

Our ref: hk/O/ KlbN/S73/10.11.22

15 November, 2022

Camden Council
Planning and Development,
Via Planning Portal

Dear Planning Officers,

Removal of condition 4 of planning permission 2016/6163/P (health centre/dental surgery use only) at Merlin House 122-126 Kilburn High Road, London NW6 4HY

We act as planning consultants to Kilburn 2016 LLP who are the freeholders of the above premises.

The Development Site

The subject property is a vacant former dental practice located in the primary shopping frontage of Kilburn High Road Town Centre.

Policy TC1 of the Camden Local promotes town centre uses within designated town centres. Policy TC2 promotes successful and vibrant centres throughout the borough to serve the needs of residents, workers and visitors. The Local Plan directs applicants to supplementary planning document Camden Planning Guidance on town centres and retail where individual objectives for each town centre are set out. Furthermore it advises that primary shopping frontages will be protected as locations with a high proportion of shops (A1) in order to maintain the retail function of the centre.

The development site comprises a vacant dental surgery over ground floor (196.4sq.m) and basement (135.6 sq. m). The unit is approximately 13.7 wide by 20.7m deep. The main frontage along Kilburn High Road is west facing. The property also faces Quex Road to the north with a street frontage of 11m that incorporates a means of escape. The unit has fire escape access to a small enclosed rear yard that is linked to Quex Mews to the east of the property. Other commercial premises enclose the southern boundary.

The site has a Public Transport Accessibility Level (PTAL) of 6a (excellent) and is easily accessible by public transport. Kilburn High Road Overground is located approximately 300m away(South), and a variety of bus stops serving numerous different routes are located 0m-300m away on Kilburn High Road and Kilburn High Road Underground Station(North) is located 800m away.

Kilburn High Road is Camden's second largest Town Centre. It is divided by the busy A5 (Edgware Road) which forms the borough boundary between Camden and Brent. The east side of the town centre is in Camden and the west side in Brent. Kilburn is designated as a Major Centre in the London Plan.

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 January 2017.

Condition 4 of the planning permission is highly restrictive, and states as follows -

Notwithstanding the provisions of Class D1 of the Schedule of the Town and Country Planning (Use Classes) Order, 1987, or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, the premises shall not be used for any purposes other than as a health centre / dental surgery.

Reason: To ensure that the future occupation of the building does not adversely affect the adjoining premises/immediate area by reason of noise, traffic congestion and excessive on-street parking pressure, in accordance with policies CS5 (Managing the impact of growth and development), CS10 (Supporting community facilities and services) and CS11 (Promoting sustainable and efficient travel) of the London Borough of Camden Local Development Framework Core Strategy; and policies DP15 (Community and leisure uses), DP19 (Managing the impact of parking) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

Condition 4 is now unduly restrictive and implies that the property can only be operated for two specific uses, namely a health centre or dental surgery. It was imposed at the time to prohibit any permitted development right to change the use of the premises to any other use within the former Class D1 of the Use Classes Order which included uses such as churches mosques and temples, church halls, law courts. and non-residential education and training centres.

However, the use Classes order has been amended significantly since then to the extent that Condition 4 does not satisfy all of the six tests necessary for the use of conditions in planning

permissions. Condition 4 is no longer relevant to the planning permission, necessary, or reasonable in all other respects and should therefore be removed.

As you know, in September 2020 the government brought forward significant changes to the Use Classes Order. Classes A, B and D and of the Use Classes Order have been revoked. The changes were introduced as a direct result of the Coronavirus pandemic, which exacerbated long standing weaknesses in the high street retail sector that were harming the long term vitality and viability of centres. The government now favours a diversity of use in town centre locations with Class E (Commercial, Business and Service) permitted development rights allowing for use, or part use, for all or any of the following purposes—

- 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.*

The lawful use of the property clearly falls within Class E of the Use Classes Order. However, condition 4 of planning permission 2016/6163/P is worded such that it proscribes any use other than health centre or dental surgery use from the premises. The corollary now being that even retail shops are not permitted to lawfully operate from the premises without planning permission. It was clearly never the intention of Camden Council to prohibit retail shops from operating in this primary shopping frontage location in a Major Retail Centre.

Furthermore, as Class A and B of the Use Classes Order have also been revoked almost all commercial ground floor premises within Kilburn Major Centre now fall within Class E or benefit from new permitted development rights to convert to Class E use. Therefore, the development control protection afforded to the use of the property as a health centre or dental surgery falls away as virtually all other commercial properties in the centre are in Class E use now and as such benefit from an automatic permitted development right to convert to dental surgery or health centre use. The protection afforded to such uses has therefore been replaced with a far greater flexibility to operate from a greater diversity of locations. The prescribed uses protected by planning condition 4 are free to locate anywhere on the high street based on demand. The restrictive policy position is therefore *otiose* and effectively superseded by the change in secondary legislation.

Condition 4 no longer satisfies all six tests for the use of planning conditions in planning permission. It is neither necessary, relevant to planning or reasonable in all other respects and unduly prohibits the freeholder from marketing the premises as a commercial retail property. The removal of condition 4 will regularise the lawful use of the premises as a Class E use with permitted development rights to change to other uses within Class E. At a time when the high street retail sector is facing massive recessionary pressure the removal of this condition will make the property far more attractive as a viable commercial location. We therefore commend this application for your approval.

Please do not hesitate to contact these offices if you have any questions relating to this application.

Yours sincerely,

HARIS KASUJI BA MA MRTPI