



Appeal Decisions

Site visit made on 3 July 2007

by R J Perrins MA MCM

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
31st July 2007

Appeal Ref: APP/X5210/C/06/2032994 270 Kentish Town Road, London NW5 2AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Arvind Kohli against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN05/1052.
- The notice was issued on 30 November 2006.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use from retail use (Class A1) of the Town and Country Planning (Use Classes) Order 1987 (as amended by the Town and Country Planning (Uses Classes) order 2005 to part accountants office (Class A2).
- The requirements of the notice are that the use of the premises for Class A2 use shall completely and permanently cease, and any equipment and fittings associated with the accountancy office shall be removed, including the large office desks located at the rear of the premises.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid, the deemed application for planning permission also falls to be considered.

Appeal Ref: APP/X5210/A/06/2027559 270 Kentish Town Road, London NW5 2AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
- The appeal is made by Arvind Kohli against the decision of the Council of the London Borough of Camden.
- The application Ref 2006/1065/P, dated 21 February 2006, was refused by notice dated 5 September 2006.
- The development proposed is the conversion of ground floor retail shop (A1) into mixed use A1 (Internet Café) and A2 (Professional Service).

Decisions

Appeal Ref: APP/X5210/C/06/2032994

1. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Ref: APP/X5210/A/06/2027559

2. I dismiss the appeal.

The appeal on ground (c)

3. The premises have been divided towards the rear of the shop with a robust, glazed, floor to ceiling framework with access door. This has created an area distinctly separate from the internet café, with two desks and associated filing draws and cabinets. This area is used by two members of staff in the accountancy practice with room for two visitors or clients to sit. It has the appearance of a self-contained office and I will refer to it as such, for the remainder of my decision, for the purposes of clarity.
4. I accept that the accountancy use at the premises occupies the smaller area of the premises. The parties have agreed that this is approximately 10 square metres almost one-quarter of the available space. I also noted during my site visit that some retail produce was being stored in the office. The Internet café has a small area adjacent to the office where associated retail products are sold.
5. The appellant argues that the change of use is de-minimis and does not constitute a material change of use as defined in the Act. Reference is made to case law however; I do not have the details of the case referred to. I have to consider if, as a matter of fact and degree, there has been a change of use and whether the accountancy practice is ancillary to the main use of the premises.
6. The internet café occupies the front of the shop and when entering into it there are 11 distinctive internet stations for customers. To my mind, there is no doubt that the internet cafe use is the primary use. However, the accountancy services offered from the office are boldly advertised on the shop frontage. Indeed, if the shop frontage is viewed exclusively the conclusion could be drawn that the accountancy services were the primary use.
7. In addition, the office is a distinctly separate unit with associated staff. Whilst I saw no clients during my visit, in my experience, clients would arrive regularly and given the advertising, passing trade would also enter the premises. In my opinion, this is a separate use, not functionally linked to the primary use, with its own customer base not reliant on the internet café. It is for these reasons that I find, as a matter of fact and degree, that there has been a material change of use, the office is not de-minimis or ancillary to the internet café and thus the appeal on ground (c) fails.

The Section 78 Appeal and the deemed planning application

8. The premises are located on the west side of Kentish Town Road, a busy retail centre. The property is adjacent to Kentish Town Station and on a main bus route. No 270 occupies the ground floor and has been laid out as described in my previous paragraphs. At the time of my inspection the internal layout was as per the plans submitted (P/01 and G13/02); the application is for the development that has already occurred.

9. Policy R7 of the London Borough of Camden's Replacement Unitary Development Plan 2006 (RUDP) states that the Council will resist the net loss of shopping floor space (Use Class A1) and will only grant planning permission for development that it considers will not cause harm to the character, function, vitality and viability of the centre. The Council has also referred to Camden Planning Guidance however, this has not been formally adopted and as such I can give it little weight.
10. I accept that the area of the premises given to the accountancy services is approximately 25% and this is to the rear of the shop. However, the premises form part of the Kentish Town District Shopping and Service Centre and is well served by public transport. To my mind, the thrust of Policy R7 of the RUDP is to protect local shopping centres; the change of use has introduced a non-retail element into this retail frontage. Whilst it may be at the rear of the shop, the external appearance is dominated by signs for accountancy services and customers have to use the retail entrance.
11. To my mind, given its location the loss of retail space is unacceptable. Moreover, the signage associated with the A2 use, detracts from the overall retail character of the shopping centre and has had an adverse impact upon the retail frontage; it is the combination of these factors that leads me to conclude that the proposal has harmed the character and function of the centre contrary to Policy R7 of the RUDP.
12. I have also considered the Council's and Third Parties' views that the use is not confined to the area shown on the plans however, I have no evidence to substantiate that and have based my decision on the case before me.
13. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Richard Perrins

Inspector