

Delegated Report		Analysis sheet		Expiry Date:		08/02/2019	
		N/A		Consultation Expiry Date:		24/02/2019	
Officer				Application Number(s)			
Patrick Marfleet				2018/6151/P			
Application Address				Drawing Numbers			
130 Charing Cross Road London WC2H 0LA				See draft decision notice			
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature				
Proposal(s)							
Variation of condition 5 (hours of operation) of planning permission 2017/4541/P dated 22/01/2018 (Change of use of existing ground floor unit from retail (Class A1) to hot food takeaway (Class A5) including installation of extract duct to the rear), namely to change the opening hours from 9:00 - 23:00 Mon-Sun to 07:00 - 01:00 Monday and Tuesday, 07:00 - 04:00 Wednesday to Saturday and 07:00 to 00:00 Sunday.							
Recommendation(s):		Refuse variation of condition					
Application Type:		Variation or Removal of Condition(s)					
Conditions or Reasons for Refusal:		Refer to Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	00	No. of responses No. electronic	05 05	No. of objections	05
Summary of consultation responses:		<p>Site notice: displayed from 28/01/2019 - 21/02/2019 Press notice: displayed from 31/01/2019 - 24/02/2019</p> <p>5 objections were received from neighbouring residents in Shaldon Mansions and the following concerns raised:</p> <ol style="list-style-type: none"> 1. The area around the entrance to the flats is already littered with rubbish from the takeaway use, extended evening hours will make this worse. 2. Drunk customers stand outside the takeaway late at night causing noise and disturbance to residents. 3. The takeaway already stays open beyond 11pm playing loud music into the early hours. 4. When returning home at night the entrance to the flats is often crowded by people standing in the doorway which can be intimidating if alone. 					

5. Bedroom windows are located directly above the takeaway use and longer hours will increase unpleasant odours coming from the site.
6. Leftover food and rubbish is dropped on the pavement which attracts vermin.

Officer comments

See section 2.1 of this report

CAAC/Local groups comments:

Denmark Street CAAC: No comments received.

Soho Society, object:

Object to the potential impact of this change of use to A5 and use until 4.00 am Wednesday to Saturday because this area of Charing Cross road has a substantial problem with drug use and anti-social behaviour and a takeaway operating to these hours is likely to aggravate the problem

Covent Garden Community Association, strongly object:

1. The idea that a restaurant and kebab takeaway should open almost all night, right in the middle of an unmodernised block of residential flats is totally unacceptable.
2. The current takeaway use causes a number of issues to neighbouring residents which include: Noise from customers leaving, entering, and loitering outside the premises, noise from music emanating from the premises, noise from buskers attracted to groups outside the premises, noise from vehicles pulling up outside the premises (including pedicabs with screaming customers, and playing beat music from speakers), rubbish and vermin, urination in the communal doorway to the flats, and ringing of doorbells, intimidation of residents trying to access the communal doorway to the flats.
3. The applicant has not addressed these issues in the 'Late Night Management Plan'. It is one of the weakest that we have ever seen and contains no clear mitigation measures.

Officer Comments

See section 2.1 of this report

Site Description

The application relates to an existing ground floor retail unit (Class A1) located within a seven storey residential mansion block located on the north eastern side of Charing Cross Road. The application site forms part of a row of five ground floor retail units, which are identified as a secondary frontage within the Tottenham Court Road/Charing Cross Road Central London Frontage.

The unit at No.130 was last in use as an unauthorised hot-food takeaway. This use has since ceased and the unit is currently unoccupied.

The property is not listed but is located within the Denmark Street Conservation Area. Whilst the retail unit is not identified as being of any architectural merit, the mansion block, located above (Shaldon Mansions) is identified as making a positive contribution to the character and appearance of the Denmark Street Conservation Area.

Relevant History

Application site

2017/4541/P - Change of use of existing ground floor unit from retail (Class A1) to hot food takeaway (Class A5) including installation of extract duct to the rear. **Approved 22/01/2018.**

2015/2945/P - Change of use from A1 (Retail) to A5 (hot food take-away). Retrospective.

Refused and warning of enforcement action 19/08/2015 - due to unacceptable loss of A1 unit and insufficient information relating to proposed mitigation measures and impact the use would have on neighbouring amenity.

Following the refusal of the application, the applicant was served with an enforcement notice (ref: EN14/1163) to cease the unauthorised A5 use and remove all associated extract equipment. The enforcement notice was subsequently appealed by the applicant (APP/X5210/C/15/3136064) and dismissed by the inspector on 24/02/2016.

Relevant policies

National Planning Policy Framework 2019

The London Plan 2016

Camden Local Plan 2017

A1 Managing the impact of development

A4 Noise and vibration

CC1 Climate change mitigation

D1 Design

D2 Heritage

TC2 Camden's centres and other shopping areas

TC4 Town centres uses

Camden Planning Guidance 2018

CPG (Design)

CPG (Town Centres)

CPG (Amenity)

Denmark Street Conservation Area Appraisal and Management Statement 2010

Assessment

1.0 PROPOSAL

1.1 Permission is sought to vary condition 5 (hours of operation) of planning permission 2017/4541/P dated 22/01/2018, which granted approval for a takeaway (A5) use at the site. Condition 5 of the approved application restricted opening hours at the site from 9:00 - 23:00 Monday to Sunday. The current proposal seeks to vary these approved opening hours to 07:00 - 01:00 Monday and Tuesday, 07:00 - 04:00 Wednesday to Saturday and 07:00 to 00:00 Sunday.

1.2 No external alterations are proposed as part of the current application.

2.0 ASSESSMENT

The material considerations for this application are summarised as follows:

- Amenity of neighbouring residential occupants;

2.1 AMENITY

Planning background

2.1.1 Planning permission was granted on 22/01/2018 ref 2017/4541/P for the change of use of the application site from retail use (A1), to a takeaway use (A5). Prior to determination of the application, officers negotiated revised opening hours for the proposed takeaway use, which was explicitly referred to in paragraph 2.4.5 of the officer's delegated report:

Concerns have been raised from neighbouring residents with regard to the proposed hours of operation at the site (7:00am-01:00am Monday to Wednesday, 7:00am-04:00am Thursday to Saturday and 7:00am-00:00am Sunday). Officers agree that the proposed hours of operation are inappropriate given the existing residential dwellings located on the floors above the application site. Therefore, to ensure the amenity of neighbouring residents is protected, the Council consider opening hours of 09:00am-11:00pm Monday-Sunday to be more appropriate in this instance as they would match the opening times of similar uses in the area. The hours of operation for the proposed use will be secured by condition.

2.1.2 These revised hours of operation were discussed and agreed by the applicant prior to the application. Officers were also commended by Council Members for negotiating more suitable hours of operation that would help to mitigate the impact the approved use would have on the amenity of the residential dwellings located directly above the site.

2.1.3 Notwithstanding the above, the current application now seeks to alter the hours of operation condition so that the site would be open until 4:00am at its latest, which is what was initially applied for as part of the previous application and considered unacceptable by the Council. There has been no change in policy or circumstance since the previous approval that would alter the Council's view on this.

Amenity of neighbouring residential occupants

2.1.4 Local Plan Policies A1 and A4 seek to protect the amenity of Camden's residents by ensuring the impact of development is fully considered. It seeks to ensure that development protects the quality of life of occupiers and neighbours by only granting permission for development that would not harm the amenity of neighbouring residents. This includes privacy, outlook, daylight/sunlight noise and odour.

2.1.5 Further, paragraph 6.103 of Policy A4 states: Where food/drink/entertainment uses are considered acceptable, planning conditions restricting opening hours will be imposed to ensure that they do not adversely impact nearby noise sensitive uses. Therefore, whilst the Council granted permission for the takeaway use, we also have a statutory duty to protect the amenity of the borough's residents and ensure that all approved developments are appropriate and sufficiently controlled in order to achieve this. This is the reason why the opening hours of 9am-11pm were secured as part of the previous permission ref 2017/4541/P.

2.1.6 With regard to the current proposal, officers note that there are number of late night uses in operation in nearby streets and the wider area which benefit from later opening hours and are likely to be busy throughout the day and night. As such, nearby residents would experience some level of noise and disturbance commensurate with a vibrant commercial centre.

2.1.7 A degree of noise and disturbance is therefore to be expected at the application site. However, to permit the extended opening hours now applied for, in such close proximity to neighbouring residential uses, is considered likely to result in unacceptable harm to the amenity of these occupiers. The increased comings and goings associated with the high turnover of walk in customers, and customers congregating outside the unit, typical features of an A5 use (due to the limited internal seating), would lead to noise and disturbance at unsociable hours in very close proximity to residential uses, when occupiers might reasonably expect a quieter environment to relax or sleep.

2.1.8 The applicant has submitted a "Late Night Management Plan" in support of the application which proposes the installation of CCTV at the site amongst other more tokenistic measures such as putting up signs in the takeaway asking customers to leave quietly. Officers would not object to the installation of surveillance equipment at the site, in the interests of security and crime prevention. However, the presence of CCTV cameras would not alleviate the problem of noise being generated by customers coming to and from, and congregating outside of the site. Therefore, the provisions of the late night management plan do not address officers concerns with regard to the impact the extended hours would have on neighbouring amenity.

2.1.9 Given the above, the proposed extension of operating hours is considered likely to result in harm to the living conditions and general amenity of neighbouring occupants, contrary to Policies A1, A4 and TC4 of the Camden Local Plan 2017.

Noise

2.1.10 The Council's environmental health officer has reviewed the submitted acoustic report and is satisfied that the operation of the existing plant equipment at the site (approved under 2017/4541/P) through the night, or until 4am, would comply with the Council's minimum noise standards for residential properties. However, as stated above, the current proposal is considered unacceptable due to the impact such late hours would have on neighbouring amenity in terms of patron noise and anti-social behaviour, rather than the operation of extract equipment.

3.0 Recommendation

3.1 Refuse Variation of Condition Application