

15 December 2022

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Dear Sir/Madam,

**TOTTENHAM COURT WALK, 18-30 TOTTENHAM COURT ROAD, W1T 1AT: PLANNING APPLICATION TO VARY CONDITIONS 5 AND 10 OF APPLICATION REFERENCE 2013/3929/P**

Please find enclosed on behalf of our client, Derwent Central Cross Limited, an application to vary Conditions 5 and 10 of planning permission Ref 2013/3929/P.

As part of this application please find enclosed:

- Signed and dated application forms and Certificates
- Completed CIL Form.

The application fee has been paid directly through the Planning Portal.

**DESIGN AND ACCESS STATEMENT**

**Background**

Planning permission was granted on 30<sup>th</sup> January 2013 (App Ref 2012/2232/P) for the:

*“Extension of retail units and cinema entrance at 18-30 Tottenham Court Road by infilling of double-height arcade, new shopfronts with canopy above; part change of use of ground floor, mezzanine and basement to flexible retail/ food and drink (Class A1 and/or Class A3) and associated works.”*

This permission was subject to a number of conditions which related to the use and extent of the approved Class A1 and A3 uses. During the detailed design process a S73 application was approved on



23 September 2013 to vary the wording of Conditions 3 and 10 of this permission, and these amendments related to changes to the retail units and their use/occupation.

The current wording of Condition 5 is:

*“The food and drink use hereby permitted shall not be carried out outside the following times 08:00 to 23:30 Mondays to Thursdays, 08:00 to 00:00 on Fridays and Saturdays and 09:00 to 22:30 on Sundays and public Holidays. “*

The current wording of Condition 10 states the following:

*“The retail food and drink uses hereby approved shall not exceed 315sqm GEA and shall be located within Unit H as identified on the approved ground floor plan and shall not be occupied by uses other than falling within Classes A1 and A3 of the Town and Country Planning (Uses Classes) Order, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.”*

The reason given for this condition is

*“To preserve the retail character of the town centre and to safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policies DP12 and DP26 of the London Borough of Camden Local Development Framework Development Policies.”*

A further application was made in 2014 under App Ref 2014/4315/P for ‘Alterations to sizes of Units G and H approved by permission 2013/3929/P dated 23/09/13 and amendment to condition 11 of planning permission 2012/2232/P dated 30/01/13 to correct reference to unit numbers.’

Additional non material amendments were also made to the original approved scheme.

### **Current Position**

The current parade of units within the development are occupied by a range of retailers as follows:

Unit and Address	Floorspace (GEA)	Tenant
Unit A, 18 TCR	295 sq.m	Vacant
Unit B, 19-20 TCR	823 sq.m	Waterstones Booksellers Limited
Unit C, 21-22 TCR	834 sq.m	ProCook Limited
Unit C1, 21-22 TCR	586 sq.m	Tiger Retail Limited
Unit D, 23-24 TCR	722 sq.m	Planet Organic Limited
Unit E, 25 TCR	126 sq.m	T2 Tea (UK) Limited



Unit F, 26 TCR	117 sq.m	Hotel Chocolat Stores Limited
Unit G, 27 TCR	228 sq.m	Leon Restaurants Limited
Unit H, 28 TCR	300 sq.m	DF Mexico Ltd

Since the 2012 and 2013 approvals there have been a number of notable changes to the retail market. Firstly the change to the Use Class Order in September 2020 and the creation of the new Class E, which combined the former Classes A1 and A3 along with other use into a single new Use Class has had a significant change to the scope for existing retail units across England.

The second is the shift in shopping habits and reduced demand for retail floorspace, fuelled in part by the Covid-19 pandemic and the rise of online shopping. Alongside this is a desire for more 'experience' type retail from younger shoppers.

In particular Unit A has struggled to let. Previously this was leased to Acuitus however the unit struggles from poor visibility being set back from the street frontage. In views northwards along Tottenham Court Road, the unit is not visible until drawing level with the site. In views southwards, the adjacent Sainsburys is the dominant focus.

There has however been interest in the unit from a Class E food and drink tenant. Discussions have progressed positively with the potential tenant, but this requires a variation to Condition 10 of the amended permission in order for them to be accommodated on site and for the opening hours to be varied to fit with their business model. The leasing history is outlined in further detail below.

In reviewing the options for the site, it has also become apparent that the existing tenant in Unit G does not comply with the requirements of Condition 10. Unit H is leased to DF Mexico, with a floorspace of 300 sq.m GEA. This is in compliance with Condition 10 of the amended permission. However Unit G has been leased to Leon, with a floorspace of 288 sq.m GEA, since 2015. Whilst not undertaken knowingly by the leasing team, they have now been made aware that this is in breach of Condition 10. This application therefore seeks to also regularise this position.

## The Proposals

The application therefore proposes to amend condition 5 as follows:

*"The food and drink use hereby permitted (except Unit A) shall not be carried out outside the following times 08:00 to 23:30 Mondays to Thursdays, 08:00 to 00:00 on Fridays and Saturdays and 09:00 to 22:30 on Sundays and public Holidays. Any food and drink use at Unit A shall not be carried out outside the following times 06:00 to 23:30 Mondays to Thursdays, 06:00 to 00:00 on Fridays and Saturdays and 09:00 to 22:30 on Sundays and public Holidays."*



Condition 10 is proposed to be amended to read as follows:

*“The retail food and drink uses hereby approved shall not exceed ~~315sq.m~~ 883sq.m GEA and shall be located within Unit A, Unit G and Unit H as identified on the approved ground floor plan and shall not be occupied by uses other than falling within Classes A1 and A3 of the Town and Country Planning (Uses Classes) Order, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.”*

The applicants are not seeking to remove Condition 10 altogether, and recognise that by seeking to amend the condition LB Camden still retain significant control over the mix of tenants along this part of Tottenham Court Road. This is different to the situation in most Central London retail frontages in the Borough.

### **Unit A**

Unit A was the last unit to be leased in the original marketing campaign for the building. Initially this was occupied by an opticians, Acuitus but they exercised their option to break, the effective break was 31/12/2021. The unit has then been vacant since that time but marketed with little traction from July 2021

As outlined above, the applicants began marketing the space at Unit A in September 2021 and have been marketing the space through the introduction of a marketing vinyl, website and instructed two agencies; Savills and Kenningham Retail to actively engage with the market.

The leasing campaign has been challenging due to a number of factors:

- Limited demand amongst retailers to take new bricks and mortar space
- The adjacency to Sainsbury's and the fact it is set back from the main building line immediately adjacent detracts from the prominence and footfall, and therefore is not attractive to comparison good retailers. This has been recurring feedback, and was also very much the factor which led to Unit A being the final unit to lease during the original leasing campaign.

Interest to date has come solely from 'grab and go' food operators. Given the existing offer on the remaining Tottenham Court Walk parade and wider street environment, and the large surrounding office population, operators see this location as being very much amenity and food & beverage driven.

The offer received is the only offer received to date – to an established food retailer with an excellent track record both in London and nationally.

As a long-term investor in London – and specifically on Tottenham Court Road – Derwent London understand the importance of good tenant mix. Recent letting campaigns for units within the parade



have seen the introduction of both ProCook and Tiger which the applicants see as excellent retailers for this parade and the wider character of Tottenham Court Road. However, flexibility is required to ensure they can offer the right tenant mix along the entire parade to respond to the changing nature of the area and the increasing number of office workers (and shoppers) requiring good food & beverage amenities. Without this flexibility they will see a long-term void on this unit which will have a detrimental effect on the aesthetics and security of the Tottenham Court Walk parade and wider street environment.

### **Unit G**

This unit is located close to the Odeon Cinema and has been leased to Leon since 2015. The proximity of this tenant to the cinema generates linked trips, and works well to balance with the offer in the remainder of the parade.

### **PLANNING STATEMENT**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. The Courts have held that the Government's statements of planning policy are such 'material considerations' which must be taken into account, where relevant, in decisions on planning applications.

The Development Plan for this site comprises:

- The London Plan (2021)
- Camden Local Plan (2017)

The original condition was applied for the following reason:

*"To preserve the retail character of the town centre and to safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policies DP12 and DP26 of the London Borough of Camden Local Development Framework Development Policies."*

It is noted that Policy TC2 'Camden's centres and other shopping areas' and Policy TC4 'Town centre uses' seeks to protect retail within existing centres, including a balance of former Class A1 and other uses. However this policy was prepared before the changes to the Use Class Order in September 2020 which combined Class A1 with other uses to create the new Class E. This new Use Class provides the ability to use retail space for the former Class A1, A2, A3, parts of D1 and D2 without any control over these changes. This therefore reduces the control of Policy TC2, and the units at the application site



could be used for any purpose within Class E, with the only controls under the existing conditions being on the location and size of the units to be used for food and drink purposes.

At present Condition 10 restricts food and drink uses in both the former Classes A1 and A3. Appendix 4 to the Local Plan outlines that within the Central London Primary Frontages at Tottenham Court Road seeks to protect 80% of uses within the former Class A1 use, and this would include Class A1 food and drink uses.

The Town Centres and Retail CPG confirms that:

*“A frontage will start at a road junction or where there are ground floor residential uses in the run, at the beginning of the first two consecutive non-residential uses at ground floor level. Frontages may continue around corners, or across entrances to premises above or rear and may include isolated ground floor residential uses, but are always ended at roadways that interrupt the run of premises.”*

The frontage for Unit A therefore runs from the corner of Hanway Street to Stephen Street, and then from Stephen Street to Percy Street for Unit G.

Unit A: There are 11 units in this frontage, which are occupied as follows:

- Boots (former Class A1)
- Wasabi (former Class A1)
- Muji (former Class A1)
- Specsavers (former Class A1)
- Barclays (former Class A2)
- Sainsburys (former Class A1)
- Vacant
- Waterstones Booksellers Limited (former Class A1)
- ProCook Limited (former Class A1)
- Tiger Retail Limited (former Class A1)
- Planet Organic Limited (former Class A1)

Currently there are 11 units in this frontage, and 1 of these (or circa 9%) are in currently in food and drink use and in the former Class A3 use. The proposals would either retain this balance at 91% former Class A1 if the new tenant operated under the format that would have historically fallen into Class A1 or would increase this to 82%, assuming Unit A became a use outside of the former Class A1. The proposed use of Unit A for non Class A1 uses, and the associated variation of the condition, therefore complies with the policy objective for the balance of retail uses along Tottenham Court Road.



Unit G: There are 8 units in this stretch of frontage.

- T2 Tea (UK) Limited (former Class A1)
- Hotel Chocolat Stores Limited (former Class A1)
- Leon Restaurants Limited (former Class A3)
- DF Mexico Ltd (former Class A3)
- Odeon entrance
- Vacant unit
- I Smash (former Class A1)
- Opticians (former Class A1)

Currently there are 8 units in this frontage, and 3 of these (or circa 37.5 %) are in currently in food and drink use in the former Class A3 use, or are the entrance to the Odeon.

This falls slightly below the threshold of 80% of all units to remain in the former Class A1 use, with only 75% remaining within this use. However it is considered that there are material considerations which justify this and should be given significant weight in assessing the proposals. These are:

- The Odeon entrance should be discounted. This is a positive addition to the street and generates significant activity. This should be seen as a positive contribution to the frontage.
- The two restaurant units at Unit G and H have operated for a number of years without detriment to the vitality of this stretch of Tottenham Court Road.
- No complaints have been received on amenity grounds regarding either of these tenants.
- The location of these two restaurants adjacent to the Odeon cinema provides the opportunity for linked trips and encourages a longer dwell time in the area, with the potential for further linked trips to other retailers within the immediate vicinity of the site.
- Aside from the restriction on food and drink, following the introduction of Class E the LPA no longer have any control over the type of tenants that could occupy the other units within this frontage. The condition still maintains some degree of control over potential tenants
- However the applicant has worked hard to find former Class A1 retail tenants who reflect the specialist retail role of Tottenham Court Road in providing concentrations of furniture and electrical shops by seeking tenants who complete this role (Pro Cook, Tiger).



- The retail market is significantly different to that at the time the policy was prepared.
- Condition 10 still retains control over the balance of uses within this parade of retail units.

Therefore it is considered that there is significant support for the proposals which justify this change in this instance.

Opening Hours: The application proposals also relate to the extension of opening hours to Unit A to accommodate the proposed tenant's business model. The unit is a small unit, and would generate only moderate additional footfall within this extended period. The site is located on a busy red route and it is considered that in the context of other existing noise sources the extended opening hours would not have an adverse impact on the amenity of surrounding uses.

### **Summary**

In summary it is considered that the proposals accord with the policy objectives for the primary retail frontages, with the balance of retail units remaining within non food and drink uses. The restrictions on the mix of uses, secured through Condition 10, provides the LPA with control over the retail at this site – a situation which is outside of the Council's control in other retail parades. It is considered that this is an important consideration in the assessment of the proposals. The proposed extension of opening hours in the morning for Unit A would not have an adverse impact on surrounding uses.

It is therefore considered that the proposals are acceptable, and permission should be granted for these.

We trust that the enclosed information is sufficient to validate and determine the application. however should you wish to discuss this further or require any additional information please contact Caroline McIntyre on 07525 289 486 or [caroline.mcintyre@dp9.co.uk](mailto:caroline.mcintyre@dp9.co.uk).

Yours faithfully

**DP9 Ltd**