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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
Town and Country Planning (General Permitted Development) Order 2015
Appeal submitted on behalf of Kingstone Property Kentish Town Ltd
Site Address: 387 Kentish Town Road, London, NW5 2TJ

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

PINS ref: APP/X5210/W/19/3234806

Our ref: 2019/1239/P determined 26 April 2019

Description: *'Change of use of the ground floor unit from retail (Class A1) to form a 2bed 4person dwelling (Class C3) together with building operations including replacement of shopfront with glazed screens and new front entrance door as well as the replacement of existing single storey rear extensions to include new windows and rooflights'*

The Council's case for each of the above decisions is set out primarily in the delegated officer's report that has already been sent with the questionnaire and is 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.

In addition, Council would be grateful if the Inspector would consider the contents of this letter which includes confirmation of the status of policy and guidance, comments on the Appellant's grounds of appeal and further matters that the Council respectfully requests be considered without prejudice if the Inspector is minded to grant permission.

1. Summary of Case

1.1. The application site relates to a ground floor unit within a 3 storey, end of terrace property. The property fronts Kentish Town road, close to the junction with Highgate Road. The rear of the property abuts the sidings to the National Rail cutting. The site is located within the designated 'Kentish Town centre', within a secondary retail frontage.

- 1.2. The prior approval application in question was refused by the Council on the 26th April 2019 for the following grounds:

Reason one:

The proposed loss of a retail unit would result in a under provision of retail and an overconcentration of non-retail uses within the designated frontage, to the detriment of the long term vitality and viability of the Kentish Town town centre. The works would therefore remain contrary to National Planning Policy Framework chapter 7, paragraph 85 (2019); London Borough of Camden Local Plan policy TC2 (2017) and Kentish Town Neighbourhood Plan policies SW2 and SW3 (2016)

Reason two:

The proposed change of use, in the absence of a Section 106 legal agreement to secure the residential unit as car-free, would contribute unacceptably to parking stress and traffic congestion in the surrounding area and would not promote the use of sustainable transport contrary to the National Planning Policy Framework chapter 9, paragraphs 102, 108 and 110

- 1.3. The Council's case is largely set out in the officer's report, a copy of which was sent with the questionnaire. In addition to this information, I would ask the inspector to take into account the following comments as well as the associated files outlined in the appendices.

2. Relevant History

Appeal site history

- 2.1. A full summary of the planning history for the appeal site is outlined in the 'relevant history' section of the main officer's report. Since the issuing of this decision, the following additional applications have been submitted in relation to the site:

2019/1970/P - Approval of details application for the submission of construction methods statement and mechanical ventilation details in connection with planning permission 2018/0204/P (*extensions and conversion of upper floors to form self-contained dwellings*) received consent on the 11/09/2019

2019/3538/P – Planning application was submitted on the 10/07/2019 for the '*Erection of mansard roof extension and alterations as approved under planning permission 2018/0204/P and erection of a ground, first and second floor rear extension, all to provide 1 no. two bed flat, 1, no one bed flat and 1 no. two bed duplex flat (C3) as well as retention of ground floor retail unit (A1).*

This planning application seeks consent for the extensions and conversion works to upper floors previously approved combined with the part conversation of the rear section of the ground floor to form a residential flat whilst retaining a retail unit to the front of the site. At the time of writing the assessment remains ongoing.

- 2.2. Other pertinent applications involving a loss of retail uses within designated retail centres:

2009/2370/P: Planning permission for the proposed '*Change of use of lower ground and ground floors from retail (Class A1) to estate agent office (Class A2)*' was granted on the 15 September 2009 at 161 Kentish Town Road (designated centre).

2015/7282/P: Planning permission for the proposed '*Change of use of ground floor from retail (Class A1) to a coffee shop (mixed use Class A1 / Class A3) and alterations to shopfront*' was refused on the 10 March 2016 at 325 Kentish Town Road (designated centre). One reason for refusal was given, alleging that the loss of retail within the centre would be harmful to the overall character, function, vitality and viability of the Kentish Town Centre. A subsequent appeal of this decision was dismissed on the 14 October 2016.

2018/1447/P: Planning permission for the proposed '*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 refused on the 01 June 2018 at Unit 18, Brunswick Centre, WC1N (designated Neighbourhood Centre). The reason for refusals related to (1) the loss of retail use and resulting over concentration of non-retail uses causing harm to the designated centre; and (2) residential amenity. A subsequent appeal was dismissed on all grounds the 03 June 2019.

2018/4667/P: Planning permission for the proposed '*Change of use of ground floor from retail (Class A1) to mixed use of restaurant and café / hot food takeaway (Sui Generis)*' was refused on the 11 January 2019 at 182 Kentish Town Road (designated centre). Three reasons for refusal were given, the first of which alleged that the loss of a retail unit, would undermine the retail function of 'Kentish Town' Town Centre and would harm the character, function, vitality and viability of the Town Centre.

2.3. The above planning history demonstrates that the Council has sought to apply its policies to protect retail uses within key shopping centres in accordance with its adopted requirements. This also demonstrates that where a proposed change of use would not result in detrimental impacts to such centres, they are supported.

3. Status of Policies and Guidance

3.1. Since the issuing of the decision there have been no materials changes to the relevant legislation set out within the delegated report.

3.2. On the 03rd July 2017, the Camden Local Plan (2017) was formally adopted. The Council's policies are recent and up to date. They do not differ from the National Planning Policy Framework (NPPF) 2019 policies in relation to this appeal.

3.3. With regard to supporting documentation in Camden Planning Guidance, the specific sections most relevant to the appeal are as follows:

Town centres and Retail CPG (2018)

- Guidance for all centres, retail uses – Pg4-8
- Centres outside of Central London – Pgs. 48-50
- Kentish Town – pgs.61 – 65

Transport CPG - March 2019

- Parking and car-free development pg.34 – 40

4. Comments on the appellant's grounds of appeal

4.1. Appellant's main Grounds of Appeal for the planning application are summarised in bold italics and subsequently addressed below:

Comments relating to Town Centre Impacts (RfR One)

4.2. Reason for refusal one in part sets out that the loss of retail floorspace within the designated frontage would, in this instance, harm the vitality and viability of that centre (Kentish Town).

4.3. Comments raised by the appellant in relation to this alleged harm will be discussed below in turn, grouped by issue.

“Given its position in relation to the remainder of the Town Centre the retention of the retail use is not important for the adequate provision of A1/A2 services. There are many premises within Kentish Town Centre that are Class A1 (shops) and at that there are many that offer hairdressing or beauty salon services as did the appeal property. The loss of the Class A1 retail unit would not therefore have an adverse impact on the adequate provision of shops and services within the area and therefore the first part of condition (d) (i) is satisfied” (6.6)

“A number of beauty salons and hairdressers were also noted within the survey area, again all within the designated primary shopping parade”... “So even within just the northern part of the centre there is clearly adequate provision for the sort of services that may be provided on the appeal site” (6.12 / 6.13)

“The property is within a relatively short frontage of 5 units that are designated as falling within a secondary shopping parade and they are located on the periphery of the Kentish Town Centre where there is little footfall. 3 of the 5 units are already not in A1 use. Condition (d)(ii) does not therefore require to be considered as it is not the case that “the building is located in a key shopping area” (6.16)

4.4. The Council disagrees with these assertions. Across the whole borough, Camden has only six town centres (including Kentish Town) outside of the Central London area that serve the majority of the Borough's residential population. These centres provide a competitive choice of goods and services accessible to all Londoners, particularly by public transport, walking and cycling. Together with neighbourhood centres, Town Centres provide a sense of place and identity within the borough and are the focal points for retail uses. The Kentish Town town Centre is located just to the north of Camden Town and is the borough's third smallest centre, meaning that it is particularly sensitive to development pressures and issues of gradual erosion. It provides for the day to day shopping and service uses for the local population and is designated as a district centre in the London Plan, further evidencing its strategic role as a key shopping centre. The centres offer a range of shops which provide essential services for residents as well as more specialist shops which attract visitors from outside the borough. The range of shops in Camden is a key part of the borough's character and ensures that our town centres and shopping areas are vibrant and varied.

- 4.5. In response to the above comments, firstly, for a unit to be situated within a secondary frontage it not to say that it is any less important in terms of the contribution it provides to the overall centre and nor is this evidence that the unit sits outside of a key shopping centre. The distinction between primary and secondary frontages within the Local Plan allows a centre to be controlled more flexibly by allowing for more lenient policy thresholds as one moves away from the core of a given centre. As set out in the delegated report, the frontage within which the appeal site sits falls far short of even the more lenient policy thresholds applied. However, the unit is still situated with the 'Kentish Town town centre' and it is the impact upon this designated asset that the alleged harm is based. It is false to attempt to artificially separate certain frontages within this centre as being outside of the key shopping centre and, as the inspector will note upon their visit, the application unit helps to define and maintain a clearly defined and legible boundary to the centre which adopted policies seek to protect. In addition, if the appellants approach were correct, then designated shopping centres of more local important than town centres (i.e. neighbourhood centres) would be absolved from all land use given their more localised catchment. This is clearly not the case, as evidenced by recently dismissed appeals relating to proposed losses of retail within such centres (see planning history section).
- 4.6. Secondly, unsubstantiated claims that the centre contains a sufficient retail provision such that a further reduction is not harmful are given limited weight. The submitted appeal statement offers very little in the way of substantive evidence to corroborate the assertion that the existing centre (taken as a whole rather than by frontage) is over performing in retail terms, such that the appeal unit is superfluous to the requirement of the local community. This assertion is rejected, please refer to paragraphs 3.23 – 3.30 of the delegated report for a full consideration of the health of the existing retail frontage.
- 4.7. Thirdly, it is well established that LPA's can seek to protect certain land uses, but not individual business tenants or operators. Whilst the unit has historically been used by a hairdressers, the existing lawful A1 Use Class of the unit would support a vast array of differing businesses and services, each of which would contribute towards the retail offer of the centre. The evidence of other nearby hairdressers provided in the submitted appeal statement is therefore given limited weight in consideration of the proposed loss of the A1 use.

“As the loss of the retail unit is therefore acceptable, it follows that is not necessary to consider the second part of the test under condition (d)(i), that is whether there is a reasonable prospect of the building being used for purposes within Class A1 or Class A2. This approach has been adopted in similar Appeal decisions by the Planning Inspectorate” (6.7).

- 4.8. As discussed above, the Council disagrees that the loss of retail use from the site is acceptable and such, it is also the Council's position that both elements of this condition must be addressed. In addition, no evidence of 'similar appeal decisions' have been forthcoming that might suggest that a decision should be taken that would not accord with the adopted Development Plan in relation to this matter.

“there are a significant number of vacant properties, and many within the “primary” shopping parade that are all capable of being used for the same Class A1 purposes, similar to that of the appeal property. They are in an area of higher footfall than the appeal property, yet they are vacant” (6.11)

“Even if the building were to be considered to be located in a key shopping area the likelihood of a replacement A1 or A2 use occupying the premises is slim, particularly when there are alternative more attractive premises available within the primary shopping area where footfall is greater” (6.17)

4.9. The supporting text to policy TC4 states that the Council will 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 (para.9.38). Where a planning application proposes the loss of a shop in retail use, the Council will consider whether there is a realistic prospect of such use continuing by requiring the submission of marketing evidence to show that there is no realistic prospect of demand to use a site for continued retail use. However, in order for reliance upon levels of vacancy rates to warrant a divergence from the development plan, robust evidence is expected.

4.10. If vacancy rates are to be relied upon, para.2.7 of the Town Centres CPG makes clear that the Council will generally require the submission of marketing evidence to show that there is no realistic prospect of demand to use a site for continued retail use. Guidance in relation to preparing marketing evidence in support of such an application is outlined in the opening chapter 1 (Guidance for all centres) of the Town Centre’s CPG. At para. 2.8 a list is provided that set out the expectations for such evidence. It states the following:

“When applicants are providing marketing evidence the following information should be provided:

- *where the premises were advertised (shopfront; media, web sources etc.) and when (dates);*
- *how long the premises were advertised for and whether this was over a consistent period;*
- *rental prices quoted in the advertisement (we expect premises to be marketed at realistic prices);*
- *copies of advertisements;*
- *estate agents details;*
- *any feedback from interested parties outlining why the premises were not suitable for their purposes; and*
- *consideration of alternative retail uses and layouts” (para.2.8).*

4.11. In this instance no evidence has been provided that might suggest that there is no demand for the continued use of the host unit for retail purposes. Similarly, no substantive evidence has been provided of the levels of vacancy rates across the centre. In addition, for those units which were highlighted as being vacant within the appellants’ statement, no evidence of the time for which any empty units have remains vacant nor evidence that vacant units have been marketed at reasonable rates have been provided. In the absence of such evidence, it is not considered that circumstances have been evidence that might warrant divergence from the development plan.

“In the current shopping climate the Council’s planning policies fail to meet their objectives and are out-of-date” (para.6.17)

4.12. As set out in the officers report, both the Local Plan and Neighbourhood Plan are up to date, in line with the NPPF and were recently examined in public prior to adoption, including

their evidence bases. In a recent appeal relating to change of use of a retail unit within a neighbour centre within the Borough (see planning history – 18 Brunswick Centre), a similar accusation was made by the appellants. In their decision letter dismissing the appeal, the inspector noted that: *“The appellant contends that the Council’s approach to convenience shopping is outdated. However, I am not persuaded that there have been such significant changes in the retail sector since the LP was adopted in 2017, or the CPG in 2018, to allow me to set aside the relevant policies. There is little evidence to suggest that convenience shopping is not still desired by people in the area, or that they wish for no more variety than that provided by the local... shops. Whilst I accept that trading conditions are challenging, amid wider changes in shopping trends, including online shopping, the marketing evidence before me is not sufficiently compelling to justify a departure from the development plan requirements in this particular case”* (Unit 18 Brunswick Centre, neighbourhood centre appeal ref. APP/X5210/W/18/3209747 dated 24 April 2019).

Comments relating to Car-free development (RfR Two)

“The “car-free” development is totally acceptable in this location, although the Council indicate the need for a legal agreement to ensure that no residential occupier will be permitted to hold a permit to park a motor vehicle in a residents parking bay within any parking zone of the London Borough of Camden. Whilst the Appellant must question whether such an agreement is necessary and appropriate to the scale of the development, a draft Unilateral Undertaking has been prepared for consideration by the Planning Inspectorate. Depending on the Council’s stance in respect of this matter, the Undertaking can be executed by Final Comments stage” (para.6.20)

- 4.13. Officers note that there is agreement between parties that requiring car-free development is appropriate, reasonable and necessary for a development of this kind. Full justification for the need for the development to be secured as car-free, both in terms of limited further strain upon existing local parking and congestion issues but also in terms of promoting more sustainable modes of transport, are outlined in the delegated report. It is also noted that the applicants have already signed a bi-lateral agreement to secure car-free development for the upper floor of the appeal site when they were granted planning permission for conversion in 2018. The agreement sought in this instance would remain in full accordance with the previous legal agreement, though it would relate to the ground floor of the property.
- 4.14. Since the submission of the appeal, the Council’s legal officers have approached the appellants with a draft agreement and have invited comments so that formal engrossments can be signed in advance of the final comments stage. To date, these attempts have been met with resistance, with the appellants claiming that such an agreement, together with the associated legal fees to cover the cost of completion, are unreasonable. Instead, the appellants offer a unilateral agreement. Further correspondence have confirmed the Council position and it is hoped that progress will be made in advance of the final comments stage so that this reason can be withdrawn.
- 4.15. As per the agreement issued at application stage, the unilateral agreement issued has not been executed nor dated, meaning that it would hold no legal weight and could not be enforced against. The unsigned agreement would therefore failing against the tests set out in the CIL regulations and would not appropriately mitigate against the harm caused by allowing future occupiers rights to apply for private permits to park within the CPZ. As such

the submission of this agreement has not addressed the above concern and the reason is maintained.

Conclusions

- 4.16. Based on the information set out above, and having taken account of all the additional evidence and arguments made, it is considered that the proposal remains unacceptable for those reasons set out within the original decision notice and remains contrary to the requirements of the General Permitted Development Order. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns. For these reasons the proposal fails to meet the requirements of this legislation as well as local and regional policies 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

List of appendices:

- 1) Appeal decision relating to Unit 18 Brunswick Centre dated 03 June 2019;
- 2) Appeal decision relating to 325 Kentish Town Road dated 14 October 2016;
- 3) Redacted correspondence in relation to legal agreement sought.



Appeal Decisions

Site visit made on 24 April 2019

by **Elaine Gray MA(Hons) MSc IHBC**

an Inspector appointed by the Secretary of State

Decision date: 03 June 2019

Appeal A - Appeal Ref: APP/X5210/W/18/3209747

Unit 18, Brunswick Centre, London WC1N 1AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ovelshield Limited t/a ICCO against the decision of the Council of the London Borough of Camden.
 - The application Ref 2018/1447/P, dated 21 March 2018, was refused by notice dated 1 June 2018.
 - The development proposed is proposed change of use from retail to restaurant/cafe and ancillary take away sales; together with associated internal and external alterations, installation of plant and signage.
-

Appeal B - Appeal Ref: APP/X5210/Y/18/3209750

Unit 18, Brunswick Centre, London WC1N 1AE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Ovelshield Limited t/a ICCO against the decision of the Council of the London Borough of Camden.
 - The application Ref 2018/1658/L, dated 21 March 2018, was refused by notice dated 1 June 2018.
 - The works proposed are proposed change of use from retail to restaurant/cafe and ancillary take away sales; together with associated internal and external alterations, installation of plant and signage.
-

Appeal C - Appeal Ref: APP/X5210/Z/18/3209753

Unit 18, Brunswick Centre, London WC1N 1AE

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Ovelshield Limited t/a ICCO against the decision of the Council of the London Borough of Camden.
 - The application Ref 2018/1448/A, dated 21 March 2018, was refused by notice dated 1 June 2018.
 - The works proposed are display of one internally-illuminated fascia sign and two internally illuminated projecting signs onto existing shopfront.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.
3. Appeal C is dismissed.

Preliminary Matters

4. In the interests of conciseness and clarity, I have dealt with all three appeals together in my reasoning.
5. With regard to Appeal A only, the Council's second reason for refusal related to a lack of information with regard to noise and odour emissions from the proposed new plant equipment. In their statement of case, the Council confirm that their concerns over these aspects of the proposal have been addressed by further evidence submitted by the appellant. I have no basis on which to take a different view, and so I have not considered these matters further in my reasoning.

Main Issues

6. The main issues are:
 - The effect of the proposal on the special interest of the Brunswick Centre, a grade II listed building;
 - the effect of the proposal on the visual amenity of the Bloomsbury Conservation Area;
 - the effect of the development on the character and function of the Neighbourhood Centre, and;
 - the effect of the proposal on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

Listed building, conservation area and visual amenity

7. The appeal site is a unit located within the Brunswick Centre, which was built between 1967-72. The concrete structure comprises two linked 'A-framed' blocks which rise to eight storeys at their highest point. The centre incorporates around 560 flats above a shopping centre with rows of shops at raised ground level. Beneath is a basement containing a car-parking/service area.
8. The list description states that the centre was a pioneering example of a megastructure scheme which combined several functions of equal importance within a single framework. It was also a pioneering example of low-rise, high-density housing. The shopping mall is characterised by a strong degree of uniformity through the design and appearance of the retail units. The formal entrance to the shopping mall is wide with shallow steps, allowing long views along the mall from the adjacent street.
9. The immediate environs of the centre, within the Bloomsbury Conservation Area (CA), provide a marked contrast with its modern character, for example, the fine townhouses directly opposite its entrance. However, the CA is of a substantial size, taking in a large range of different building types and styles, which are interspersed with public open spaces. The features outlined above all contribute to the special significance of the grade II listed building, and also to the variety of built forms that makes a positive contribution to the character and appearance of the CA.

10. In association with the proposed change of use of the unit, it is proposed to install a new fascia sign behind the glazed shopfront, and a new external projecting sign. Both new signs would be of metal and vinyl, and would be internally illuminated. I note the appellant's willingness to accept a condition or split decision withholding consent for the illumination, were I to allow the appeal. However, for the sake of completeness, I have considered the proposal as it appears before me.
11. A standardised retail signage strategy for the centre was adopted, setting out approved locations for each unit, including a standard size of projecting sign. The number, type and size of the proposed signs are in keeping with this strategy, and the Council raise no objection on these grounds. From the evidence before me, I have no basis on which to take a different view. It is also the case that the scheme would not obscure any important features of the building.
12. On my site visit, I saw that the existing retail signage remains generally consistent in its appearance. Nonetheless, the appellant states that illuminated signage exists at a large number of the commercial premises, and they have submitted assessments of the existing signage to support this position. Whilst I saw a number of illuminated signs in place, the majority of these were inside the units.
13. In terms of the external projecting signs, illuminated examples appeared to me to be in the minority. Within this context, the proposed internal illumination of the projecting sign would depart from the established character of the retail centre. It would result in a visually prominent sign that would draw the eye, thus dominating the area. By disrupting the uniform appearance of the existing sequence of projecting signs, the new sign would erode the uniformity of the parade of shops on this side, thus harming the character and appearance of the listed building. The projecting sign would also be perceptible in longer views along the arcade from the street. It would be clearly out of character in such views, thus harming the significance of the CA.
14. The visual impact of the internal fascia sign would be more limited, due to its location inside the unit. The planning history set out in the Council's statement of case indicates with some consistency that illuminated signs behind the shopfronts have been permitted, but not illuminated external projecting signs. I therefore consider that the new internal sign would have an acceptable effect on the character and appearance of the listed building.
15. However, in view of my concerns over the proposed illuminated projecting sign, I therefore conclude that the appeal scheme would unacceptably harm the character and appearance of the listed building. By harming the listed building, the development would also fail to preserve or enhance the character or appearance of the wider conservation area, and would thus unacceptably harm the visual amenity of the area.
16. Accordingly, conflict arises with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the National Planning Policy Framework (NPPF). In addition, the scheme would fail to comply with Policy D2 of the Camden Local Plan (LP), insofar as it resists development that is less than substantial to the significance of a heritage asset unless the public

benefits of the proposal convincingly outweigh that harm. It would also conflict with the element of LP Policy D2 that seeks to protect CAs.

17. Although serious, the harm to the heritage asset in this case would be less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal.
18. The appellant contends that the illuminated signage is a necessary and essential part of the streetscape announcement of the unit. However, as I have observed that the majority of the projecting signs are not illuminated, I am not convinced that this is the case. Whilst rebranding and identification of the premises is necessary, the redesign of the signs with the new logo would be sufficient for this purpose. I accept that the new unit be open after dark. However, I am confident that there would be sufficient ambient lighting for patrons to find the premises. There is little quantified evidence to show that the economic viability of the business would suffer due to the lack of illumination.
19. Further benefits alluded to by the appellant include enhancing and maintaining the economic viability of the beneficial use of the listed building, and continued public access to it. However, these factors are not reliant on the appeal scheme. The appellant states that the development would ensure the on-going maintenance and upkeep of the building. Whilst the proper maintenance of a heritage asset would constitute a public benefit, I have not been provided with a repair schedule, or any documentary evidence to demonstrate how the presence of this specific signage would directly contribute to the physical upkeep of the building.
20. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset. The scheme would therefore conflict with the NPPF, which directs, at paragraph 193, that 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.

Appeal A only – character and function of Neighbourhood Centre

21. LP Policy TC2 promotes successful and vibrant centres throughout the borough to serve the needs of residents, workers and visitors. The Brunswick Centre is designated as a Neighbourhood Centre (NC). The Council seek to retain a strong element of convenience shopping for local residents in NCs, and to ensure that any development in them does not harm the function, character or success of that centre.
22. The LP seeks to maintain an acceptable level of convenience shopping, and to ensure an overall mix of uses at the Brunswick Centre. It therefore resists schemes that would result in any of the following within each frontage: less than 50% of ground floor premises being in A1 retail use; more than 25% of premises being in food, drink and entertainment (FDE) uses; more than two consecutive FDE uses; or FDE premises larger than 100sqm.

23. The Council's document entitled 'Camden Planning Guidance – Town Centres and retail' (CPG) states that large-scale retail development (over 1,000sqm) and late-night licensed entertainment will generally be inappropriate in NCs due to the impact of deliveries, noise and customers on residential amenity. NCs 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.
24. The Council carried out a retail survey of the centre in 2018. In terms of the south-west frontage, the survey found that, including the proposed change, 80% of units would remain in use class A1, resulting in only 15% in FDE uses across the frontage. Taking the whole centre into account, the proposal would result in 67% of units remaining within use class A1, and a total of 23% of units in FDE uses. Furthermore, the proposal would not result in a row of more than two consecutive non-A1 units in the South-western frontage. To that extent, the proposed development would comply with the LP requirements.
25. However, the new restaurant/café/takeaway would have a total gross internal area of approximately 325sqm, which would be significantly greater than the LP target size within NCs. The ground floor area would comprise around 175sqm, and around 54sqm of this area would be reserved for kitchen/preparation space. The appellant argues that the trading area of the business would be modest, with a maximum number of covers of around 58.
26. Nevertheless, I am unable to find any wording within the Council's policies or guidance to suggest that the 100sqm limit refers to anything other than the size of the premises as a whole. In this case, the proposed development would be more than three times greater than the stated maximum floor area, and thus clearly gives rise to a policy conflict in that regard.
27. The appellant contends that the Council's 100sqm guideline figure for FDE uses within the Brunswick Centre is solely in order to protect residential amenity. However, this is not borne out by the policy wording. It is clear that residential amenity is of specific concern in relation to retail development of over 1000sqm and late-night licensed entertainment. However, for small scale food and drink uses, the concern is that they 'do not harm the surrounding area.' Whilst residential amenity may be encompassed within this phrase, it is clearly not the sole concern, as potential harm to the surrounding area would necessarily take in a range of factors.
28. I have taken into account the marketing information provided by the appellant. The submitted leasing history of 14 August 2018 states that the unit had been vacant since August 2017, following the departure of a long-term tenant. Since then, a short term let was agreed from August 2018 to January 2019. Subsequently, the unit was taken over by, and is currently occupied by, EE. The evidence also suggests that overall vacancy rates at the centre are relatively low, with three other units stated to be vacant in the appellant's statement of case. In the context of a shopping centre of this size, this level of vacancy would not appear to be out of the ordinary. Certainly, my impression during my visit was of a vibrant and busy shopping area. The appellant has since submitted some further information and commentary on marketing. Nevertheless, there is little before me to show convincingly that there remains no prospect of the appeal unit being rented for alternative retail uses.

29. The appellant contends that the Council's approach to convenience shopping is outdated. However, I am not persuaded that there have been such significant changes in the retail sector since the LP was adopted in 2017, or the CPG in 2018, to allow me to set aside the relevant policies. There is little evidence to suggest that convenience shopping is not still desired by people in the area, or that they wish for no more variety than that provided by the local Waitrose and Sainsburys shops. Whilst I accept that trading conditions are challenging, amid wider changes in shopping trends, including online shopping, the marketing evidence before me is not sufficiently compelling to justify a departure from the development plan requirements in this particular case.
30. In addition, the Council refer to a number of units in retail use (A1) which 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. The Council contend that, at present, the convenience shopping offer of the NC, is very poor, with only 44% of units offering any form of convenience shopping. This is in comparison with the 37% of units which are either restaurants, or are a retail 'food store' whose prime function is the sale of prepared foods and drinks.
31. The appellant disputes the approach of taking A1 units into account in this way. I accept that some of these units may indeed contribute to the day to day needs of local residents. However, it seems to me that, taking both the A3 restaurant uses and the proportion of A1 food outlets together, the character of the shopping centre is gradually tending towards a food and drink destination, and away from the convenience shopping facility that the Council wish to protect. The proposed change of use of the appeal site would further exacerbate this shift.
32. However, even if the A1 uses are taken out of the consideration, the policy conflict in terms of the size of the new unit would remain. As noted above, it is clear from the wording of the CPG that the Council wish to support small scale food and drink uses that serve a local catchment. LP Policy TC2 also aims to provide for and maintain a range of shops, including independent shops and other services. In my view, setting aside the 100sqm guideline figure would be contrary to the aim of promoting small, independent facilities within Neighbourhood Centres.
33. The appellant argues that the proposal would provide enhanced local employment both through jobs on site, and amongst suppliers and other support. However, little substantive evidence of such a benefit has been submitted. Similarly, little evidence has been provided to show that the proposal would add significantly to footfall and customer spend in the area. Even if quantified evidence showed that the proposed restaurant would produce a higher financial turnover and attract a larger number of customers, these are not the sole considerations in this case. I can therefore attach only limited weight to the stated benefits.
34. In the absence of any compelling reason to set aside the relevant policy requirements, I conclude that the proposed development would unacceptably harm the character and function of the designated Neighbourhood Centre, contrary to LP Policy TC2, LP Policy TC4, which amongst other things, sets out expectations for the mix and balance of uses within frontages for each centre, and the provisions of the CPG.

Appeal A only - living conditions

35. Due to the significant number of residents who are located close to the appeal site, the Council have voiced concern over the effect of the proposal on living conditions with regard to the comings and goings of patrons, and also deliveries to the appeal site. In response, the appellant has commissioned and submitted a Noise Impact Assessment (NIA, dated 10th July 2018).
36. A survey was undertaken on Tuesday 10th July between the hours of 17:57pm and 22:58pm. The assessment sought to establish a worst case scenario based on calculating the noise emissions from a group of 20 people having a normal conversation outside the unit. I note also that the recording was undertaken at roof level above the front of the unit, rather than at a position near a residential window. The NIA states that additional noise measurements were made with a hand-held measurement system at other locations in the immediate area, but it is unclear how these positions related to the residential receptors.
37. Nonetheless, based on the measurements taken, the average existing background noise levels were recorded at 53.6dB, dropping to 49.1dB in the last hour of the survey, which was from around 22:00 to 23:00pm. On the basis of 20 people, ten of whom would be presumed to be speaking at a time, the noise emissions predictions were calculated at 67dBA. As noise is attenuated by separation distance, the assessment estimated that break-out noise from such a group would be reduced below 25dBA at a distance of around 30m, which is characterised as subjectively inaudible.
38. However, a number of matters arise. Firstly, the survey was carried out on a weekday evening, and therefore may not be representative of the noise that might be generated at weekends, when the proposed restaurant, and the other existing restaurants in the vicinity, would be expected to be at their busiest. I note also that the Council's document entitled 'Camden Planning Guidance – Amenity' (CPGA) requires background noise levels measured over a minimum of 24 hours. In this case, a single period of around five hours was assessed, which would fall significantly short of the CPGA requirement. Thirdly, the matter of cumulative noise impacts within the centre has not been thoroughly addressed.
39. In the light of these factors, I am unable to be certain that it has adequately been demonstrated that the proposed development would safeguard the living conditions of existing residents in terms of noise and disturbance. As a result, the proposed development would conflict with LP Policy A1, which seeks to protect the quality of life of occupiers and neighbours, LP Policy A4, which seeks to ensure that noise is controlled and managed, and with the requirements of the CPGA.

Conclusion

40. For the reasons above, the proposed works and development would be contrary to the development plan as a whole, and so the appeals are dismissed.

Elaine Gray

INSPECTOR

Appeal Decision

Site visit made on 6 December 2016

by **Beverley Wilders BA (Hons) PgDurb MRTPI**

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

Decision date: 20 January 2017

Appeal Ref: APP/X5210/W/16/3158351

325 Kentish Town Road, Camden, London NW5 2TJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Amin Merali against the decision of the Council of the London Borough of Camden.
 - The application Ref 2015/7282/P, dated 18 December 2015, was refused by notice dated 10 March 2016.
 - The development proposed is change of use of ground floor from retail shop (use class A1) to coffee shop (mixed use A1/A3).
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the character, function, vitality and viability of Kentish Town town centre.

Reasons

3. The appeal site comprises a ground floor retail unit with residential accommodation above. It is located centrally within a frontage of fourteen other ground floor commercial premises (Nos 317 to 347) and forms part of the wider Core Retail Frontage within Kentish Town town centre. At the time of my site visit two of the premises, including the appeal site, were vacant with the remainder of the premises in commercial use as shops, cafés/restaurants, takeaways and as a bookmaker. The main parties agree that the existing percentage of retail units within the frontage is 64%.
 4. Policy CS7 of the Camden Local Development Framework Core Strategy (CS) seeks 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. It also seeks to protect and promote small and independent shops and resist the loss of shops where this would cause harm to the character and function of a centre. The CS defines specific objectives for each of the centres including Kentish Town. It states that the Council will support the character and retail role of Kentish Town by managing the proportions of non-retail premises, in line with the approach set out in the Council's Supplementary Planning Document.
-

5. Policy DP12 of the Camden Local Development Framework Development Policies (DP) seeks to manage development to ensure that it does not cause harm, amongst other things, to the character, function, vitality and viability of a centre.
6. Camden Planning Guidance 5 (CPG5) Town Centres, Retail & Employment expands upon Policy CS7 of the CS and Policy DP12 of the DP and designates Core and Secondary Frontages in order to protect the retail function of Kentish Town. It states that the Council will generally resist proposals that would result in less than 75% of the premises in Core Frontages being in retail use and more than 2 consecutive premises within the Core Frontages being in non-retail use. CPG5 is a relatively recent adopted supplementary planning document and in reaching my decision I therefore afford it significant weight.
7. Although the proposal is for a mixed A1/A3 use, it would result in a further reduction in the percentage of premises within the Core Frontage in retail use from 64% to 57% and would be contrary to the guidance in CPG5. Whilst the retail unit at the appeal site is currently vacant, I have seen no evidence regarding how long it has been vacant and note that the Council resolved to approve an application which included an extension to an existing retail unit at the site in 2015 (Ref 2015/2605/P).
8. At the time of my visit the town centre was busy with pedestrians and I note that a recent study considers it to be performing well in relation to the provision of convenience and service units (GVA Grimley Camden Retail Study November 2013) and that a recent health check carried out by the appellant shows no significant changes to the centre since the GVA Study. I acknowledge that by bringing the premises back into use the proposal would offer some benefits in terms of increased pedestrian footfall, employment and the provision of a complementary service to the town centre. However there is no substantive evidence to suggest that the premises are unlikely to be brought back into retail use and indeed the appellant has stated that the premises would be used for an A1 retail use should the appeal be dismissed. The appeal site appears to provide a suitable unit and fulfils a role as a small shop in the context of CS Policy CS7.
9. The existing retail premises, albeit currently vacant, contributes to the retail character and function of the town centre and is within a frontage where the retail function is already threatened by the existence of a number of non-retail premises. In my view in this context the loss of any additional retail premises in this particular part of the town centre is likely to be harmful to the character and function of the town centre, notwithstanding the figures provided by the appellant regarding the percentage of A3-A5 uses in the wider town centre.
10. In reaching my decision I have considered the evidence submitted regarding the positive role that Starbucks outlets and other coffee shops can play within town centres and the benefits that they can bring, in particular in relation to pedestrian footfall. However for the reasons stated above, in this instance I do not consider that the benefits of the proposal would outweigh the harm to the town centre that would be likely to result from the loss of the retail premises. Whilst the appeal site is located in an accessible location close to Kentish Town station and whilst the Council raised no amenity concerns, I do not consider the proposal to be sustainable development having regard to the likely harm to the retail function of the town centre.

11. My attention has also been drawn by the appellant to numerous appeal decisions allowing proposals for mixed coffee shop and retail uses within centres. Whilst I have had regard to these in reaching my decision and whilst they provide a useful indication of how such uses have been considered by other Inspectors, I note that none of them relate to proposals within Camden and to the policies relevant to the proposal. A number of the appeal decisions were made some time ago and relate to existing uses where specific evidence was provided regarding the impact of these existing uses on the relevant centres. Whilst others are more recent, none appear to directly replicate the circumstances of the proposal and as such I afford them limited weight.
12. The Council has referred to three relatively recent appeal decisions relating to the loss of retail premises within Camden, one of which relates to 317 Kentish Town Road, though I note that none of the proposals involve a proposed A1/A3 use. I have not however been provided with copies of these decisions but understand that these appeals were dismissed due to concerns relating to the loss of the retail use and the impact of this on the vitality and viability of the relevant centres. However as I am not fully aware of the details or particular circumstances relating to these cases I afford them limited weight.
13. In any event I must determine the proposal before me on its own merits. Though the premises are relatively small and located towards the end of the Core Frontage on this side of the road I do not consider that this means that the impact of the proposal would be significantly lessened or allows for increased flexibility with regard to non-retail uses. Finally whilst the proposed use would incorporate an element of retail use and whilst I understand that in some cases Starbucks premises have been considered to be A1 retail uses, a mixed A1/A3 use is proposed in this case. Consequently there would be some loss of retail function at the appeal site. For the reasons stated this would be harmful to the town centre and whilst the proposal may comply with some aspects of some of the Council's policies and with some parts of the National Planning Policy Framework, I do not consider that the material considerations put forward in this particular case outweigh the harm identified and the conflict with the most relevant Council policies, namely CS Policy CS7 and DP Policy DP12.
14. Taking the above matters into consideration, I conclude that the proposal would be likely to adversely affect the character, function, vitality and viability of Kentish Town town centre. It is therefore contrary to the development plan and in particular Policy CS7 of the CS and Policy DP12 of the DP. These policies seek to amongst other things, protect and enhance the role and unique character of each of Camden's centres and to resist the loss of shops where this would cause harm to the character and function of a centre. The proposal is also contrary to the guidance contained within CPG5.

Other Matters

15. I note that the proposal also includes changes to the external appearance of the shopfront. The Council states that these changes were previously approved under the 2015 permission (Ref 2015/2605/P) and has raised no objections to the alterations. I have no reason to disagree with the Council's conclusions on this matter.

Conclusion

16. For the above reasons and having regard to all matters raised, I hereby conclude that the appeal should be dismissed.

Beverley Wilders

INSPECTOR

Diver, John

From: Neale, Laura
Sent: 21 October 2019 10:33
To: Warren Pierson; Diver, John
Subject: RE: Draft S106 appeal agreement - 387 Kentish Town Rd APP/X5210/W/19/3234806
Attachments: Developer contributions CPG.pdf

Hi Warren

Regarding both the appeal and the new application, we consider that these need to be standalone Section 106 agreements rather than deeds of variation.

In relation to the appeal agreement, I understand that the appeal relates to the ground floor rather than the upper floors which are covered by the agreement you are seeking to vary. The appeal also relates to a GDPO Prior Approval as opposed to a planning application. The only circumstances in which we use Deeds of Variation are for Section 73 applications where the development is essentially the same, with only minor changes to conditions. It is particularly important for car free agreements that the scope of the development is clear to ensure that the car free requirement only applies to the correct units so we would not consider that a Deed is appropriate in these circumstances because of the differing type of application, the fact that the area of development is different and because it is an appeal which requires some different clauses to be included in the agreement.

In relation to the new application, the reasoning is essentially the same. I understand the new application relates to all floors of the building, while the previous agreement covers only the upper floors. We need to ensure that the correct units are secured as car free and there is no confusion.

Regarding our fees, the Council cannot reduce its legal fees as these are set by our Cabinet and applied across all Section 106 agreements drafted and signed by Camden. I'm attaching our CPG regarding developer contributions which sets out our policy, please look specifically at para 6.8 onwards. While I understand that the following may be counterintuitive, having an existing agreement saves little time in terms of the drafting process. We are still required to carry out updated title checks, review the planning file and draft the agreement to include the new planning reference and description of development etc. As set out above, this is particularly true for appeal agreements as the form the agreement takes is quite different due to the fact that it is not a permission granted by the Council so different clauses are required. If you can confirm that the agreement for the appeal as drafted is agreed meaning no negotiations are required and saving the Council time, I may be able to reduce the legal fee slightly however this would be subject to the approval of the planning department. The monitoring fees are set and cannot be reduced – these are only payable if the appeal is successful and permission granted.

I look forward to hearing back from you.

Kind regards
Laura

Laura Neale
Lawyer



From: Warren Pierso [redacted]
Sent: 18 October 2019 [redacted]
To: Neale, Laura [redacted]
Subject: Re: Draft S106 appeal agreement - 387 Kentish Town Rd APP/X5210/W/19/3234806

Hi Laura and John,

I have not heard back from you with regard to the appeal or the current application?

With regard to the legal fees for the preparation of an agreement, as it will be a simple substitution of the previous agreement (just with a different application number and a different description of development) I do not consider your quoted fees justifiable.

Please can I have an update so that we can move to a conclusion.

Regards,

[Warren @ PD Planning UK Ltd](#)

On 8 Oct 2019, at 12:41, Neale, Laura <[redacted]> wrote:

Hi Warren

I am seeking instructions and will come back to you however I am not clear as to why we would use a Deed of Variation in this situation.

Kind regards
Laura

Laura Neale
Lawyer

<image001.png> <image002.png> <image003.png> <image004.jpg>

From: Warren Pierso [redacted]
Sent: 07 October 2019 [redacted]
To: Neale, Laura <[redacted]>
Cc: Diver, John <[redacted]>
Subject: Re: Draft S106 appeal agreement - 387 Kentish Town Rd APP/X5210/W/19/3234806
Importance: High

Hi Laura,

Thank you for your email. I am not sure where your instructions have come from, but I believe that it is appropriate to secure this by a deed of variation of the legal agreement attached to the original approval?

Regards,

Warren @ PD Planning UK Ltd

On 7 Oct 2019, at 15:24, Neale, Laura <[REDACTED]> wrote:

Dear Warren

I act for the Council's planning department in relation to the Section 106 Agreement on the above appeal and understand you are the agent acting on behalf of the applicant.

In accordance with my instructions, I have prepared the attached draft Agreement for your use in the appeal.

Please note the following.

1. Completion Date

This Agreement must be completed as soon as possible **and no later than 24 October 2019, the date that written representations are due.** Given the time it will take the Council to issue engrossments, receive engrossments back and seal the agreement (which will not occur until payment is received), approval of the agreement should be provided as soon as possible.

2. Parties to the Agreement

All parties with an interest in the land are required to be a party to the Agreement so please check the draft to ensure all such parties have been referred to. If details change or new parties (e.g. mortgagees) are subsequently added to the title please let me know forthwith as failure to do this may prevent completion taking place prior to the deadline.

3. Legal fees and monitoring fees

Please note that your client will need to pay our costs in relation to this matter, whether or not the matter proceeds to completion. We anticipate the costs as being £1,366 made up of £770 as to our legal fees, a one off monitoring fee of £584 (being £584 per head of term), and £12 for Land Registry Charges. If negotiations become protracted and costs exceed the £770 fee we will charge on a £329 per hour basis until such time as the matter is completed. I will provide you with an invoice when I send you the engrossment copies of the Agreement for signature, but in the meantime I should be grateful to receive your firm's undertaking that those costs will be met. I have copied below our standard undertaking which is to be completed and returned to me.

I look forward to receiving any comments you may have, or your approval of the draft, so that I can issue engrossment copies for signature.

Kind Regards,

Laura Neale

Planning Lawyer
Law and Governance
London Borough of Camden

Telephone: [REDACTED]

Web: camden.gov.uk

UNDERTAKING

TO: Legal Services
London Borough of Camden

Town Hall, Judd Street
London WC1H 9LP
FAC [REDACTED]

**RE: TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)
SECTION 106 AGREEMENT
NAME OF PROPERTY: 387 KENTISH TOWN ROAD LONDON NW5 2TJ**

I [REDACTED] of [REDACTED] undertake on behalf of Kingstone Property Kentish Town Limited to ensure that the Council's legal fees in the preparation of the above Agreement will be met in full and in accordance with the terms set out in the Council's email of 7 October 2019.

SIGNED BY:

NAME IN CAPITAL:

FOR AND ON BEHALF OF:
(Applicant)

DATE:

This e-mail may contain information which is confidential, legally privileged and/or copyright protected. This e-mail is intended for the addressee only. If you receive this in error, please contact the sender and delete the material from your computer. See our new Privacy Notice [here](#) which tells you how we store and process the data we hold about you and residents.

<S106 appeal agreement - 387 Kentish Town Rd V1.docx><Site Plan - 387 Kentish Town Rd.docx>

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