

Date: 30/04/2019
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The Planning Inspectorate
3N - Kite, Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal submitted on behalf of Ovelshield Limited t/a ICCO
Site Address: Unit 18, Brunswick Centre, WC1N 1AE

I write in connection with the above appeal against the Council's refusal to grant permission for the following applications:

(1) Full planning

Your ref: APP/X5210/W/18/3209747

Our ref: 2018/1447/P dated 01 June 2018

Description: *'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'*

(2) Listed Building Consent

Your ref: APP/X5210/Y/18/3209750

Our ref: 2018/1658/L dated 01 June 2018

Description: *'Internal and external alterations to ground floor unit including installation of illuminated fascia behind glazed shopfront; creation of opening in rear elevation and installation of extract louvre; installation of internal air handling equipment (GII)'*

(3) Advertisement Consent

Your ref: APP/X5210/H/18/3209753

Our ref: 2018/1448/A dated 01 June 2018

Description: *'Display of one internally-illuminated fascia sign behind glazed shopfront and one internally illuminated projecting sign onto existing shopfront'*

The Council's case for each of the above decisions is set out in the delegated officer's report and appeal statement that have already been sent to you, along with the questionnaire and are to be relied on as the principal Statement of Case. Copies of the relevant Local Plan policies and

accompanying guidance were also sent with the appeal questionnaire. The LPA's primary appeal statement was submitted to PINS on the 09 April 2019. In response, further statements and evidence was issued by the appellants to the Council on the 30 April 2019.

In light of the submission of new evidence and reporting, the Council would be grateful if the Inspector would consider the contents of this letter. This includes confirmation of the outstanding matters of contention as well as a review of the new information and further matters that the Council respectfully requests be considered without prejudice if the Inspector is minded to grant permission.

1. Updated summary of Case

1.1. Within the previous appeal statement, the information provided as part of the appeal was considered adequate to narrow down the matters of contention in a number of areas. The areas of agreement now reached can be summarised as follows:

(1) Planning permission

- Noise and vibration from fixed plant equipment has been quantitatively assessed and is considered acceptable, subject to conditions
- Odour and emissions from kitchen extract system has been quantitatively assessed and is considered acceptable, subject to conditions

(2) Listed building

- Objection is withdrawn to the new fixing work in relation to the proposed internal fascia sign in light of evidence provided

(3) Advertisement

- Objection is withdrawn in relation to the proposed internal fascia sign in light of evidence provided

1.2. In light of the above, the main outstanding issues of contention for the appeal site can be summarised as follows:

Issue 1:

Land use principle of a further loss of retail use within the designated Neighbourhood Centre and a resulting overconcentration of food, drink and entertainment uses causing an adverse impact on the character and function of the Centre and the amenities of neighbours (Application 1)

Issue 2:

The visual impact caused by the 2x illuminated projecting signs which would fail to preserve the building's special architectural and historic interest and would harm the visual amenity of the centre and conservation area by appearing overly prominent and out of character and by adding visual clutter (Applications 2 and 3).

1.3. Final comments in relation to the above two issues are included within the appellants latest submission. Final responses from the LPA will be provided below.

2. Response to appellant's final comments statement (dated 29/04/2019)

(Issue One)

2.1. As set out in the Council's main appeal statement, the remaining issue with regard to the planning permission includes two districts elements concerning (a) the principle of the loss of retail use, (b) the operational impacts of the proposed business and the cumulative impact of food, drink and entertainment uses to the centre and its residents.

(a) Loss of retail

2.2. In response to the concerns raised in relation to the marketing evidence, the appellants have submitted additional information and reporting. The additional information provided includes another letter from the asset manager for Lazari Investment Management Ltd dated 29/04/19. A second letter titled 'Marketing Commentary' is also provided which discusses the current retail market and rental state of affairs for the Brunswick Centre. This letter is undated and no authors name are provided, though the logos of the two letting agents are inserted into a header and the contact details for one of the agents are inserted into a footer (CWM). It is assumed that this letter was produced by CWM and this is confirmed in the letter from Lazari Ltd (para.4.9), though without a name, date or signature only limited weight can be offered to this evidence. In addition, a further five documents were provided which were titled as follows:

- 'Interest Schedule 2016'
- 'Interest Schedule 2017'
- 'Interest Schedule October 2018 appeal response'
- 'Interest Schedule January 2018 appeal response'
- Marked up floor plans and internal elevations produced by EE Ltd showing the layout for the retail business currently occupying the unit (dated Feb 2019 - rev P)

2.3. This information was issued to the Council at 10:37am on Tuesday 30th April 2019. Given that the PINS start letter required all final comments to be issued to PINS by no later than Tuesday 30th April 2019, comments in relation to the extra information provided has had to remain brief given the very limited timeframe for comment.

2.4. As set out in the submitted letters, since the submission of the appeal the unit has been re-let twice, both to retail businesses. Whilst copies of leases have not been provided, it is understood that both were secured on short timer leases and to not occupy the entirety of the unit. However, this does not alter the fact that at the time of writing, the appeal unit is occupied and in a retail use. As set out in the LPA appeal statement (para.4.12), the securing of these leases and the interest in vacant units would undermine the position that there is limited interested in the use of the units for retail purposes. In addition, the current leaseholder is a digital communications company of national significance (EE) who currently operate and run over 550 stores nationwide¹. Their commitment to invest in refurbishing the unit and installing partitions and point of sale displays is noted and would not necessarily be suggestive of a 'meanwhile use'.

2.5. Further to the above, the four sets of 'interest schedules' outline a variety of interest in a number of units across the centre from potential retailers. In 2016, interest was shown

¹ See 'About EE' webpage [here](#).

in the appeal unit by three retail businesses. In the October 2018 schedule, the appeal unit was included within the 'exchanged/let' section of the schedule rather than the schedule of interest given the securing of a lease by Fuwa Fuwa (A1). It is noted that for the other units listed in this schedule interest was expressed by a large and broad range of retailers, with only a select number of potential occupiers being discounted outright. A large retailer (Ikea) is also recorded as expressing an interest in occupying units 18-22. In January 2019, again the unit is not listed within the interest schedule itself as it is listed as having a retail let agreement in place. While the lease is limited to an initial 12months period, it suggests that there might be scope to extend. Within the rest of this schedule, again interest from a broad range of retailers for units across the centre is illustrated. The accompanying letter (produced by either Savills or CWM) anecdotally sets out how [they] have experienced a shift in the retail markets at a London and national scale in light of increased internet shopping patterns, 'Brexit' and levels of receiverships. It also suggests that they no longer utilise traditional forms of marketing such as website or boards and instead rely upon a more proactive methods (as detailed in the interest schedules discussed above). The letter does not include any specific commentary concerning unit 18, though it does discuss what the author considers to be 'inherent factors' that are perceived as 'hampering our efforts to attract interest'. These factors include: local demographic; a lack of coherency or direction in tenant mix policy; and the limited opportunity for units to expand due to the listed status of the centre. The letter continues to list some 28 retailer who the agents have approached and 'fit with the ongoing strategy'.

2.6. The submitted interest schedules and letters do provide some evidence that a continuous marketing campaign has remained ongoing for the centre as a whole. This comes as no surprise given the number of units across the centre and the almost continuous task of securing, retaining and negotiating tenants for the whole range of units within the centre. However, this would still not provide a robust evidence base to justify the position that the appeal unit itself was lacking in interest as a retail unit. Indeed, the unit has been re-let twice for retail purposes (albeit as shorter term leases) since the submission of the appeal. Given the above, this evidence is not considered to demonstrate that there is no realistic prospect of demand to use the site for continued retail use. Its loss would therefore remain objectionable in land use terms.

(b) Operational impacts of unit and cumulative impacts of cluster of Food, Drink and Entertainment uses

2.7. Paras.4.20 – 4.27 of the main LPA appeal statement established that concern was maintained that the operation of the proposed business, both individually and cumulatively with existing uses, would detrimentally affect the character of the centre and residential amenity. Though patron noise was considered in the Noise Assessment, concern was expressed that this had not taken a true worst case scenario of breakout noise, had not justified the lack of further monitoring and had not addressed the matter of cumulative impacts.

2.8. In response the appellant's noise consultant, Richard Vivian of Big Sky Acoustics, contacted officers on the 23 April to discuss the matters raised within the appeal statement. At this point, further explanation of the monitoring methodology was provided and it was agreed between all parties that the continuous, attended/supervised survey undertaken could reasonably be considered to represent the likely lowest background noise level given the

unique nature of the centre and its circulation spaces. It was also agreed that the centre was also unusual in that, despite its central location, it remains very quiet in general – to the benefit of its residents. Furthermore, it was agreed that the ‘worst case scenario’ from breakout noise of patron leaving the unit could be increased to assess levels if the unit were at capacity at closing time (58 patrons). Whilst there was discussion about the likelihood of this occurring, it was noted that this would represent a genuine ‘worst case scenario’. As such updated calculations were included within the report addendum and confirms that such a situation would not result in noise levels of more than 10dB above the lowest background levels recorded (49dB) at the flats above. These calculations have been reviewed by Environmental health officers and are not challenged.

2.9. Despite this, officers did request that further noise monitoring was completed over the weekend period so that the levels of breakout noise experienced at present from the existing food, drink and entertainment uses could be quantified and the resulting cumulative impacts of the proposed unit, combined with the existing situation fully understood. The Council’s Noise Officers clarified that it is essential that the assessments consider not only the impact of patrons arriving/vacating the premises individually but also the cumulative impact of the new source in addition to existing noise in order to prevent gradually creeping noise levels over busy periods. To assess the cumulative impact it would be necessary to have evidence of the current ambient noise levels in the area during their busiest period to quantify the existing increase above the lowest recorded background levels.

2.10. Creeping outdoor ambient noise levels occur in situations where there are an increasing number of noise sources in an area, each of which makes a small contribution to an overall deteriorating and locally unacceptable situation (i.e. the cumulative impact). As outlined in the currently adopted Mayor’s Ambient Noise Strategy², adverse impacts from ambient noise levels are multifaceted (see paras.2.6 - 2.9) and that “*reactive policy towards individual noise sources has led to the phenomenon of ‘creeping ambient’*” (para.2.12). It was explained that by undertaking further monitoring during the weekend, over periods when the existing restaurants are likely to be busier, this could be evidenced. Such evidence could potentially fully address concerns relating to creeping outdoor ambient noise levels and the resulting cumulative impacts to the centre’s residents. The appellant’s noise consultants accepted that this was a reasonable concern, though noted that further monitoring would not be undertaken. Instead a dispersal policy was provided. Whilst the dispersal policy is welcomed in principle, it includes very little in the way of genuine mitigation and would be unenforceable. The lack of a formal consideration of the cumulative impacts from both the individual as well as other existing food, drink and entertainment uses within the centre is considered to remain a significant concern. Again, it is noted that during the appeal assessment for unit 5 (see appendix three of appellants statement), the previous inspector shared a similar concern stating 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)

² Sounder City. Adopted 2004. A copy of which can be found [here](#).

2.11. Given that unit 5 is of a similar internal ground floor area to unit 18 (252sqm at GF) and is located in close proximity to unit 18, these concerns are still considered valid. Unfortunately, the submission of a noise report addendum has not provided enough assurances for this aspect of the reason for refusal to be withdrawn, though the narrowing in the scope of outstanding matters is welcomed.

(Issue Two)

2.12. As set out in the para 1.2, the second outstanding issue concerns the sustained objection by the Council that the introduction of illuminations within projecting signs would remain harmful on ground of visual amenity and the significance of the listed building. The substantive reasoning behind this position is set out in the main officer's report (paras.5.3-5.12) as well as statement of case (sections 5 and 6).

2.13. The appellants have not provided further commentary on this issue beyond what was previously raised, though it is noted that at para.2.10 of their statement it is confirmed that restrictions to prohibit the use of illuminations to external signage would be accepted were the inspector to conclude that this were necessary. It is respectfully requested that this approach is taken by the inspector so as to ensure that the coherency and visual harmony currently maintained across the centre is protected.

3. Conclusion

3.1. The submissions made by the appellants have successfully narrowed down the scope of matters in contention to only two main issues (see section 1). However, having taken account of all the additional evidence and arguments made, it is considered that the proposals remains unacceptable for those reasons set out within the original decision notice and remain contrary to the Council's policies as set out above and within the main statement of case. For these reasons the proposal fails to meet the requirements of policy and therefore the Inspector is respectfully requested to dismiss the appeal.

Yours faithfully,

John Diver
Senior Planner
Regeneration and Planning
Supporting Communities
London Borough of Camden