

# PLANNING COMMITTEE REPORT

Development Management Service  
Planning and Development Division  
Environment and Regeneration Department  
PO Box 333  
222 Upper Street  
LONDON N1 1YA

<b>PLANNING SUB- COMMITTEE B</b>		
<b>Date:</b>	8 <sup>th</sup> October 2015	<b>NON-EXEMPT</b>

Application number	P2015/2662/FUL
Application type	Full Application
Ward	Finsbury Park
Listed Building	Not listed
Conservation Area	Not Located in Conservation Area
Development Plan Context	Article 4 direction - Office to residential Finsbury Park Core Strategy Key Area Secondary retail frontage Finsbury Park Town Centre
Licensing Implications Proposal	The proposal will require a license.
Site Address	Unit 2, Wells House, 5-7 Wells Terrace, London N4 3JU
Proposal	Change of use from retail use (Use class A1) to Drinking Establishment (Use class A4) together with alterations to Shopfront

Case Officer	Duncan Ayles
Applicant	Mr Remi Dubois
Agent	N/A

## 1. RECOMMENDATION

The Committee is asked to resolve to **REFUSE** planning permission:

1. for the Reasons set out in Appendix 1.



### 3 PHOTOS OF SITE/STREET



Image 1: aerial view of the site



Image 2: View of the Site From Wells Terrace

## **4 SUMMARY**

- 4.1 The application is for the change of use of an A1 retail unit to an A4 drinking establishment use, to create a café bar providing table service. The application is a resubmission, following two applications for the same development which were refused due to the loss of A1 retail within a secondary shopping frontage. This application has been called in by Cllr Asima Shaikh and Cllr Heather.
- 4.2 The application is submitted with the same marketing information which was provided in support of the most recently refused application (see history section 7.1-7.4). It has been supplemented with some additional survey information. The additional information has been assessed, and has been concluded that it does not overcome the previous objection based on the loss of A1 retail space within a defined secondary frontage. As the previous grounds for refusal have not been overcome, it is recommended that the application is refused, as it would be contrary to policy DM 4.5 Part B (iii) of the Islington Development Management Policies 2013.
- 4.3 The application is considered to be acceptable on the grounds of neighbour amenity, and notwithstanding the objection to the loss of A1 retail use the proposed use would be appropriate for a town centre. The proposed alterations to the shopfront are also considered to be acceptable in design terms.

## **5 SITE AND SURROUNDING**

- 5.1 The application site is located at Unit 2, Wells House. This is an A1 retail unit located close to Finsbury Park Station. The application site is located close to a specialist shopping area where the majority of ground floor units are occupied by clothing and fashion shops. Wells House, at 5-7 Wells Terrace, is a four storey mixed use building. The upper floors are in use as B1 offices, with the other two ground floor units are used as a café and a bridal shop. The surrounding land use is also mixed, with buildings containing retail and café units at ground floor level, with either office or residential uses at upper floor levels.
- 5.2 The application site is located immediately opposite the City North Development. This is a large mixed use development comprising 335 residential dwellings, 2172 square metres of office floor space and 9665 square metres of A1-A4 floor space. This development is currently being constructed. The application site is located approximately 150 metres away from the bus station and underground entrance. The application site is close to a specialist shopping area on Fonthill Road, which is characterized by the presence of a significant number of textile and fashion outlets.

## **6 PROPOSAL (in Detail)**

- 6.1 Planning permission is sought for the change of use of the property from an A1 retail use to an A4 drinking establishment use. The applicant intends to create a jazz bar serving cocktails. The bar will also serve bar snacks, but the applicant has confirmed that no primary cooking will occur on the premises and it will function predominantly as a drinking establishment, therefore no air conditioning or plant extract equipment is proposed as part of this application.
- 6.2 The application also seeks approval for the alteration of the shopfront of the unit, replacing the existing shopfront with a new shopfront. The proposed shopfront contains less glazing than existing, a 4 panel entrance door and timber panel stallriser.

## **7. RELEVANT HISTORY:**

### **PLANNING APPLICATIONS:**

- 7.1 **P2015/1484/FUL:** An application for the change of use from A1-A4 and to alter the shopfront was refused, because the marketing information submitted was not considered to be considered to justify the loss of the A1 retail use.

REASON: The proposal would result in the loss of an A1 shop within a protected designated retail frontage, and the applicant has not provided the two years of substantive marketing evidence that demonstrates that the unit cannot not viable in A1 use. The proposal is therefore in conflict with policy DM 4.5 Part B (iii).

- 7.2 **P2015/0344/FUL:** An application for the change of use from A1-A4, and for the alteration of the shop front was refused because no marketing information had been provided to justify the loss of the A1 retail shop.

REASON: The proposal would result in the loss of an A1 shop within a designated retail frontage, and the applicant has not provided the two years of marketing evidence that demonstrates that the unit is not viable in A1 use. The proposal is therefore in conflict with policy DM 4.5 Part B (iii).

- 7.3 **P2013/0666/FUL:** An application for a change of use from A1 to a flexible A1/A2/B1 use was approved subject to conditions.

- 7.4 **P2013/0647/FUL:** An application to change the use from A1 to a flexible A1/A2/B1 use was approved subject to conditions.

### **ENFORCEMENT:**

- 7.5 None

### **PRE-APPLICATION:**

7.6 None

## 8 CONSULTATION

### Public Consultation

8.1 Letters were sent to occupants of 97 nearby and neighbouring properties at Wells Terrace, Fonthill Road and Clifton Terrace. A site notice was also displayed. The consultation expired on the 30<sup>th</sup> July 2015. However, it is the Council's practice to continue to consider representations made up until the date of a decision.

8.2 A total of 12 letters of support were received from the public with regard to the application, the issues raised can be summarised below (with the paragraph that provides responses to each issue indicated in brackets):

- beneficial Impact on footfall and vitality within the area (10.11);
- benefits brought by the new facility to the economy of the area (10.11);
- character and professional experience of the applicant (10.12).

### Internal Consultees

8.3 **Planning Policy Team:** The additional information submitted since the last refusal is anecdotal, and does not represent a robust survey of the area. The planning policy section have recently updated the town centre survey, which shows the Wells terrace secondary frontage has 20 units, with 13 in A1 use.

8.4 The marketing information submitted is poor and lacking in detail, and it has not demonstrated the two years of marketing required by policy. As the site is located close to a specialist shopping area, it would be expected that the full two years evidence be submitted. The applicant's analysis is one dimensional; they say that the area has gone downhill, but our town centre surveys refute this. The complaint that there are a lot of textile shops in the area, but it is this agglomeration that justifies the identification of the area as a specialist shopping area. The rental arrears cited by the applicant is not a planning consideration, and points to poor property management and a lack of pre-occupation checks.

8.5 **Licensing Team:** No comments

8.6 **Public Protection Licensing:** No comments

8.7 **Noise Pollution:** Response awaited

### External Consultees

8.8 **Crime Prevention Officer:** No comments

## 9 REVELANT POLICIES

Details of all relevant policies and guidance notes are attached in Appendix 2. This report considers the proposal against the following development plan documents.

### **National Guidance**

- 9.1 The National Planning Policy Framework 2012 seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.
- 9.2 The National Planning Practice Guidance is a material consideration and has been taken into account as part of the assessment of these proposals.

### **Development Plan**

- 9.3 The Development Plan is comprised of the London Plan 2015, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The policies of the Development Plan are considered relevant to this application and are listed at Appendix 2 to this report.

### **Supplementary Planning Guidance (SPG) / Document (SPD)**

- 9.4 The relevant SPGs and/or SPDs are listed in Appendix 2.

## 10 ASSESSMENT

- 10.1 The main issues arising from this proposal relate to:
- Acceptability of the proposed change of use and impact on the retail function of the Finsbury Park Town Centre
  - Design and impact on the character and appearance of the area
  - Impact on the amenity of neighbouring properties.

### **Proposed Use (Loss of A1 retail use)**

- 10.2 The application site is located within a defined secondary retail frontage under the 2013 Development Management, and has been most recently occupied by clothing shops within use class A1. The application proposes to create a café/bar within use class A4, which will lead to the loss of the existing A1 unit. This change of use requires planning permission and is not covered by the prior approval or flexible uses regime contained within the 2015 Use Classes

Amendment Order. Permitted changes of use under the 2015 Amendment Order include from A1 (retail) to A2, or up to 150m<sup>2</sup> A3 subject to Prior Approval, or up to 200m<sup>2</sup> D2 subject to Prior Approval and only if the premises was in A1 use on 5th December 2013. In addition buildings with A1, A2, A3, A4, A5, B1, D1 and D2 uses are permitted to change use for a single period of up to two years to A1, A2, A3 and B1 uses.

- 10.2 The site is a secondary retail frontage located in close proximity to the specialist shopping area at Fonthill Road, which contains a significant number of clothing and textile shops. Policy DM 4.9 B states that all applications near to specialist shopping areas will be assessed in terms of their impact on the character and function of the shopping centre.
- 10.3 Policy DM 4.5 B relates to changes of use within secondary frontages, and the policy confirm that the council will retain the A1 retail use character of these areas, and provides five criteria against which change of use applications will be assessed. The proposal is in compliance with DM 4.5 B (i) as the overall percentage of non-A1 retail units within the frontage would not exceed 50% of the units.
- 10.4 Notwithstanding the above restrictions to a change of use from A1 retail uses, A4 drinking establishment uses are considered to be an appropriate form of development within town centres. Policy DM4.2 confirms that entertainment and night-time activities are generally appropriate in town centres where they are compatible with other main town centre uses, do not cause an over concentration of such uses and are acceptable in terms of their impact on the amenity of neighbouring properties. However, the applicant has failed to address all of the criteria set out within policy DM 4.5 B.
- 10.5 The proposed change of use fails to comply with DM 4.5 B (ii) as the proposed change of use would result in two non-A1 uses being situated adjacent to one another. However, in this situation both non A1 uses provide an active frontage, and therefore on balance it is considered to be acceptable in this instance.
- 10.6 Policy DM 4.5 B (iii) requires that two years marketing information is provided to demonstrate that there is no realistic prospect of the unit being used for an A1 retail purpose. The unit has been vacant for approximately 1 year, and therefore the unit is not in compliance with DM 4.5 B (iii), which requires the unit to have been marketed continuously for two years. Appendix 11 to the 2013 Development Management Policies contains a checklist of marketing information required to demonstrate that there is not reasonable prospect of the unit being occupied as an A1 use.
- 10.7 In terms of the appendix itself, the marketing information has been found to be deficient in respect of four specific requirements. The applicant has not provided evidence of the enquiries received in respect of the property, the marketing length (9 months) is not sufficient and the applicant has not provided confirmation from three separate agents that the asking price is reasonable.

- 10.8 Consequently it cannot be concluded, on the basis of the information submitted, that there is no reasonable prospect that the unit cannot be occupied by an A1 retail unit in the future. The additional information that has been submitted with this application is considered to be anecdotal, and is not consistent with a recent Town Centre Health Check, conducted by the planning policy team, which found that the existing retail uses are in good health.
- 10.9 Policy DM 4.9 B states that all applications in and around specialist shopping area will be considered in relation to their impact on the character of a specialist shopping area. The proposal is considered to detract from the character and function of the Fonthill Road shopping area, as it leads to the loss of an A1 shop which has been recently occupied by fashion outlets.
- 10.10 It is noted that there are a number of planning decisions that have granted the change of use of the units to a non-A1 use. However, these decisions predated the existing Development Management Policies 2013, and were based on a less restrictive policy within the Unitary Development Plan 2002, which did not require the submission of evidence such as vacancy and marketing to demonstrate that there would be no realistic prospect of the unit being used for A1 retail purposes. Consequently these decisions are not considered to justify the proposed development.
- 10.11 The applicant, and a number of respondents to the public consultation, have highlighted the benefits that the proposal will bring to the area. This includes increasing footfall within the area, and providing a new amenity for local residents. While these are material planning considerations, they are not considered to outweigh the loss of an A1 retail use and the potential harm that this would cause to the retail function of the area.
- 10.12 Some of the respondents to the public consultation have also referred specifically to the personality of the applicant, and his ability to run the bar effectively. The personal characteristics of the applicant is not a material planning consideration, and this cannot be given weight in the determination of this application and planning permission would run with the land.
- 10.13 The proposal is therefore contrary to the objectives of policy DM 4.5, as it would lead to a cumulative erosion of the retail character and function of the shopping area, without sufficient supporting information to demonstrate that the units could not be brought back into an A1 use. The proposal is also in conflict with policy DM 4.9 as it will further erode the specialist fashion centre at Fonthill Road.

#### **Design and Impact on the Character and Appearance of the Area**

- 10.14 The application proposes to alter the existing shop front to the unit, which is a contemporary shop front with no stall riser and large glazing, with a more traditionally designed shopfront including a timber stallriser. The application

building dates from the 1980s, and consequently there is no requirement under the Council's planning policies to install a traditional shopfront.

- 10.15 However, the shopfronts of the properties within Wells terrace show a substantial degree of variation in terms of their detailed design and materials. While most of the shopfronts are also contemporary, with large amounts of glazing, some of the shopfronts, such as at 9-10 Wells terrace contain stall risers and other traditional features. The new shopfront will not, therefore, appear as a discordant or incongruous feature within the street scene. The application does not contain any details of new signage to be erected above the shopfront, and these may require additional consent.
- 10.16 The proposed shopfront is therefore considered to be acceptable on design grounds, and in compliance with policies DM 2.1 of the Development Management Policies and CS9 of the Core Strategy. The shopfront design is also considered to be in compliance with the guidance within the Shopfront Design SPD.

### **Impact on the Amenity of Neighbouring Properties**

- 10.17 The upper floors of Wells House are in use as B1 offices, and the proposed change of use to a drinking establishment A4 use are not considered to lead to any adverse impact of the working conditions of these offices, as a noise condition and condition for appropriate sound insulation between both uses could be applied to any permission if granted
- 10.18 The upper floors of the neighbouring properties on both sides of Wells House are used as residential flats. While it is considered that the proposal will lead to an increased amount of noise and activity in association with the unit, especially within the evening, it is not considered that this would lead to any adverse impact on the amenity of these properties and such details as hours and noise can be controlled.
- 10.19 The application site is located within a busy town centre location, close to Finsbury Park Station, and therefore the amount of noise and disturbance created would not significantly exceed the background level. There are no other similar uses within close proximity to the application site, and therefore the application does not raise any issues in respect of the overconcentration of similar uses. In addition, if Members are minded to approve the application, a condition could be imposed to control the opening hours of the unit, noise levels, appropriate sound insulation, servicing and delivery.
- 10.20 The applicant has confirmed that no primary cooking will occur on the premises, although the bar will serve some bar snacks. Consequently the proposal will not require the addition of any flues to the property, or lead to any impact through the emission of smoke or ventilation. If members are minded to approve the application, a condition could also be imposed to ensure no primary cooking occurs on the premises, in the interests of amenity.

- 10.21 The impact of the proposed development on the amenity of neighbouring properties is therefore considered to be acceptable subject to possible conditions, and in compliance with policies DM 2.1, DM 4.2 and DM 4.3.

### **Other Matters**

- 10.22 The access statement submitted with the application does not make any reference to access to the proposed A4 drinking establishment unit for disabled persons or those with impaired mobility and those with prams and pushchairs. However the plans submitted show a level access from street level, but no accessible toilet facilities. If members are minded to approve the application, a condition could also be imposed to ensure an accessible toilet is provided within the unit.
- 10.23 Details of the proposed refuse and recycling storage and collection arrangements have not been provided with the application, however if members are minded to approve the application, a condition could also be imposed to submit such details.

## **11. SUMMARY AND CONCLUSION**

### **Summary**

- 11.1 The proposal would result in the loss of an A1 retail shop within a designated shopping frontage close to a specialist shopping area, and the applicant has not provided sufficient marketing information to clearly demonstrate that there is no reasonable prospect that the unit cannot be brought back into an A1 use. The proposal is therefore contrary to policies DM 4.5 B of the 2013 Development Management Policies.
- 11.2 The proposed development is considered to be acceptable in terms of its impact on the character and appearance of the area and the impact on neighbouring properties. In addition, any impact on neighbour amenity can be adequately controlled through the imposition of planning conditions. The proposal is therefore considered to be in compliance with policies DM 2.1 and DM 4.2 of the Development Management Policies 2013.
- 11.3 A number of the benefits arising from the development which have been identified by respondents to the consultation, including the provision of a new local amenity, and the possible increase in footfall are material planning considerations. However, these are not considered to be sufficient to outweigh the harm to the character and function of the shopping area by virtue of the loss of A1 retail use.

### **Conclusion**

- 11.4 It is recommended that planning permission is refused for the reason set out within Appendix 1- RECOMMENDATION A.



# APPENDIX 1 – RECOMMENDATIONS

## RECOMMENDATION A

That the application is refused for the following reason.

1	<b>REASON</b>
	The proposal would result in the loss of an A1 shop within a protected secondary retail frontage, close to a specialist shopping area, and the applicant has not provided the two years of substantive marketing evidence that demonstrates that there is no reasonable possibility that the unit could be brought back into use for A1 retail. The proposal is therefore in conflict with policy DM 4.5 Part B (iii) of the Development Management Policies 2013.

### List of Informatives:

1	<b>Positive statement</b>
	To assist applicants the Local Planning Authority has produced policies and written guidance, all of which is available on the Council's website. A pre-planning application advice service is also offered and encouraged. No pre-application discussions were entered into. On receipt, the scheme did not comply with policy or guidance. The LPA delivered the decision in accordance with the requirements of the NPPF. The LPA invites the applicant to enter into a collaborative pre-planning application discussion process to assist in the preparation of a new planning application.

## **APPENDIX 2: RELEVANT POLICIES**

This appendix lists all relevant development plan policies and guidance notes pertinent to the determination of this planning application.

### **1 National Guidance**

The National Planning Policy Framework 2012 and Planning Policy Guidance seek to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF and PPG are material considerations and has been taken into account as part of the assessment of these proposals.

### **2. Development Plan**

The Development Plan is comprised of the London Plan 2015, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The following policies of the Development Plan are considered relevant to this application:

#### **A) The London Plan 2015 - Spatial Development Strategy for Greater London**

##### **1 Context and strategy**

Policy 1.1 (Delivering the strategic vision and objectives for London)

Policy 7.4 (Local character)

Policy 7.6 (Architecture)

Policy 7.8 (Heritage Assets and archaeology)

#### **B) Islington Core Strategy 2011**

Policy CS2 (Finsbury Park)

Policy CS14 (Retail and Services)

#### **C) Development Management Policies June 2013**

##### **Design and Heritage**

Policy DM 2.1 (Design)

##### **Shops, Culture and Services**

Policy DM 4.2 (Entertainment and the night time economy)

Policy DM 4.3 (Concentration of uses)

Policy DM 4.5 (Primary and Secondary Shopping frontages)  
Policy DM 4.9 (Markets and Specialist shopping areas)

### **3. Designations**

Article 4 direction - Office to residential  
Finsbury Park Core Strategy Key Area  
Secondary retail frontage  
Finsbury Park Town Centre

### **4. Supplementary Planning Guidance (SPG) / Document (SPD)**

The following SPGs and/or SPDs are relevant:

- Finsbury Park
- Shopfront Design SPD