



# Appeal Decision

Site visit made on 5 January 2004

by Jean Russell MA MRTPI

an Inspector appointed by the First Secretary of State

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Date

22 JAN 2004

**Appeal Ref: APP/X5210/A/03/1129086**

**95a Fairfax Road, London NW6**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms L J Caminha and Mr C J Serrao against the decision of the Council of the London Borough of Camden.
- The application ref: PWX0203071/P, dated 2 September 2002, was refused by notice dated 15 August 2003.
- The development proposed is change of use from A1 to A3.

**Summary of Decision: The appeal is allowed and planning permission granted subject to the conditions set out in the Formal Decision below.**

## Procedural Matters

1. Notwithstanding the description of development used on the planning application forms, I shall adopt an abridged version of the Council's description, which is quoted on the appeal forms and is more precise: *change of use of the ground floor unit at no. 95a from Use Class A1 (retail) to Use Class A3 (food and drink), together with the provision of air handling equipment and the erection of an extract flue to the rear elevation of no. 95.* In order to be consistent, I shall also alter the site address to: *95 & 95a Fairfax Road, London NW6.*
2. The Council's committee report indicates that a change of use to A3 occurred prior to the submission of the planning application. When I visited the site, I saw that although the sign above the shop indicated its use as a café and delicatessen, the unit itself was shut and undergoing refurbishment. I shall therefore consider the appeal on the basis that the proposed use has not been implemented.
3. During the course of the planning application, revised/additional plans (SA6/157/3B and /4), an environmental noise assessment and a letter and plan dated/faxed 16 April 2003 were submitted to the Council. The application was determined on the basis of this information and I shall deal with the appeal likewise.

## Main Issue

4. I consider that the main issue is the effect of the proposed development on the living conditions of nearby occupiers, with regard to noise and disturbance, odour, and visual impact.

## Planning Policy

5. The development plan includes the *London Borough of Camden Unitary Development Plan* (UDP, 2000). Policy EN1 seeks to ensure that developments will not have an adverse impact on the amenity of the surrounding area and the quality of the wider environment in

the short and long term. In particular, developments should protect or improve the physical environment, including the Borough's living and working conditions and its visual amenity.

6. Policy SH18 suggests that when considering applications for planning permission for A3 use, account will be taken of the need for conditions to control the hours of operation; arrangements that could overcome potential loss of amenity and noise disturbance; the provision of tables, chairs, litter bins and advertisements on the forecourt and highway; and the storage and disposal of refuse and customer litter. Where appropriate and necessary, conditions will be imposed. In addition, account will be taken of the number and distribution of A3 uses and their relationship with other uses, so as to avoid a cumulatively harmful effect upon loss of retail outlets, traffic parking and local residential amenity.
7. Government guidance in *Planning Policy Guidance Note 6: Town Centres and Retail Developments* (PPG6) emphasises the need to sustain and enhance the vitality and viability of town centres, including district and local centres. It suggests, in Paragraph 2.6 and elsewhere, that diversification of uses will support vitality and viability.

### Reasons

8. Fairfax Road is a mainly residential road, but it includes a long parade of shops, in a four storey building with flats above in Britannia Court. The appeal relates to a ground floor shop unit in this parade, at 95a Fairfax Road. This unit is sited on the corner of Fairfax Road and Fairhazel Gardens, and at the edge of a roundabout. When I visited the site, I saw that most of the shops in this parade were trading, and that four of them were used for A3 uses. Nearby, there are local shops and two bar/restaurants on Fairhazel Gardens. A public house faces the site, across the roundabout, on the junction of Belsize Road and Hilgrove Road. The shops at Fairfax Road back on to Fairfax Mews, a residential street.
9. The proposed use of the premises would be as a café/restaurant with a bar and a delicatessen/retail area. In my view, the proposed layout of the unit would be such that the proposed café/restaurant would represent the main use and the delicatessen would be ancillary. To start by dealing with the principle of the use, the site is within a well established shopping parade, where cafés and restaurants would normally be considered acceptable. Residential properties are located above and near to the site, but in my experience housing and A3 uses can co-exist without problems, even when the residents are elderly. There are other cafés, bars and restaurants in the area, but in my opinion these are neither so numerous nor so concentrated that an additional A3 use would cause an unacceptable loss of retail units or threaten the quality of the residential environment. The Council has no objections to the proposed use in principle, and I support that assessment.
10. There are objections to the proposed use on the grounds that it would create noise through the playing of loud music and through the operation of air handling and other equipment. However, the site lies at the edge of a roundabout and in area of mixed uses. The nearby supermarket at 93 Fairfax Road opens for 24 hours. I consider that traffic and pedestrian activity is likely to remain significant in the area until late in the evening and that ambient noise levels would be high until around midnight. Planning conditions could be imposed to prevent music from being played in the proposed café at loud volumes and to regulate the noise from plant and machinery. The opening hours of the café could also be restricted, to ensure that noise coming from the site ceases during the night. In these circumstances, I consider that noise emanating from the proposed café could be adequately controlled and would not cause unacceptable harm.
11. There are also objections to the proposed development on the grounds that its customers would cause unacceptable noise in the street. I understand that A3 uses can lead to such

disturbance, and that such noise can be difficult to control. In this instance, however, there is little space outside the site where customers might wish to linger, and I consider that they would be likely to disperse quickly when leaving the café. A condition can be imposed to prevent the placing of tables and chairs on the pavement, to ensure that customers are not encouraged to congregate outside the premises. Furthermore, the location of the site at the edge of a roundabout suggests to me that customers would be likely to travel to and from the café in different directions. Their movements would be scattered and any noise would be diluted.

12. I understand that there have been problems of alcohol-related anti-social behaviour in the area, and that offenders have congregated on the central reservation at the roundabout and outside nearby dwellings. However, there is no evidence that patrons of licensed cafés or restaurants in the area have engaged in such behaviour, and I see no reason to believe that those of the proposed café would either. Overall, I consider that the proposed development would not lead to unacceptable noise and disturbance from customers taking place in the streets and near to residential properties.
13. The proposed development would include a fume extraction system. In my view, a modern, properly installed and maintained fume extraction system can adequately reduce cooking smells, even when meals are prepared rather than light snacks. The proposed flue would extend above the roof line on the building, and even residual odours would have little impact on nearby dwellings. Turning to visual impact, the proposed flue would be positioned to the side of windows at Britannia Court and would not cause a loss of outlook to residents of those flats. It would also be sited several metres away from the nearest house at Fairfax Mews. Consequently, the proposed development would not cause nearby occupiers unacceptable harm in relation to odour or visual impact.
14. I conclude that the proposed development would not cause any unacceptable harm to the living conditions of nearby residents, subject to the imposition of planning conditions. It would comply with UDP Policies EN1 and SH18.

### **Other Matters**

15. I have taken account of the representations of local residents. Parking is limited in the area, but the site is accessible by public transport and is near to residential areas. I therefore consider that customers and staff would be likely to travel to the proposed café/restaurant by various modes of transport. The Council has not objected to the proposed development on the grounds that it would generate excessive traffic or lead to unacceptable parking in residential streets. I see no reason to disagree with that assessment.
16. It is proposed that refuse from the proposed café would be stored in a courtyard to the rear of 95 Fairfax Road. The Council considers that this arrangement would be acceptable and I support that view. There may be a problem with vermin in the area, but that is a wider public health matter. Noise and disturbance from building works is temporary in nature and it would be unreasonable to dismiss any appeal on that basis. Finally, the chiller equipment at 95 Fairfax Road, which has caused noise and pollution, was not erected by the appellants and is not related to the proposed development.

### **Conditions**

17. I have assessed the conditions suggested by Council against the tests set out in *Circular 11/95: the Use of Conditions in Planning Permissions*. I consider it reasonable and necessary to impose conditions controlling the volume of music played on the premises; the levels of noise from plant and machinery that would be audible outside nearby habitable

rooms; and the levels of noise from plant and machinery in relation to background noise, to ensure that the proposed development does not cause unacceptable noise and disturbance. I also consider it reasonable and necessary to require that the opening hours of the proposed café/restaurant be restricted, and that no tables or chairs should be placed on the pavement outside the premises, for the same reason.

18. I consider, however, that it would be unnecessary to require that all plant and machinery be sound attenuated and isolated, because these measures form part of the proposal, as shown in the environmental noise assessment, and the letter and plan dated 16 April 2003. I also consider that it would be unreasonable to restrict the use of the premises to a restaurant, because there is no evidence that other A3 uses would have more serious adverse effects than the proposed development on nearby occupiers. The conditions that I shall impose will be adequate to protect their living conditions.

### **Conclusion**

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

### **Formal Decision**

20. I allow the appeal and grant planning permission for change of use of the ground floor unit at no. 95a from Use Class A1 (retail) to Use Class A3 (food and drink), together with the provision of air handling equipment and the erection of an extract flue to the rear elevation of no. 95, at 95 and 95a Fairfax Road, London NW6 in accordance with the terms of the application (ref: PWX0203071/P) dated 2 September 2002, the plans numbered SA6/157/1A, /2A, /3B and /4, the Environmental Noise Assessment dated April 2003 and the letter and drawing dated/faxed 16 April 2003, and subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
2. No music shall be played on the premises in such a way as to be audible within any adjoining premises or on the adjoining highway.
3. The level of noise emitted from the site from all plant and machinery shall be at least 5 decibels below the existing background noise levels, at all times, as measured at 1 metre outside the windows of any neighbouring habitable rooms, expressed in dB(A) at such locations. Where the noise from the plant and machinery is tonal in character, the differences in these levels shall be at least 10 dB(A).
4. For each of the octave band of centre frequencies 63Hz-8KHz inclusive, noise levels from all plant/equipment (measured in LAeq) when in operation shall, at all times, add not more than 1 decibel to the existing background noise level LA90, expressed in dB(A), in the same octave band as measured 1 metre external to sensitive facades.
5. The use hereby permitted shall not be open to customers other than between the hours of: 0800 to midnight, Monday to Saturday; and 0900 to 2230 on Sundays and Bank Holidays.
6. No tables or chairs shall be placed on the forecourt or pavement areas outside of the premises.

**Information**

21. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.
22. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
23. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.
24. Attention is drawn to the requirements of Section 76 of the Town and Country Planning Act 1990 concerning provisions for the benefit of the disabled.

*Russell*

INSPECTOR