odour assessment considers the potential odour

nuisance caused by the operation of the proposed kitchen plant at the appeal site, set within a surveyed assessment of the ambient odour environment surrounding the appeal site, and concludes that the proposed pizza restaurant will have little impact on the overall odour character of the area and would be unlikely to cause any significant impact on any nearby residential receptors.

iii) Would the illuminated signage be overly visually prominent and result in visual clutter, which would fail to preserve the building's special architectural and historic interest?

5.42 The LPA's refusal reason of the advertisement consent appeal application 2018/1448/A states that, solely by reason of the proposed illumination, the proposed signage would be overly visually prominent and result in visual clutter, which would fail to preserve the building's special architectural and historic interest. The LPA therefore accepts that non-illuminated versions of the proposed appeal signage would be acceptable to them and it is only the internal illumination of this signage that is objectionable for the LPA. The LPA's delegated report (see Appendix 1 of this Statement of Case) is clear that every other element of the proposed external alterations associated with the appeal proposals is considered to be acceptable to them.

5.43 Paragraph 5.7 of the LPA's delegated report adds that the proposed works would include the installation of illuminated signage, both externally as well as within the shop itself. Whilst the proposed projecting sign would be provided within existing housing (meaning Listed Building Consent would not be required for these adverts), the proposed fascia would be a new addition affixed internally to listed fabric, triggering a requirement for listed building consent. Paragraph 5.8 of the LPA's delegated report adds that this provision of illuminated signage within the centre is considered to result in the proposed signage disrupting the uniformity and consistency of signage across the centre, meaning that they would appear overly visually prominent. This is considered by the LPA to have a detrimental impact on the special architectural and historic interest of the listed building and to the Bloomsbury Conservation Area and be contrary to policies D1, D2 and D3. Paragraph 5.9 of the LPA's delegated report adds that although this harm would be considered 'less than substantial', in accordance with the then para.134 of the 2012 NPPF (now updated by the 2018 Framework – see paragraph 4.7 above) such harm would need to be weighed against any public benefit derived from the development when assessing the case. In this instance the LPA concluded that the development would not provide any public benefits which might outweigh the harm identified to the designated heritage assets, meaning that the works would not be supported.

5.44 Paragraph 5.10 of the LPA's delegated report states that advertisement consent is sought for the display of one internally illuminated projecting sign as well as one internally illuminated fascia sign. Although the fascia advert would be displayed within the unit, as it would be illuminated and within 1m of the shopfront it would not benefit from deemed consent. As already rehearsed above, in

paragraph 3.5, the appellant disagrees with the LPA in their assessment that the fascia sign requires advertisement consent. It is clearly the case that the internal fascia sign benefits from deemed consent by virtue of Class 12 of the advertisement regulations. Consequently, the fascia sign only requires listed building consent. From the commentary of the LPA within paragraph 5.7 of their delegated report, they consider that the projecting signs only require advertisement consent.

- 5.45 Paragraph 5.11 of the LPA's delegated report states that across the centre, signage generally remains highly consistent in terms of scale, number, positioning and a lack of illumination. Paragraph 5.12 of the LPA's delegated report concludes that, while the appeal signage would include an appropriate number, type and size of advertisements; the proposal to make these adverts illuminated is of concern for the LPA, as they consider that '*...generally all signage within the centre is not illuminated...*' which gives the Brunswick Centre a consistent visual appearance and avoids visual clutter. The LPA consider that the proposed illuminated signage would act to punctuate the otherwise consistent approach for adverts and would mean that the signs become very visually prominent. The LPA consider that the projecting signs in particular are visible not only in the immediate vicinity but also in long views down the centre of the arcade and, in these views as well as the immediate context, the proposed signage would appear overly disruptive. As such the LPA considers that the proposed illuminated signage causes harm to the visual amenity of the local area as well as the character and appearance of the Bloomsbury Conservation area and is contrary to policies D1, D2 and D3.
- 5.46 The appeals are accompanied by an assessment of the existing signage displayed at the Brunswick Centre (see Appendix 4 of this Statement of Case). The Inspector will note that the existing visual character of the Brunswick Centre includes an established display of illuminated signage by a large number of the commercial premises. The appellant therefore does not agree with the LPA's fundamental assertion that the Brunswick Centre signage is characterised by generally non-illuminated signage. This is simply not the case. Within the actual visual context of signage displayed within the Brunswick Centre, the appeal signage would in fact be similar, sympathetic and visually compatible. In reality, any reasonable and proportionate assessment of the appeal signage would conclude that it would not be overly visually prominent and would not result in visual clutter and would preserve the building's special architectural and historic interest.
- 5.47 The appeal signage is intended to rebrand and visually identify the appeal premises for its customers. Illuminated signage is a necessary and essential part of the street-scape announcement of commercial units within the Brunswick Centre. The proposed restaurant would be trading during hours of darkness and it is critically important that the associated signage can be seen at night. The appeal signage would be a key part of the visual character and street announcement of the appellant's business at this site. The appellant would be making significant investment into these premises. It is important that the site maintains sufficient commercial street presence and announcement as a restaurant, otherwise the appeal site will suffer seriously

detrimental effects on the ability to attract customers, thereby subsequently affecting sales and vitality, to the detriment of the economic viability of the premises. The proposed appeal signage would, in reality, be only genuinely noticeably visible within the general vicinity of this part of the Brunswick Centre and it would have no genuine material impact upon the wider street scene beyond the immediate environs of the appeal site. Both full and part-time staff would be employed at this restaurant and would be reliant on it for their income. Any consequential drop in sales will affect the ability of the appellant to retain their proposed staffing levels.

- 5.48 The evening and night-time leisure market is already suffering from the on-going effects of the economic recession, together with the continuing uncertainties over 'Brexit'. The appellant has already rehearsed above the true vacancy and marketing position of the commercial units at the Brunswick Centre, with direct input from the landlord for the Brunswick Centre (see Appendix 2 to this Statement of Case). The appeal unit is currently vacant and the landlord has struggled to find a commercial operator to bring this unit back into beneficial use. The continued closure of this unit has a far more detrimental impact upon the character and appearance of this listed building and the Bloomsbury Conservation Area and the special historic interest of this listed building than the proposed illumination of the appeal signage. The continuing vacancy of the appeal premises gives a strong negative message to other operators and potential investors into the Brunswick Centre.
- 5.49 The relevant considerations for determining proposals for advertisement consent comprise visual amenity and public safety only. Visual amenity is not only related to the aesthetics of the specific signage but must relate to visual considerations of the surrounding area, including any detriment caused by loss of investment to commercial buildings and their external appearance.
- 5.50 Both the LPA and the appellant agree that the appeal signage would not result in substantial harm to this listed building. No architectural or historic features of this listed building would be obscured by the proposed signage and the methods of fixing to the building would respect its historic fabric. The size, positioning and method of fixing of the appeal signage would also closely both the previously installed signage at this site and what exists at other commercial units within the Brunswick Centre. The materials and proportions of the appeal signage are appropriate and sympathetic and the overall scale of the appeal signage, set against the scale of the host building, is modest. It is therefore considered that the appeal signage represents a reasonable proposal, given the appellant's commercial operational requirements at this site. Furthermore, the appellant's intentions and reasoning for the proposed appeal signage, are to assist in enhancing and maintaining the economic viability of the proposed beneficial use of this listed building. This beneficial use would ensure this listed building's on-going maintenance and upkeep, as well as the retention of public access into this listed building; all of which are considered to be clearly within the public interest for this listed building.
- 5.51 Consequently, it is considered that any modest (and certainly less than substantial) harm caused by the proposed illumination of the appeal signage is clearly heavily outweighed by the public benefits it would generate for the economic viability and retention of this beneficial re-use of this

listed building, to ensure its continued upkeep and maintenance as well as ensuring continued public access into this listed building. The appellant strongly disagrees with the LPA on this issue. There are clearly significant public benefits derived by the proposed appeal signage, given its important contribution to the proposed on-going beneficial use, long-term maintenance and facilitation of public access of and into this listed building. The intransigence of the LPA over the proposed illumination of the appeal signage would have a serious detrimental effect on the economic viability of the proposed beneficial use of these premises and the local employment, economic activity and community leisure provision that it would generate; as well as for the on-going beneficial use, upkeep and maintenance of this listed building for a use that allows public access into it.

5.52 The Local Planning Authority does not appear to have considered the appellant's reasoning behind the proposed display of the appeal signage, nor the contribution that this would make to attracting custom, with its consequential contribution to the upkeep and wellbeing of this listed building. The 2018 Framework requires local planning authorities to approach decision-making in a positive and creative way, working proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area; with decision-makers at every level seeking to approve applications for sustainable development where possible (paragraph 38).

5.53 Furthermore, whilst it is hoped that the Inspector will agree with the appellant that the proposed signage scheme is acceptable, for all of the reasons rehearsed above, if the Inspector considered that the projecting signage alone was unacceptable, for whatever reason, the appellant would be comfortable with this element of the proposed signage scheme being excluded from the consented signage scheme. This could be easily secured through a part-approval and part-refusal of the advertisement consent appeal and a suitably worded condition on the associated listed building consent appeal decision, which specifically excluded listed building consent for the projecting signage.

iv) Would the proposed projecting sign and internal fascia sign, by reason of the proposed illumination, be overly prominent and out of character with the predominantly non-illuminated signage within the wider Brunswick Centre and result in visual clutter that would detract from the visual amenity of the area, the special character of the listed building and the character and appearance of this part of the Bloomsbury Conservation Area?

5.54 For all of the reasons already rehearsed above in section iii, the appellant contends that the proposed illumination of the appeal signage would not be overly prominent nor out of character with the alleged predominantly non-illuminated signage within the wider Brunswick Centre and would not result in any visual clutter that would detract from the visual amenity of the area, the special character of the listed building and the character and appearance of this part of the Bloomsbury Conservation Area. Any reasonable and proportionate assessment of the proposed illumination of the appeal signs would agree with the appellant on this.

v) Are the proposals in conflict with any other planning policy?

- 5.55 The appellant has already addressed above the planning policies cited by the LPA in their refusal reason. The appellant undertook a thorough appraisal and assessment of the relevant planning policy context, within which the appeal proposals should be assessed, within the Planning Support Statement that accompanied the appeal applications. The Inspector's attention is respectfully drawn to that document and its planning policy appraisal. Furthermore, the appellant has addressed the 2018 Framework above in paragraphs 4.1 to 4.8 inclusive. The appellant considers that there is no conflict between the appeal proposals and the other relevant planning policy context. Through their exercising of their development control powers, the LPA has also agreed that there is no conflict with any other relevant planning policy, other than those that the LPA cite within their refusal reasons.
- 5.56 It is also considered that the appeal proposals are supported by Development Plan policies which the LPA did not include within their refusal reasons, as rehearsed within the appellant Planning Support Statement. The proposed restaurant would bring general benefit to the whole economy of the Brunswick Centre, in accordance with the aspirations of Policies G1 and E1 of the Camden Local Plan. The appeal proposals also include appropriate management measures for servicing and waste management, together with the storage and sorting of recyclable materials. The proposed use would therefore accord with the aims and aspirations of Policies CC5, TC4, CC2 of the Camden Local Plan and the guidance of CPG1 parts 10 and 11 and CPG5 part 6. The LPA agrees with the appellant on all of this within section 6 of their delegated report (see Appendix 1 of this Statement of Case).
- 5.57 The advice of the 2018 Framework should be applied in this case. LPAs should approach decisions on proposed development in a positive and creative way and to 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 (paragraph 38). Planning policies and decisions should help to create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (paragraph 80). Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should promote the long-term vitality and viability of town centres and allow them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries and allow for a suitable mix of uses (paragraph 85). Planning policies and decisions should promote social interaction and opportunities for meetings between people who might not otherwise come into contact with each other (paragraph 91). In order to provide the social and recreational facilities and services the community needs, planning policies and decisions should plan positively for the provision and use of shared spaces and meeting places, such as public houses (paragraph 92).

It is also considered that the location of this proposed restaurant facility is highly sustainable and accords with the wider aspirations of section 9 of the 2018 Framework. Leisure and entertainment facilities also have a vital role in enhancing and sustaining the vitality and viability of urban centres, as specifically recognised in the 'Ensuring the Vitality of Town Centres' SPG.

5.58 It is therefore clear that any fair reading of the aims and aspirations of the national and local planning policy context affecting this site, would conclude that there is no material conflict with the proposed use of the appeal site and its associated illuminated signage.

vi) Are there any other material considerations?

5.59 The appellant has rehearsed all of the relevant, material planning considerations within their Planning Support Statement that accompanied the appeal applications and the Inspector's attention is respectfully drawn to this document. The fundamental benefits that the proposed restaurant use would bring for the vitality and viability of the Brunswick Centre and the wider local area are key material planning considerations in this case. From their exercising of their development control powers, the LPA has agreed with the appellant on this (please refer to the LPA's delegated report attached as Appendix 1 to this Statement of Case). The implications of the appeal proposals for the vitality and viability of the Brunswick Centre did not form part of the LPA's refusal reasons.

5.60 Allowing for the restaurant use of the appeal premises would ensure a continuing and active use of this unit, with an active frontage, in an appropriate town centre use that would be in keeping with the mixed character and economic vibrancy of the Brunswick Centre and this area of Camden as a whole. It would directly assist in maintaining and strengthening the role of the Brunswick Centre and this area of Camden by improving its attractiveness and helping to diversify its evening economy and leisure function; ensuring that this area remains vibrant, attractive and accessible. ICCO would be the only specialist pizza operator in the Brunswick Centre and would add to the diversification of food offerings within the centre. The proposed use of the appeal site in this highly accessible and sustainable location is also in compliance with the aspirations for sustainable transport. The appeal site has a PTAL rating of 6b (the most accessible) and benefits from excellent transport options for both customers and staff. The proposed restaurant use would also increase levels of activity in the wider area, as customers would compare the various food-led offers available locally. The increased footfall between the various competing food-led offers would encourage additional visits to the various shopping and leisure facilities available locally, in addition to helping to facilitate longer town centre customer dwell-times. The appeal proposals would also strongly support the local economy and would accord with the principles, aims and objectives of the 2018 Framework. The appeal proposals would generate significant local employment, both through direct staff jobs on site and those indirectly employed at suppliers, head office staff, cleaners, maintenance workers, etc. The employment generated by the proposed restaurant use would be considerably greater than that generated by a more conventional retail

use of this unit, which would be a material benefit for the local area. The financial turnover of the proposed restaurant at the appeal site would also be greater than would occur with any conventional, retail use; thereby the appeal proposals would also significantly contribute to the vitality and viability of the Brunswick Centre. In summary, the appeal proposals would enhance the economic role and function of the site and wider area. The 2018 Framework is clear that LPAs need to exercise their development control powers appropriately, giving due cognisance to the actual benefits to the vitality and viability of the Brunswick Centre, rather than inflexibly applying draconian policies without further thought.

5.61 As outlined within the appellant's Planning Support Statement that accompanied the appeal applications, there are therefore numerous research reports, conducted by independent and highly qualified institutions and organisations advising of various high street strategies in the face of a changing retail climate. This changing climate has come about for various reasons but none so apparent as the rapid domination of internet shopping. Subsequently, the overwhelming conclusion drawn by all, advise of the need to diversify the uses located within the high street so as to broaden the offering to people and secure higher footfall. The University of Southampton report, 'High Street Performance & Evolution', makes quite clear the fact that a key driver to increasing footfall within high streets is through the incorporation of leisure uses. The proposed restaurant use should be viewed within this context. It would help provide that 'experiential' social interaction experience for the residents, shoppers, workers and visitors who use the Brunswick Centre and would directly help to attract and retain people within this centre, thereby helping to increase the dwell times and spending of these customers. In this way, the proposed restaurant use would directly assist the economic well-being and vitality and viability of the Brunswick Centre and the LPA should have, in reality, welcomed this use of the appeal site, rather than refusing its consent. Central Government is actively encouraging flexibility in high street uses without the need to obtain planning permission. Permitted development rights now allow the conversion of shops to cafés, restaurants and other uses for a period of two years without the need for planning permission. It is quite apparent that Central Government supports flexibility in high street uses, particularly where these relate to food and drink-led uses. Both the 2019 Framework and current Government initiatives support the proposed use at the appeal site and this support should be reflected in the allowing of this appeal.

5.62 The prime measure of the vitality of a town centre is the number of people attracted to it at different times of the day and evening. The proposed restaurant use of the appeal site would attract high levels of pedestrian footfall that would support the retail and service functions of the Brunswick Centre and the wider area of this part of Camden. The proposed use would help meet the local food needs of residents, shoppers, workers and visitors to this part of Camden and would also increase the time spent at the site by a large number of customers, above and beyond that associated with a Class A1 retail use of this unit. It is highly likely that many customers would combine their visit to the proposed use with other trips and reasons to be in and around the Brunswick Centre; whether for work, leisure or shopping purposes. The character and function of

the wider area of this part of Camden is driven by a lively mix of uses, which include retail and more leisure-orientated uses. It is considered that the proposed use of the appeal site would complement the role and function of the Brunswick Centre and the wider area of this part of Camden as a whole. ICCO would be the only specialist pizza operator in the Brunswick Centre and would add to the diversification of food offerings within the centre. The proposed use would attract a significant number of customers throughout the daytime and into the early evening, at times when a Class A1 retail use would generally be quieter. The proposed use of this unit would therefore not be harmful to the character and function of the area and would provide a use that would attract the public into the area. The proposed use would have a positive effect on the shopping environment of the area and would encourage combined trips which would attract pedestrian activity into the Brunswick Centre and wider area. The increased number of customers who are likely to combine visits to these premises with shopping, leisure and work trips would add to the vitality of the Brunswick Centre. Subsequently, the viability of the Brunswick Centre and the wider area of this part of Camden in general would be enhanced by the presence of the proposed use at this site. The proposed restaurant use would clearly enhance the vitality and viability of this part of the Brunswick Centre and the nature of the proposed use would not result in any detrimental impacts on the function and character of the Brunswick Centre.

- 5.63 Furthermore, it is considered that the majority of the day-to-day convenience shopping needs of the local residents within the Brunswick Centre are in reality already well served by the presence of the large 'Waitrose' supermarket premises at 41-64 Brunswick Centre (which is understood to be open 0800 to 2200 hours Mondays to Fridays, between 0800 and 2100 hours on Saturdays and between noon and 1800 hours on Sundays) and the 'Sainsburys Local' supermarket located opposite the appeal site at Unit 5 Brunswick Centre (which is understood to be open daily between 0700 and 2300 hours).
- 5.64 The proposed restaurant use of the appeal site would sit very comfortably within the local context of uses within the Brunswick Centre and would complement the range of services and facilities provided within the centre to the local area. Allowing for the proposed restaurant use of the appeal premises would ensure an active use of these premises, with an active frontage, in an appropriate town centre use that would be in keeping with the mixed character and economic vibrancy of the Brunswick Centre. It would help attract higher levels of pedestrian footfall that would support the retail and service functions of the Brunswick Centre and the continuing vitality and viability of this important urban centre location. Rejecting the proposed restaurant here risks this unit continuing to remain vacant, empty and unused; or be subject to a series of failing, short-term tenants; either of which would lead to the appeal premises contributing little to the vitality, viability, vibrancy and attractiveness of the Brunswick Centre and would risk a continuing negative image for this part of the Brunswick Centre.

5.65 Given all of this context, it cannot be reasonably concluded that the proposed use would warrant a refusal of planning permission, listed building consent and advertisement consent and the Inspector is respectfully requested to allow these appeals.

6.0 Summary & Conclusions

- 6.1 No reasonable and proportionate assessment of the true distribution and realistic position regarding the proposed distribution of food, drink and entertainment uses within the Brunswick Centre could conclude that the appeal proposals would represent an overconcentration of food, drink and entertainment uses and the appeal proposals would not have a significant adverse impact on the character and function of the designated Neighbourhood Centre and the amenities of neighbours; especially given the compliance of the appeal proposals with Camden Local Plan Policy TC2 and Local Plan Appendix 4 on the overall Class A1 to food, drink and entertainment uses percentage criteria and the avoidance of a continuous non-Class A1 frontage with the adjoining units, as the LPA themselves recognise. Furthermore, as rehearsed above, there is, in reality, no material conflict with the relevant requirements of the criteria of Policy TC4 and its supporting paragraphs. In reality, therefore, the proposed use of the appeal site would not result in an overconcentration of food, drink and entertainment uses and that the appeal use would not have any significant, adverse impact on the character and function of the designated Neighbourhood Centre and the amenities of neighbours. Residential amenity would, in reality, not be materially affected.
- 6.2 To include authorised Class A1 uses within their assessment of whether or not there is an overconcentration of food, drink and entertainment uses is considered to be perverse logic by the LPA. It is also considered flawed logic by the LPA to conclude that the existing, authorised Class A1 uses which sell food do not contribute towards meeting the day-to-day shopping needs of local residents. No reasonable and proportionate assessment of this distribution could conclude that this would represent an overconcentration of food, drink and entertainment uses; especially given the compliance of the appeal proposals with Camden Local Plan Policy TC2 and Local Plan Appendix 4 on the overall Class A1 to food, drink and entertainment uses percentage criteria and the avoidance of a continuous non-Class A1 frontage with the adjoining units, as the LPA themselves accept.
- 6.3 Despite the opening passing comments in paragraph 3.11 of the LPA's delegated report, the LPA also fails to properly consider the changing shopping habits and spending patterns and what their implications are for the genuine requirements for convenience shopping for local residents. The LPA appear to be wedded to a now outdated concept of what are the genuine convenience shopping needs of local residents now; especially with the significant growth of the on-line sector; and what shopping and service centres, such as the Brunswick Centre, now need to do to remain economically viable and commercially relevant to providing the shopping and servicing needs of local residents.
- 6.4 There are therefore numerous research reports, conducted by independent and highly qualified institutions and organisations advising of various high street strategies in the face of a changing

retail climate. This changing climate has come about for various reasons but none so apparent as the rapid domination of internet shopping. Subsequently, the overwhelming conclusion drawn by all, advise of the need to diversify the uses located within the high street so as to broaden the offering to people and secure higher footfall. A key driver to increasing footfall within high streets is through the incorporation of leisure uses. The proposed restaurant use should be viewed within this context. It would help provide that 'experiential' social interaction experience for the residents, shoppers, workers and visitors who use the Brunswick Centre and would directly help to attract and retain people within this centre, thereby helping to increase the dwell times and spending of these customers. In this way, the proposed restaurant use would directly assist the economic well-being and vitality and viability of the Brunswick Centre and the LPA should have, in reality, welcomed this use of the appeal site, rather than refusing its consent.

6.5 The Brunswick Centre's landlord has provided key information on the genuine marketing and vacancy situation within the Brunswick Centre and the reasons why the Brunswick Centre needs to adapt to this radically changed commercial environment, in order to keep commercial units open and trading and helping to meet the shopping and servicing needs of local residents. Commercial shopping and service centres, such as the Brunswick Centre, cannot now simply just rely upon provision towards meeting the convenience shopping needs of local residents in order to remain commercially viable; despite this appearing to be the LPA's approach. Such centres need to attract custom from further afield if they are to remain commercially viable and vibrant to meet the needs of all local residents, visitors, shoppers and workers within the wider catchment area served by the Brunswick Centre. The alternative to allowing this necessary adaptation to take place is permanently vacant commercial units plagued by a series of short term lets at discounted rental rates, which would further undermine the commercial upkeep and attractiveness of centres such as the Brunswick Centre and would not assist in the on-going upkeep and maintenance of listed buildings such as the Brunswick Centre complex.

6.6 The appellant's environmental noise impact assessment provides a detailed, evidenced assessment of the true likely amenity implications raised by the operation of the proposed use at the appeal site and considers and addresses the potential implications of both the proposed use and its associated activities and the proposed associated plant upon the residential amenities of local residents. The noise impact assessment provides a thorough, detailed and evidenced assessment of the existing ambient noise environment around the appeal site and an assessment of the noise implications of the proposed plant; together with a surveyed assessment of the existing noise environment generated by the operation of one of the appellant's existing restaurants, to inform its assessment of the likely noise impacts of both the proposed use and its associated plant. The detailed assessment provided by the accompanying noise impact assessment concludes that the appeal proposals would not adversely impact upon residential amenity given that: activity will be contained by the building (and no remedial works are required to the existing building); plant noise would be compliant with the LPA's own adopted policy and would be contained in an area that is substantially separated from residential properties; operational practices to control noise

would be implemented; and patron departures would be relatively early in the evening, in small numbers, as is typical for restaurants such as is proposed, into an area well-served by public transport.

- 6.7 The appellant's proposed trading opening hours within the appeal planning application were between 0700 to 2300 hours on Mondays to Fridays and 0900 to 2300 hours on Saturdays and Sundays. The appellant is willing to accept reduced trading hours on Sundays to Thursdays of a 2200 hours closing; with Friday and Saturday closing remaining at 2300 hours; should the Inspector consider it to be reasonable and necessary to limit the proposed trading hours accordingly.
- 6.8 Whilst the overall floorspace of the appeal premises does exceed the LPA's 100 square metres policy guidance floorspace threshold for food, drink and entertainment uses within the Brunswick Neighbourhood Centre, nearly half of the floorspace is formed from the upper and lower basement accommodation, which is only to be used for the back-of-house operations. The ground floor area comprises 175 square metres of accommodation and around half of this floorspace would also be back-of-house accommodation. Therefore, the active area of restaurant used for customer seating would be below the LPA's 100 square metre guideline policy figure. Furthermore, the appellant has estimated that the maximum number of covers achieved by their proposed layout and use of the ground floor accommodation of the appeal premises would be around 58 and the appellant is comfortable to have this estimated maximum number of covers figure, together with a restriction on any use of the upper and lower basement levels for customer seating, included within a suitably worded planning condition restriction, if the Inspector considers it reasonable and necessary to do so. This would provide a further control on the true intensity of the use of the ground floor accommodation. Provided that suitable measures are in place in order to ensure that residential amenity is adequately protected, which is the sole reason for the LPA's adoption of this 100 square metre guideline floorspace figure, then pragmatism should be exercised with regard to the application of this 100 square metre policy threshold figure in this case. 58 covers are not considered to represent an overly large restaurant size for this location within a designated Neighbourhood Centre and applying such a condition would ensure that there would be no rearrangement of the internal accommodation within the appeal premises to increase the number of covers. Hence the true size and level of intensity of use of the proposed restaurant would be modest and appropriate and is capable of being controlled by the LPA through suitable planning conditions.
- 6.9 The appellant contends that there are material differences between Unit 5 and the appeal site and between the nature of the proposals in both cases. The LPA's selective quoting from the appeal decision letter for Unit 5 omits the consideration of the context that the Inspector applied in that case. Unit 18 does not lie within any existing concentration of food, drink and entertainment premises (as the LPA themselves recognise within their delegated report), but Unit 5 did, with a large restaurant premises immediately adjoining that unit. There were also existing external

customer seating areas neighbouring Unit 5, whereas the Unit 18 appeal does not propose any external customer seating areas and is not adjoined by any. Unit 18 would also have only 58 covers and would involve around only half of the 175 square metre ground floor area being actively used for customer seating, whereas, from the LPA's records, Unit 5 has a floor area of 392.5 square metres, did not provide any indicative number of covers, and appears to have not provided any detailed proposed layout plans. In addition, in this Unit 18 appeal, the appellant would accept a 2200 hours closing on Sundays to Thursdays and 2300 hours closing on Fridays and Saturdays, whereas in the Unit 5 appeal, the appellant wanted a daily 2330 hours closing. It would also appear that the appeal at Unit 5 did not provide any site management measures and that their noise assessment concerned only the associated plant and did not consider the use itself as well. It is also the case that each planning proposal ought to be considered on its own individual merits.

- 6.10 The proposed use of the plant/equipment, when operating at full capacity, would be capable of doing so without causing noise disturbance and harm to local amenity. The accompanying environmental noise impact assessment considers and addresses the potential noise implications of the proposed plant equipment upon the residential amenities of local residents. The noise impact assessment considers the noise implications of the proposed plant, set within the existing ambient noise environment around the appeal site, and concludes that the appeal proposals would not adversely impact upon residential amenity given that plant noise would be compliant with the LPA's own adopted policy and would be contained in an area that is substantially separated from residential properties. Furthermore, the accompanying detailed odour assessment, which has been produced in line with DEFRA guidelines, considers the potential odour nuisance caused by the operation of the proposed kitchen plant at the appeal site, set within a surveyed assessment of the ambient odour environment surrounding the appeal site, and concludes that the proposed pizza restaurant will have little impact on the overall odour character of the area and would be unlikely to cause any significant impact on any nearby residential receptors.
- 6.11 The illuminated signage would not be overly visually prominent and would not result in visual clutter, and would preserve the building's special architectural and historic interest. The proposed signage and very modest additional external plant would both preserve the building's special architectural and historic interest and respect the character and appearance of the Bloomsbury Conservation Area. The existing visual character of the Brunswick Centre includes an established display of illuminated signage by a large number of the commercial premises. The appellant therefore does not agree with the LPA's fundamental assertion that the Brunswick Centre signage is characterised by generally non-illuminated signage. This is simply not the case. Within the actual visual context of signage displayed within the Brunswick Centre, the appeal signage would in fact be similar, sympathetic and visually compatible. In reality, any reasonable and proportionate assessment of the appeal signage would conclude that it would not be overly visually prominent and would not result in visual clutter and would preserve the building's special architectural and historic interest. Illuminated signage is a necessary and essential part of the street-scape announcement of commercial units within the Brunswick Centre. The proposed restaurant would

be trading during hours of darkness and it is critically important that the associated signage can be seen at night. It is important that the site maintains sufficient commercial street presence and announcement as a restaurant, otherwise the appeal site will suffer seriously detrimental effects on the ability to attract customers, thereby subsequently affecting sales and vitality, to the detriment of the economic viability of the premises. The proposed appeal signage would, in reality, be only genuinely noticeably visible within the general vicinity of this part of the Brunswick Centre and it would have no genuine material impact upon the wider street scene beyond the immediate environs of the appeal site.

6.12 Both the LPA and the appellant agree that the appeal signage would not result in substantial harm to this listed building. No architectural or historic features of this listed building would be obscured by the proposed signage and the methods of fixing to the building would respect its historic fabric. The size, positioning and method of fixing of the appeal signage would also closely both the previously installed signage at this site and what exists at other commercial units within the Brunswick Centre. The materials and proportions of the appeal signage are appropriate and sympathetic and the overall scale of the appeal signage, set against the scale of the host building, is modest. It is therefore considered that the appeal signage represents a reasonable proposal, given the appellant's commercial operational requirements at this site. Furthermore, the appellant's intentions and reasoning for the proposed appeal signage, are to assist in enhancing and maintaining the economic viability of the proposed beneficial use of this listed building. This beneficial use would ensure the both this listed building's on-going maintenance and upkeep, as well as the retention of public access into this listed building; all of which are considered to be clearly within the public interest for this listed building. Consequently, it is considered that any modest (and certainly less than substantial) harm caused by the proposed illumination of the appeal signage is clearly heavily outweighed by the public benefits it would generate for the economic viability and retention of this beneficial re-use of this listed building, to ensure its continued upkeep and maintenance as well as ensuring continued public access into this listed building. There are clearly significant public benefits derived by the proposed appeal signage, given its important contribution to the proposed on-going beneficial use, long-term maintenance and facilitation of public access of and into this listed building.

6.13 The appeal unit is currently only partially occupied through a short-term, heavily discounted let and the landlord has struggled to find a commercial operator to bring this unit back into permanent beneficial use. The continued closure of this unit, punctuated only by short-term partial lets, would have a far more detrimental impact upon the character and appearance of this listed building and the Bloomsbury Conservation Area and the special historic interest of this listed building than the proposed illumination of the appeal signage. The continuing vacancy and series of short-term lets of the appeal premises gives a strong negative message to other operators and potential investors into the Brunswick Centre.

- 6.14 The issues which form the basis of the LPA's refusal reasons were only raised by the LPA on 25/05/2018 at 1603 hours, when the LPA also advised that refusal was imminent unless the applications were withdrawn by the afternoon of the 29/05/2018 (effectively a half working days' notice to withdraw the applications or have them refused, given the bank holiday weekend). Despite the request of the appellant's agent, also sent on 25/05/2018, to allow time for the appellant to address these additional, late issues raised by the LPA, the LPA did not allow the appellant the opportunity to address these. The only reply to the appellant's agent's request for the chance to address the additional, late issues raised by the LPA was the final response of the LPA on 04/06/2018, which also attached the refusal notices, backdated to 01/06/2018. This is considered to be unreasonable behaviour by the LPA, which prevented the appellant the opportunity to address the additional and late issues raised by the LPA, which could have saved time considering these issues at appeal.
- 6.15 The advice of the 2018 Framework should be applied in this case. LPAs should approach decisions on proposed development in a positive and creative way and to 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 (paragraph 38). Planning policies and decisions should help to create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (paragraph 80). Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should promote the long-term vitality and viability of town centres and allow them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries and allow for a suitable mix of uses (paragraph 85). Planning policies and decisions should promote social interaction and opportunities for meetings between people who might not otherwise come into contact with each other (paragraph 91). In order to provide the social and recreational facilities and services the community needs, planning policies and decisions should plan positively for the provision and use of shared spaces and meeting places, such as public houses (paragraph 92). It is also considered that the location of this proposed restaurant facility is highly sustainable and accords with the wider aspirations of section 9 of the 2018 Framework.
- 6.16 It is also considered that the appeal proposals are supported by Development Plan policies which the LPA did not include within their refusal reasons. The proposed restaurant would bring general benefit to the whole economy of the Brunswick Centre, in accordance with the aspirations of Policies G1 and E1 of the Camden Local Plan. The appeal proposals also include appropriate management measures for servicing and waste management, together with the storage and sorting of recyclable materials. The proposed use would therefore accord with the aims and aspirations of Policies CC5, TC4, CC2 of the Camden Local Plan and the guidance of CPG1 parts 10 and 11 and CPG5 part 6.

- 6.17 Leisure and entertainment facilities also have a vital role in enhancing and sustaining the vitality and viability of urban centres, as specifically recognised in the 'Ensuring the Vitality of Town Centres' SPG.
- 6.18 Allowing for the restaurant use of the appeal premises would ensure a continuing and active use of this unit, with an active frontage, in an appropriate town centre use that would be in keeping with the mixed character and economic vibrancy of the Brunswick Centre and this area of Camden as a whole. It would directly assist in maintaining and strengthening the role of the Brunswick Centre and this area of Camden by improving its attractiveness and helping to diversify its evening economy and leisure function; ensuring that this area remains vibrant, attractive and accessible. The proposed use of the appeal site in this highly accessible and sustainable location is also in compliance with the aspirations for sustainable transport. The appeal proposals would also strongly support the local economy and would accord with the principles, aims and objectives of the 2018 Framework. The appeal proposals would generate significant local employment, both through direct staff jobs on site and those indirectly employed at suppliers, head office staff, cleaners, maintenance workers, etc. The employment generated by the proposed restaurant use would be considerably greater than that generated by a more conventional retail use of this unit, which would be a material benefit for the local area. The financial turnover of the proposed restaurant at the appeal site would also be greater than would occur with any conventional, retail use; thereby the appeal proposals would also significantly contribute to the vitality and viability of the Brunswick Centre. In summary, the appeal proposals would enhance the economic role and function of the site and wider area. The 2018 Framework is clear that LPAs need to exercise their development control powers appropriately, giving due cognisance to the actual benefits to the vitality and viability of the Brunswick Centre, rather than inflexibly applying draconian policies without further thought.
- 6.19 The proposed restaurant use of the appeal site would sit very comfortably within the local context of uses within the Brunswick Centre and would complement the range of services and facilities provided within the centre to the local area. Allowing for the proposed restaurant use of the appeal premises would ensure an active use of these premises, with an active frontage, in an appropriate town centre use that would be in keeping with the mixed character and economic vibrancy of the Brunswick Centre. It would help attract higher levels of pedestrian footfall that would support the retail and service functions of the Brunswick Centre and the continuing vitality and viability of this important urban centre location. Rejecting the proposed restaurant here risks this unit continuing to remain vacant, empty and unused; or be subject to a series of failing, short-term tenants; either of which would lead to the appeal premises contributing little to the vitality, viability, vibrancy and attractiveness of the Brunswick Centre and would risk a continuing negative image for this part of the Brunswick Centre.
- 6.20 Given all of this context, it cannot be reasonably concluded that the proposed use would warrant a refusal of planning permission, listed building consent and advertisement consent and the

Inspector is respectfully requested to allow these appeals. The Inspector is therefore respectfully requested to allow these appeals.

LIST OF APPENDICES AND LIST OF DOCUMENTS

List of Appendices

1. LPA's delegated report
2. Landlord's report on marketing and vacancies at the Brunswick Centre and Leasing History Addendum document
3. Appeal decision letter APP/X5210/A/11/2162818
4. Assessment of existing signage displayed at the Brunswick Centre

List of Documents – planning application 2018/1447/P

1. Application forms dated 21/03/2018
2. Location plan L01
3. Existing floor plans P01
4. Proposed floor plans P02
5. Existing and proposed front elevation E01
6. Existing and proposed rear elevation E02
7. Existing and proposed section aa S-01
8. Existing and proposed section bb S-02
9. Existing and proposed section cc S-03
10. Interior elevations E02
11. Existing and proposed rear elevation
12. Operational Management Plan
13. Planning Support Statement dated 21/03/2018
14. Servicing and Waste Management
15. CIL form

List of Documents – listed building consent application 2018/1658/L

1. Application forms dated 21/03/2018
2. Location plan L01
3. Existing floor plans P01
4. Proposed floor plans P02
5. Existing and proposed front elevation E01
6. Existing and proposed rear elevation E02
7. Existing and proposed section aa S-01
8. Existing and proposed section bb S-02
9. Existing and proposed section cc S-03
10. Interior elevations E02
11. Proposed signage colour D01
12. Existing and proposed rear elevation
13. Planning Support Statement dated 21/03/2018

List of Documents – advertisement consent application 2018/1448/A

1. Application forms dated 21/03/2018
2. Location plan L01
3. Existing and proposed front elevation E01
4. Proposed signage colour D01
5. Planning Support Statement dated 21/03/2018

List of Documents submitted to LPA subsequent to initial submissions (for listed building consent application 2018/1658/L and advertisement consent application 2018/1448/A)

1. Proposed signage colour rev A D01

List of documents not previously submitted to the LPA and included only as documents with these appeals

1. Noise Impact Assessment by Big Sky Acoustics (document reference: 18070786)
2. Odour Assessment by Phlorum Ltd (Ref: PB/8143A/PN)

3. Updated Operational Management Plan with additional note on deliveries and associated floor plans indicating proposed waiting area for delivery staff and associated site location plan indicating proposed parking area for delivery drivers

