



PLANNING SERVICES

TOWN & COUNTRY PLANNING Act 1990 (as Amended)

**TOWN & COUNTRY PLANNING (Determination by Inspectors)
(Inquiries Procedure) (England) Rules 2000**

RULE 6

STATEMENT OF CASE

FOR PUBLIC INQUIRY COMMENCING ON 24th January 2012

APPEAL SITE

4 Ferdinand Street, London, NW1 8ER

APPELLANT

Mr. Rafael Pesce and Mr. Nikos Zandos

SUBJECT OF APPEAL

The decision of the London Borough of Camden to issue an Enforcement Notice
alleging the following:

The unauthorised use of the property as a bar/restaurant.

COUNCIL REFERENCE: EN10/0405

PLANNING INSPECTORATE REFERENCE: APP/X5210/C/12/2183361 and
APP/X5210/C/12/2183362

1.0 RELEVANT LEGISLATION

- 1.1 Town and Country Planning Act 1990 (as amended).
- 1.2 Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI No. 1624)
- 1.3 Town and Country Planning (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI No. 1625)
- 1.4 Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009 (SI No. 455)

2.0 APPEAL SITE AND SURROUNDINGS

- 2.1 The appeal site is located on the eastern side of Ferdinand Street, close to the junction with Chalk Farm Road. Ferdinand Street is a predominantly residential street with some commercial activities closest to Chalk Farm Road to the south. The site comprises a two storey mid-terraced property with a restaurant/bar on the ground and first floor level.
- 2.2 The site forms part of a wider parade of two storey buildings in commercial use on the ground and first floor to the north and a residential dwelling to the south. There is a parade of 5 commercial units on the opposite side of the street with residential accommodation above. To the west of the appeal site, the road adjoins with Chalk Farm Road. This main road forms part of the designated Camden town centre. This street comprises a mixture of retail, bars and restaurants.
- 2.3 The building is located outside the boundary of Camden Town designated Town Centre which includes Core Shopping Frontages, Secondary Frontages and sensitive frontages
- 2.4 The building is not listed and does not lie within a conservation area.
- 2.5 The appeal relates to unauthorised use of the building as a restaurant/bar. The previous use was a shop and this was the lawful use of the property.

3.0 APPEAL APPLICATION DETAILS

- 3.1 The appeal is against the service of an enforcement notice by the Council on the 30th July 2012. It is noted that the appellant has appealed on grounds (a), (d), and (f) of Section 174 (2) of the Town and Country Planning Act 1990.

- 3.2 The Council's reasons for issuing the enforcement notice comprises reason 1 which relates to timeframe the building has been in use as a restaurant/bar prior to the enforcement notice being served and reason 2 which relates to the impact of the use of the property as a restaurant/bar.
- 3.3 As noted above, reason 1 for issuing the enforcement notice concerns the time the building has been in use as a restaurant/bar. The Council will show that the use of the appeal site as a restaurant/bar has not been in use for ten years prior to the enforcement notice being served.
- 3.4 The second reason for issuing the enforcement notice is that the bar/restaurant, by reason of the location in a predominantly residential area has a harmful impact on the amenity of residents and the local area contrary to policies CS1 (Distribution of Growth), CS5 (Managing the impact of growth and development), CS2 (Promoting Camden's centres and shops of the of the London Borough of Camden Core Strategy Development Plan Document and policies DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) and DP26 (Managing the impact of development on occupier and neighbours) of the London Borough of Camden Local Development Framework.
- 3.5 The enforcement notice requires the use of the premises as restaurant and bar to cease and any associated fixtures and fittings shall be removed.

4.0 RELEVANT PLANNING HISTORY OF SITE

- 4.1 A Certificate of Lawful Development (PEX0200507) for existing use, as retail (Class A) use at ground floor level and ancillary storage at first floor level' was refused on the 16th July 2002. Permission was refused for the following reason;

The evidence has not been provided to satisfy the Council that the evidence has not been provided to satisfy the Council that the existing use of the premises has been in continuous use for the previous ten years in accordance with Section 191 (4) of the Town & Country Planning Act 1990.

- 4.2 Planning permission (2004/3064/P) was refused on the 27th September 2004 for the 'change of use from offices (Class B1) to a café/restaurant (Class A3). Permission was refused for the following reason;

The proposed A3 use, through increased activity and associated disturbances is likely to be detrimental to the amenity and living conditions of the adjoining area, the character of which is predominantly residential. The proposal is therefore contrary to policies RE2 (Residential amenity and environment), EN1 (General environmental protection and improvement) and SH18 (Food and drink) of the London Borough of Camden Unitary Development Plan 2000 and the Food, Drink and Entertainment in Camden Town Supplementary Planning Guidance 2003.

- 4.3 Planning permission was granted on the 3rd December 2004 for the 'change of use from offices (Class B1) to retail (Class A1)'.
- 4.4 The enforcement investigation began in June 2010 when the Council received a complaint that the new occupier of the building had changed the use from retail to a bar/restaurant use.
- 4.5 A review of the planning history for the property revealed that planning permission had not been obtained for the change of use and therefore the current use was in breach of planning control.
- 4.6 A site visit was made on the 10th June 2010 and the Site Officer was informed by the occupier at the time (Mr Pietro Rocha) that he intended to submit a planning application for the use.

- 4.7 A planning application was submitted on the 4th November 2010 for the 'retrospective application for change of use from shop (Class A1) to bar/restaurant (Class A4/A3). Planning permission was refused with a warning of enforcement action on the 24th December 2010 for the following reason;

The bar/restaurant (Class A4/A3), by reason of the location outside of a designated centre in a predominately residential area has a harmful impact on the amenity of residents and the local area contrary to policies CS1 (Distribution of Growth), CS5 (Managing the impact of growth and development), CS7 (Promoting Camden's centres and shops), policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework.

- 4.8 An Enforcement Notice requiring the use of the premises as a restaurant and bar to cease was issued on the 30th July 2012.

5.0 PLANNING POLICY FRAMEWORK

- 5.1 The Development Plan for the area comprises the London Plan 2011 and the Local Development Framework, containing the Camden Core Strategy and the Camden Development Policies.

Local Development Framework

- 5.2 The Local Development Framework was formally adopted on 8th November 2010. The policies of relevance to the appeal site as a whole, having regard to all material considerations are listed below:

LDF Core Strategy and Development Policies

Core strategies

- CS1 (Distribution of growth)
- CS3 (Other highly accessible areas)
- CS4 (Areas of more limited change)
- CS5 (Managing the impact of growth and development)
- CS7 (Promoting Camden's centres and shops)
- CS11 (Promoting sustainable and efficient travel)

Development policies

- DP10 (Helping and promoting small and independent shops)
- DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses)
- DP18 (Parking standards and the availability of car parking)
- DP19 (Managing the impact of parking)
- DP26 (Managing the impact of development on occupiers and neighbours)

Supplementary Planning Guidance (CPG)

- 5.3 The Council will also, where appropriate, rely on supplementary planning guidance as set out in the Camden Planning Guidance 2011 (CPG) insofar as it is material. In particular CPG 1 Amenity and CPG5 Town Centres, Retail and Employment, see section 8 for further details.

London Plan

- 5.4 The local policy framework has been considered against and alongside the strategic policies set out in the replacement London Plan was formally adopted in July 2011 and the following specific policies are relevant to the appeal scheme:

- *Policy 3B.8 Creative industries*
- *Policy 3D.1 Supporting town centres*
- *Policy 3D.4 Development and promotion of arts and culture*
- *Policy 4A.20 Reducing noise and enhancing soundscapes*

National Planning Policy Statement and Guidance Notes

- 5.5 The Council has taken into account the National Planning Policy Framework 2011.

Other Relevant Documents

- 5.6 Please see section 8 of this report.

6.0 SUBMISSIONS

The Council's Case

- 6.1 The Council's reasons for issuing the enforcement notice comprise two reasons. Reason 1 relates to timeframe the building has been in use as a restaurant/bar prior to the enforcement notice being served and reason 2 relates to the impact of the use of the restaurant/bar use.
- 6.2 As noted above, Reason 1 for issuing the enforcement notice concerns the time the building has been in use as a restaurant/bar. The Council will show that the building has not been in use a restaurant/bar since the 30th July 2002, being ten years before the Enforcement Notice was served. The Council has supporting evidence in the form of photographic evidence dated and the planning history records for the property.
- 6.3 The second reason concerns the damaging impact on the amenity of residents and the local areas by reason of the location of the use in a predominantly residential area. The Council will demonstrate the record of and potential for detrimental impacts on residential amenity in the wider area. The Council will clearly demonstrate how the unauthorised use is contrary to planning policy and guidance.

The Grounds of Appeal

- 6.4 The appellant has appealed against the enforcement notice on grounds (a) that planning permission should be granted for what is alleged in the notice (d), that at the time the enforcement notice was issued it was too late to take enforcement action against the works stated in the notice; and (f), that the steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections.

Ground (a)

- 6.5 The Appellant claims that the site is located just outside the boundary of the 'designated town centre plan which in itself contradicts Camden's Special Policy Area'. The Appellant claims that the use is further justified by the existence of two major nightclubs (The Barfly and Coco Bamboo) as well as numerous late night venues along Chalk Farm Road in close proximity to the site.
- 6.6 The Council will argue that Policy CS7 and DP12 state that food, drink and entertainment uses are best suited to locations within the designated Town Centres or Neighbourhood Centres. Camden Planning Guidance 5 (Town Centres) 2011 states that a concern in the Camden Town area is increasing impacts associated with food, drink and entertainment activities such as pubs, clubs, bars and restaurants which includes noise, anti-social behaviour, crime, litter and traffic congestion. The Council will argue that the location, albeit in close proximity to a designated Town Centre is clearly outside its boundary as specified in CPG 5 (2011). The Appeal Site was not included as part of this area given its position away from the main street and the surrounding residential accommodation. The proposals map which designates the Town Centre was adopted as part of the Local Development Framework in November 2010. CPG5 states that food, drink and entertainment uses should be located in areas where their impact can be minimised. The Council will argue that given the location of the appeal site with residential accommodation directly adjacent, opposite and further along the street, it is not a suitable location for such a use.
- 6.7 The site is located within outside Camden's Special Policy area. The Council will argue that the Camden's Special Policy Area highlights areas that are in operation as late night uses and not as a guide for where such uses are considered acceptable. Furthermore the designation of this area originated from research conducted in 2004 where the Licensing Authority identified two areas within the Borough where the number, type and density of premises selling alcohol for consumption on the premises was having a serious negative

impact on the local community and local amenities. These areas include Camden Town and the Seven Dials area in Covent Garden and they were made the subject of special policies on cumulative impact.

- 6.8 The Appellant claims that any complaints or nuisance that may have come in regarding these premises have now been resolved and he has received no recent complaints personally. The Appellant claims he has been working with the Licensing Enforcement Officer for the area and the situation has changed due to better management of the premises. The Council will argue that there has been a record of complaints regarding breaches of the Appellant's license and noise complaints. The Council will argue that although the situation may have improved there is a significant potential for detrimental impacts on residential amenity. Furthermore the resulting harm from the potential precedent of such uses spreading into residential areas will be demonstrated.
- 6.9 The Appellant claims that planning permission should be granted as conditions to control any potential issues is a far more practical solution than that of seeking enforcement action and destroying a business. The Council will argue that conditions would not be sufficient to manage the potential harm from this type of use in such close proximity to residential accommodation.
- 6.10 The Appellant argues that the business provides 'respite for the Brazilian community in North London' and 'adds to the variety and interest of Chalk Farm and Camden in general'. The Council will argue that the principal function of the use is as a restaurant/bar and not a community facility. Furthermore the community function which is provided does not outweigh the resulting harm to the residential area from the unauthorised use.
- 6.11 The Appellant argues that the outlay of the premise is designed for a small bar/ restaurant and would not work as a retail shop. The Council will argue it is not unviable to operate the premises as a retail unit.
- 6.12 The Appellant argues that Camden Council previously served a Compulsory Purchase Order on the property in order for a development to be undertaken. The development did not occur and according to the Appellant after a number

of years the Council returned both properties without any compensation and in a dilapidated condition. The Council will argue that the last permitted use of the property appears to have been retail (Class A1) and this history does not affect the assessment of the use against current planning policy.

Ground D

- 6.13 As stated above the Council will show that it has evidence to show the building has not been in use as a restaurant/bar since the 30th July 2002 being 10 years prior to the enforcement notice being served.
- 6.14 The Appellant's claims that the use of the building as a bar/restaurant has been in operation for the last 9 years. It is also claimed that the building was in use as a restaurant in the 1960s and 1970s. Whilst the Council has been in on-going discussions with the Appellant, no evidence has been provided to show that the use has been in operating since the 30th July 2002.
- 6.15 The Council will provide photographic evidence from 2004 and details of planning permission submitted by one of the Appellant's which confirms the site was not in use as a restaurant/bar at this time, being less than 10 years from the date the Enforcement Notice was served.
- 6.16 For the appeal to succeed, the onus of proof lies with the Appellant to demonstrate that on the balance of probability, the breach – i.e. the use of the building as a restaurant/bar – occurred prior to 30th July 2002 (being ten years before the service of the Enforcement Notice). The Council's case is that the Appellant has failed to provide evidence to meet that test and therefore the breach is not immune from enforcement action.

Ground F

- 6.17 In terms of Ground (f) the Council will argue that the steps required to comply with the requirements of the enforcement notice are reasonable and not

excessive. Lesser steps would not overcome the planning objections to the unauthorised use of the premises.

8.0 DOCUMENTS

The Council may refer to all or part of the following list of legislation, national planning guidance, plans and documents and any other document it considers relevant, having regard to the Appellant's case to be identified in its Statement of Case or any other change of circumstances:

- 8.1 Acts of Parliament and Statutory Instruments.
- 8.2 The London Plan (July 2011)
- 8.3 London Borough of Camden Local Development Framework Core Strategies and Development Policies (Adopted June 2010).
- 8.4 Camden Planning Guidance 2011
- 8.5 Relevant case reports or decisions of the Planning Inspectorate and Secretary of State
- 8.6 Government Advice, especially Circulars by DCLG (or its predecessors) on Planning Inquiries and Costs.
- 8.7 Government advice such as National Planning Policy Framework 2011

The Council reserve the right to refer to other documents in response to the Appellant's case should it prove necessary to do so.

Contact: Elizabeth Beaumont, tel. 020 7974 5809

30 October 2012