

Our ref: hk/O/kbrn/Council/OH/21.09.20

21 September, 2020

Mr Obote Hope  
Planning – Development Control  
London Borough of Camden 2nd Floor, 5 Pancras Square  
c/o Town Hall, Judd Street  
London  
WC1H 9JE

Dear Obote,

**Ref: 2020/2409/P - Proposed change of use from vacant dental surgery (Class D1) to restaurant use (Class A3) at 122-126 Kilburn High Road London NW6 4HY**

Further to our recent correspondence via e-mail regarding the above application proposal please note the following in response to the issues raised –

- 1. The loss of the community use (class D1), in the absence of sufficient justification demonstrating that the premises is not suitable for such use and the proposal would fail to provide evidence that the loss of the facility would not create, or add to, a shortfall in provision for the existing community use activity in Camden*

The subject proposal to establish the principle of A3 use fully complies with adopted Local Plan Policy TC2 and TC4. There is no loss of retail use and the principle of non A1 use at this site is already established. The proposed use will restore an active and viable use to a defined prime shopping location and create approximately 70 jobs on the high street.

The previous occupier, a private dental practice, Dentix UK limited (Class D1 use) vacated the property ceased trading having gone into administration shortly after lockdown on 17<sup>th</sup> April 2020 (see link to the Official Public Record <https://www.thegazette.co.uk/notice/3551674>). it is therefore not a viable proposition in this location.

Planning permission 2016/6163/P for 'change of use from retail (Class A1) to dental surgery (Class D1) including alterations to shopfront and installation of louvered roof and doors in rear elevation was approved on 17<sup>th</sup> January 2017 with the premises being occupied

approximately 8-12 months later. As such, the approved dental practice has not been in situ for a sufficient period in order to contribute to or create any perceived shortfall in dental surgery use in the area. Rather, it is the case that there appears to be an oversupply of such uses which may explain why the Dentix use went into administration. For example, please note all of following dental practices within the immediate vicinity (walking distance) of the site: -

- Quex Road Dental Surgery - 10 Quex Road, North Maida Vale, London NW6 4PL (82m from application site- 1 minute walk)
- Kilburn Dental Studio – 137 Kilburn High Road (50m from application site - 1 minute walk)
- NW London Smile Centre - 98A Kilburn High Road, North Maida Vale, London NW6 4HS (109m from application site – 1 minute walk)
- Northwest Dental Care - 196 Kilburn High Rd, Kilburn, London NW6 4JD (161m from application site – 3 minute walk)
- Shape Dental Clinic- 44 Kilburn High Road, North Maida Vale, London NW6 4HJ (321m from application site – 4 minute walk)
- Rashid GN Dental Clinic - 207 Kilburn High Road, Kilburn, London NW6 7JG (321m from application site – 4 minute walk)
- David Saitowitz Dentistry, 61 Kilburn High Road, North Maida Vale, London NW6 5SB (0.2 miles – 5 minute walk from application site)
- Inspire Dental Care - 287 Kilburn High Rd, Kilburn, London NW6 7JR (0.4 miles from application site – 8 minute walk)
- The Kilburn Corner Dental Practice, 61 Kilburn High Rd, North Maida Vale, London NW6 5SB (0.3miles from application site – 5 minute walk)
- Dental Surgery, 341 Kilburn High Rd, Brondesbury, London NW6 7QB (0.5miles – 10 minute walk)
- Maygrove Dental Practice, 348 Kilburn High Road, Kilburn, London NW6 2QJ – 0.6miles from application site – 11 minute walk

- White Rose Dental Studio, 92 West End Ln, West Hampstead, London NW6 2LU  
(0.5miles from application site – 12 minute walk)

There are twelve alternative dental practice facilities within a 10-12 minute walk of the application site such that the loss of the existing dental practice use will not result in a shortfall of provision in the area.

It is also the case that condition 4 of planning permission 2017/2868/P restricts the use of the premises as a dental practice / health centre only such that any other community use within the D1 class such as a library or a place of worship would in fact require planning permission and it is highly unlikely that any alternative D1 use would be granted as this is defined primary retail frontage where Class A uses are expected to locate. The restrictive condition also means that even an A1 retail use at this defined prime shopping location would also require planning permission and following your reasoning above the suggestion is that this would also be denied. It is however the case that the Courts have determined that it is enough that a proposal accords with the Development Plan when considered as a whole. It is not necessary to accord with each and every policy contained within the Development Plan. Indeed it is not at all unusual for development plan policies to pull in different directions.

The perceived need to protect the existing use at all cost is clearly a bizarre position in the current climate that has no planning merit, especially given that as of 1<sup>st</sup> September 2020 by virtue of *The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020*, almost all of the properties on Kilburn High Road could be converted under permitted development rights without restriction for all or any part use without restriction as -

***(a)for the display or retail sale of goods, other than hot food, principally to visiting members of the public,***

***(b)for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,***

***(c)for the provision of the following kinds of services principally to visiting members of the public—***

***(i)financial services,***

***(ii)professional services (other than health or medical services), or***

***(iii)any other services which it is appropriate to provide in a commercial, business or service locality,***

***(d)for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,***

***(e)for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,***

*(f)for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*

*(g)for—*

*(i)an office to carry out any operational or administrative functions,*

*(ii)the research and development of products or processes, or*

*(iii)any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*

As you know, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The changes effective from 1<sup>st</sup> September 2020 are a **significant material consideration**. Whereas existing development plan policy seeks to protect community uses such as dental surgeries, the changes to the Uses Classes Order mean that such uses can far more easily locate anywhere on the high street without requiring planning consent.

The protection afforded to such uses in the development plan is therefore replaced with a far greater flexibility to operate from a greater diversity of locations. Such uses are now free to locate anywhere on the high street based on demand. The restrictive policy position and indeed the restrictive planning condition on the previous use is therefore *otiose* and effectively superseded by the change in planning legislation.

The appeal precedent for this has also already been established as recently as 17 August 2020. We refer you to appeal decision APP/P1133/W/20/3251909 (copy attached) at 32 Queen Street, Newton Abbot TQ12 2EQ. This appeal related to the refusal of planning permission for the change of use of a retail unit in a Devon primary shopping frontage to a restaurant. The inspector firstly established that the proposal was contrary to the development plan. He then went on to consider material considerations, finding that the proposal would make use of an under-utilised unit, stimulate an evening economy, create some employment and add activity to the site's frontage and the street. Crucially the Inspector found that the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which at the time had not yet even come into force **outweighed the conflict with the development plan**.

The proposed A3 use at this site will create approximately 70 jobs on the High Street and this is yet another significant material consideration at a time when approximately 100,000 high street jobs have already been lost in the UK due to Covid-19. Policy C1 and C2 are not therefore breached and there is now no planning barrier to community uses locating anywhere on the high street.

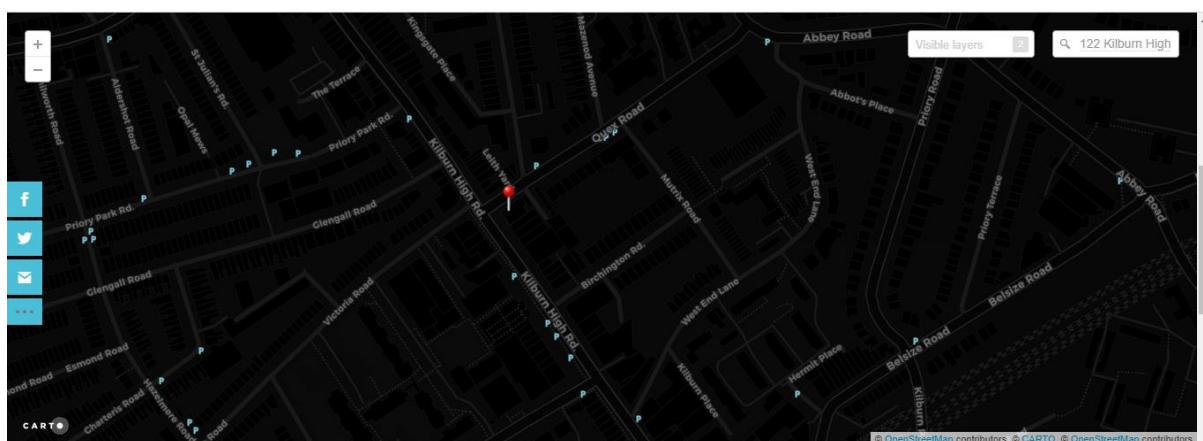
2. *The proposed development, in the absence of a legal agreement securing a Delivery and Servicing Management Plan, would likely give rise to conflicts with other road users and be detrimental to the amenities of the area generally*

The applicant is happy to accept a condition requiring the submission of a Delivery and Service Management Plan before the proposed use commences. The wording of the condition could read as follows -

*You must apply to us for approval of a delivery and service management plan to show how the premises will be serviced and how you will prevent the causing of nuisance for people in the area, including people who live in nearby buildings. You must not start the restaurant use until we have approved what you have sent us. You must then carry out the measures included in the management plan at all times that the restaurant is in use.*

3. *The proposed development, in the absence of a legal agreement securing 2 long-stay and 16 short-stay cycle parking, would likely give rise to conflicts with other road users and be detrimental to the amenities of the area generally*

We note that the previous dental surgery use was not required to provide secure cycle provision. The subject property is located in a highly sustainable location with a PTAL score of 6a (excellent). The TfL Cycle Parking Map confirms that there 22 cycle parking spaces on Quex Road and further 20 cycle parking spaces in the immediate vicinity on Kilburn High Road (<https://www.stolenride.co.uk/cycle-parking-map-london/>), which are considered suitable for use by customers of the proposed development. To encourage staff to cycle to the Site, the Operator will ensure that staff have a secure location for storing bicycles during their shift.



TfL Cycle Parking Map

The applicant is content for a condition to be attached to the planning permission as follows

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*You must provide details of secure cycle parking storage for the restaurant use. Thereafter the cycle spaces must be retained in accordance with the approved details, they must be provided prior to the use of the building as a restaurant and the space used for no other purpose.*

We trust all of the above is acceptable and commend this application for your approval.

Yours sincerely,

**HARIS KASUJI** BA MA MRTPI