

Delegated Report		Analysis sheet	Expiry Date:	21/12/2010
		N/A / attached	Consultation Expiry Date:	09/12/2010
Officer			Application Number(s)	
Anette de Klerk			2009/5681/P	
Application Address			Drawing Numbers	
174 Drury Lane London WC2B 5QF			Refer to decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Retention of change of use on basement and ground floors from cafe (Class A3) to hot food takeaway (Class A5)				
Recommendation(s):		Planning Permission Refused		
Application Type:		Full Planning Permission		
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice		
Informatives:				

Consultations

Adjoining Occupiers:	No. notified 87		No. of responses 2		No. of objections 2	
Summary of consultation responses:	<p>A site notice was displayed between 18/11/2010 – 09/12/2010. Two letters of objection were received stating the following:</p> <p><u>174-176 Drury Lane (freeholders)</u> object- tenants in breach of their lease; table and chairs licence was refused on 9.3.10 due to problems of loss of amenity; application contrary to policies in London Plan, policies CS7, CS9 and DP12 of Camden LDF and also Camden SPD Planning guidance central London food drink and entertainment; new takeaway use with late night operation impacts on amenity of residents, such as late hours of operation, noise, increased motor traffic, slamming doors etc, fumes from fried food extracted out into street, increased litter on street, vandalism, vomit and urination; such impacts on highly residential area are inappropriate.</p> <p>Objections also made to concurrent advert application.</p> <p><u>2 Macklin Street</u> objects- daytime café changed to noon to night time kebab shop without licence- application to extend opening hours of kebab shop refused by Licensing SubCtee; later licensing application allowed to operate to midnight daily; design and layout resembles sit down café without toilets or ventilation; fast food takeaway not in keeping with character of residential and conservation area; loss of amenity due to noise, smells, litter, urine; midnight operation affects sleep of residents opposite; illegal parking by client in narrow road; potential attraction for alcohol-fuelled groups, drug dealers etc.</p>					
CAAC/Local groups comments:	<p>Covent Garden Community Association (CGCA) object on same grounds as their objection to appeal against enforcement notice- area is residential in character; previously café had A3 designation with no evening operation; numerous complaints from neighbours re operation of premises since change in style of operation, such as noise, litter and food waste, street urination and vomiting, smells from front extract due to no proper ventilation system; balance of trade between takeaway and eating is mainly takeaway in evening, esp late evenings on Thur/Fri/Sat; ventilation system incapable of coping with type of cooking involved (ie. frying); better locations elsewhere to cater for demand in kebabs.</p>					

Site Description

The appeal site has a basement and ground floor cafe below 3 storeys of residential properties. It is actually in Macklin Street near the junction with Drury Lane. There is opposite in Macklin Street the New London Theatre with a five storey block of flats above; 175 Drury Lane next door also has flats above. Adjoining the site is a corner retail shop at no.175 and Drury Lane itself has retail parade, while Macklin Street has no ground floor commercial units. The property lies within the Seven Dials Conservation Area.

Relevant History

CA/905: Internally- illuminated double sided box sign with green letters to read Sandwich Bar with a red and white "Drink Coca-cola" motif all on a white background. Advertisement consent granted on the 24th November 1967.

3981: Installation of new shop front , permission granted 10th August 1967

2010/5607/A: Retrospective application for the installation of an illuminated projecting sign and fascia sign to an existing shop (Class A3) - submitted 18 October 2010. The decision has not yet been made.

Enforcement History:

EN09/0532: Enforcement Notice issued - Change of use from an A3 use (restaurant) to an A5 use (hot food take-away). Appealed, hearing due in April.

Relevant policies

LDF Core Strategy and Development Policies

CS1 (Distribution of growth)

CS5 (Managing the impact of growth and development)

CS7 (Promoting Camden's centres and shops)

CS16 (Improving Camden's health and well-being)

CS17 (Making Camden a safer place)

DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses).

DP26 (Managing the impact of development on occupiers and neighbours)

DP28 (Noise and vibration)

CPG

Revised Planning Guidance for Central London- Food, Drink and Entertainment Specialist and Retail Uses, Oct 2007

Assessment

Proposal: Planning permission is sought for the retention of the ground floor use as take away (A5). The ground floor was previously used as a café (A3).

Land Use:

Preamble

The planning history of the site would appear to indicate that the authorised use of the premises was originally a sandwich bar (class A1 retail). There are no records of any planning approvals for a change of use to A3 use on Council files. It would appear over time that this use became an A3 use (restaurant), although there is no evidence relating to the precise period the use occurred. Given the period of time that has lapsed since the premises have been used as a restaurant, the use has become authorised. The premises were in use as Piccolos café with limited opening hours closing at 18.00.

The Council's Enforcement section received a complaint in July 2009 that the café had been turned into a kebab shop (Piccolos Kebab house), with opening hours until midnight. The late opening has been approved by Licensing SubCommittee. A site visit was carried out on 19 August 2009 and it was found that a hot food take away had been established with 5 tables and chairs and that the customers

witnessed were waiting to take hot food away and eat outside rather than eating inside. The owner was requested to cease the use. This did not happen and therefore authority was obtained under delegated powers in July 2010 to serve an Enforcement Notice (Ref no. EN09/0532). An appeal (Ref no. APP/X5210/C/10/2136914) is currently under consideration.

Loss of A3 use:

Council policies on Town Centre uses (CS7 and DP12) do not afford any weight to the protection of Class A3 uses, particularly those located outside of any designated centre such as the application site. In light of the above the loss of an A3 use in this location is considered acceptable in principle.

Impact of A5 use:

Policies DP12 and DP26 state that the Council will not grant permission for food and drink uses or licensed entertainment (in Use Classes A3, A4, A5, D2 or sui generis) that it considers would cause individual or cumulative harm to an area and provides guidance with regard to the potential effect on nearby residential uses and amenity, noise pollution, the potential effect on highway conditions, the potential for anti-social behaviour and potential effects of a concentration of food and drink uses.

The application site is located off Drury Lane and faces onto Macklin Street. The area immediately surrounding the application site is largely characterised by residential uses on the upper floors. A residential block, Macklin House adjoins the application site to the north east and residential units are located above no 175 Drury Lane and on the upper floor of the building at no 2 Drury Lane opposite. Other commercial properties along the street operate during the daytime.

The café had been operating in working hours and customers would have been limited to the number of seats available in this small area of space. The effect on residents would therefore have been minimal. The activity associated with the take away premises (Class A5) is different from that of a café in that the customers arrive later in the night and generally overflow into the street. Customers congregating out on the pavement are considered to have a detrimental impact on the amenities of nearby residents in terms of noise and antisocial behaviour as experienced by residents (see consultation section above), such as noise, litter, food waste, street urination, vomiting, and smells from the front fascia extract. The interior has a display counter with grill, chip fryers and 2 doner kebab spits, plus a seating area comprising 5 tables with 10 chairs. However it appears from officer visits and from neighbour observations that, although there is a mix of eat-in A3 and takeaway A5 use during the day, the balance of trade in the evenings is mostly as takeaway (especially in late evenings at end of the week) with people taking out hot food (kebabs and chips) rather than eating inside.

The property has a recently installed ventilation system exiting at fascia level directly underneath windows to the residential units located on the upper floors. The main impact on residential amenity would arise from the noise and smells generated by the system. The application site is adjoined by a residential block to the north east and residential units are also located above the application site and in the building opposite. Given the proximity of the extract to residential properties it is particularly important that Camden's noise criteria would be met and no odour nuisance created.

Information regarding the noise and manufacturers specification of the extract system has been submitted to support the application and this has been reviewed by the Council's Environmental Health Officer. It is considered that the information is deficient and do not demonstrate how Camden's noise standard would be met. An environmental sound survey to determine the lowest background noise level to be compared with the unit during operation has not been undertaken. No noise calculation prediction has been made to determine the resultant noise level from the source to the nearest noise sensitive premises.

The property has inadequate hot food ventilation facilities to accommodate the cooking of hot food and at present the extraction system extracts fumes from the cooking area out of a grille under the fascia at the front of the building leading to a harmful impact on the amenity of adjoining residential

occupiers in terms of smells

It is considered that the current use of the premises as an A5 with extended opening hours and the location of an extract duct at fascia level under residential units are harmful to the amenity of nearby residential occupiers in terms of cooking smells, anti-social behaviour and noise at night.

Impact on Transport:

Given the small floor area of the premise, its location within a town centre and being within walking distance to bus routes and tube stations, the proposal does not significantly affect the existing transport conditions in terms of parking and traffic generation.

Recommendation:

the application be refused on basis that the hot food take-away (Class A5) use results in loss of residential amenity for neighbouring occupiers, by virtue of noise, fumes, littering, and anti-social behaviour, contrary to policies CS5 (Managing the impact of growth and development); CS7 (Promoting Camden's centres and shops); CS16 (Improving Camden's health and well-being) & CS17 (Making Camden a safer place) of the London Borough of Camden Local Development Framework Core Strategy and policies DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses); DP26 (Managing the impact of development on occupiers and neighbours) & DP28 (Noise and vibration) the London Borough of Camden Local Development Framework Development Policies.

Note- an enforcement notice has already been served so there is no need to authorise another one.

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