



Appeal Decision

Site visit made on 13 March 2007

by **D N Donaldson**

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

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Date **27 MAR 2007**

Appeal A - Ref: APP/X5210/C/06/2022306

Site address: **225 Kentish Town Road, London NW5 2JU**

- The appeal is made under Section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against Camden London Borough Council's enforcement notice.
- The appeal is made by Mr H Alagoz.
- The Council's reference is EN06/0418.
- The notice was issued on 4 July 2006.
- The breach of planning control alleged in the notice is, without planning permission, the unauthorised change of use from retail use (Class A1) of the Town and Country Planning Act [sic] (Use Classes) Order 1987 to restaurant use (Class A3) at the ground floor of the premises.
- The requirements of the notice are:
 - (1) The use of the premises as a restaurant (Class A3) shall completely and permanently cease.
 - (2) All furniture, fittings and equipment associated with the use of the premises as a restaurant shall be permanently removed from the site.
- The period for compliance with the requirements is within one month of this notice taking effect.
- The appeal was made on ground (a) in section 174(2) of the 1990 Act, as amended by the 1991 Act.

Summary of Decision: The appeal is allowed; the enforcement notice is quashed; and time-limited, personal planning permission is granted, with additional conditions.

Appeal B - Ref: APP/X5210/A/06/2021844/NWF

Site address: **225 Kentish Town Road, London NW5 2JU**

- The appeal is made under Section 78 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against a refusal to grant planning permission.
- The appeal is made by Mr H Alagoz against the decision of Camden London Borough Council.
- The application (reference No 2006/1094/P) dated 25 February 2006 was refused by notice dated 7 June 2006.
- The development proposed is change of use of ground floor (café-shop) to restaurant – use A3; and opening hours Monday to Saturday 8am-11pm, Sunday 9am-10.30pm; installation of extraction-flue systems.

Summary of Decision: The appeal is allowed and conditional planning permission is granted in the same terms as those in respect of Appeal A.

Preliminary matters

1. Appeals A and B have been linked administratively because they are both concerned with the same premises, namely the ground floor of the property at 225 Kentish Town Road, London NW5. However, in my opinion, Appeal A on ground (a) is narrower in its scope on planning merits than Appeal B. This is because the deemed planning application arising under section 177(5) of the 1990 Act from Appeal A concerns only
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the change of use of the property's ground floor from a retail use to a restaurant use, whereas Appeal B is concerned with that change of use, the proposed hours during which it is intended to operate, and with the installation of a flue extraction system which is apparently designed (according to Drawing No 51.06/04, dated February 2006) to be fitted to the second floor of the appeal premises where it would extract fumes from the cooking equipment installed in the kitchen at the rear of the property's first floor.

2. Secondly, paragraphs 2, 3 and 5 of the enforcement notice seem to me to involve inconsistent drafting. Paragraph 2 refers to the appeal property as 'the Premises'. Paragraph 3 (reciting the alleged breach of control) is directed at 'the ground floor of the premises'. And sub-paragraphs 5(1) and (2) apply the requirements to 'the use of the premises as a restaurant'. My interpretation of the Council's enforcement action is that it is directed at the restaurant use of the ground floor. Accordingly, if I eventually determine that the enforcement notice should be upheld, I shall direct that sub-paragraphs 5(1) and (2) be varied so that they refer only to the ground floor restaurant use.

Procedural matter

3. Paragraph 1 of Camden Councillor, Paul Braithwaite's undated appeals representations to the Planning Inspectorate encourage the appeals decision-maker to look at the Council's 'webcast' for 1 June 2006. I regret I am unable to do so because I must have regard, in determining these appeals, only to representations made available equally to both appeals parties. To have regard to any representations on which the appellant or his agent had not been given the opportunity to comment would, in my opinion, be contrary to the requirements of natural justice.

The appeals site and surroundings

4. The appeals site is on the western side of Kentish Town Road, a short distance south of the junction with Angler's Lane. The relevant part of the site comprises the ground floor in which the appellant appeared to be trading as a café-restaurant at the time of the inspection. The ground floor was equipped with a glass-fronted food bar on the left-hand side, with a wall-mounted menu board behind the bar, two refrigerated cabinets for the display respectively of drinks and patisseries, and a TV-set on top of one of the cabinets. There were 14 tables, catering for some 35 seated customers on the ground floor, with male and female toilets and a store room along a corridor to the rear of this floor. Hot tea and coffee were dispensed from catering equipment installed behind the bar, while hot food was brought down from the first floor by the serving staff to customers on the ground floor. I saw that the appellant was trading as 'Café Euro-Med' and the appeal property was situated between the retail premises of a national supermarket (to the south) and a former public house, now operating as a Portuguese fish restaurant, at the corner with Angler's Lane. This stretch of Kentish Town Road is devoted to a variety of commercial uses. It is reportedly within the Kentish Town District Shopping and Service Centre for planning control purposes.

The appeals site's recent planning history

5. In summary, the appeals site's recent planning history is reportedly as follows:

- (1) 6 September 1996: the Council granted planning permission (application reference No P9601254 R1), subject to three conditions, for 'Retention of first floor as a restaurant and of a ventilation duct, as shown on four unnumbered drawings' at 225 Kentish Town Road, London NW5. (I have seen a copy of the document granting this permission, but the appeal parties have not provided a copy of any plans or elevational drawings which accompanied it.)
- (2) 7 June 2006: the Council refused planning permission for 'Continued use of ground floor as a café/restaurant (Class A3) to be used in conjunction with the existing restaurant on the upper floor, with the installation of a new extract flue and air handling equipment to the rear elevation' (application reference No 2006/1094/P). (This is the decision to which Appeal B relates.)

Appeal A on ground (a) and Appeal B

6. Although I have stated my opinion (paragraph 1 above) that Appeal B is wider in scope on planning merits than Appeal A on ground (a), I consider that both appeals should be determined together because the Council's reasons for refusing planning permission are the same as their reasons (paragraph 4(b) of the enforcement notice) for taking enforcement action.
7. From my inspection of the appeals site and surroundings and my examination of the written representations, I consider that the main issue arising from Appeal A on ground (a) and Appeal B is whether the development to which these appeals relate would unacceptably harm the character, function, vitality and viability of the Kentish Town District Shopping and Service Centre. In dealing with this issue, the relevant statutory provisions require me, if regard is to be had to the development plan, to determine the appeals in accordance with the plan unless material considerations indicate otherwise.
8. The development plan includes the adopted London Borough of Camden Unitary Development Plan 2000 (the UDP) in which the Council have drawn attention particularly to Policies SH1 and SH7. These Policies seem to me relevant in determining these appeals. I shall also have regard to Policy R7 in the adopted (June 2006) London Borough of Camden Replacement UDP which has reportedly come into effect since the Council's decisions resulting in Appeals A and B were made.
9. It seems to me indisputable that the change of use of the ground floor in the appeal premises to a restaurant would result in a further erosion in retail outlets in this part of the Borough and would inescapably intensify the concentration of food-providing establishments. *In my opinion, this result would be contrary to the Council's aims in UDP Policy SH7 and in Replacement UDP Policy R7(B)(a), although the Council have not provided persuasive evidence that the loss of the retail use would result in unacceptable harm to the vitality and viability of the neighbourhood centre in this case. And paragraph 4.4 of the Council's written appeals statement appears to imply their particular concern that, were the current use permitted, it would enable 'an A3 chain operator' to occupy the premises.*
10. Turning to other material considerations, it is evident from the terms of the letter of 9 August 2006 to the appellant from the Council's Contract Planning Officer that advice

has been offered which, if followed, might have enabled the appellant to adapt the mode of operation of his use of the ground floor of the appeals premises so as to comply with the enforcement notice's requirements. The appeals documents made available to me imply (paragraph 4.5 of the Council's written statement) that the appellant decided not to follow this advice.

11. *In my opinion, the primary material consideration in this case is whether, having regard to the Council's grant of planning permission, on 6 September 1996, for the use of the first floor in the appeals premises as a restaurant, it is realistic to expect a subsequent occupier or lessee of the entire premises to maintain a retail use of the ground floor, even though I saw, during the inspection, there is a separate access and stairway to the first floor restaurant. I am also concerned that the advice offered by the Council to the appellant in the letter of 9 August 2006, while undoubtedly given in good faith, might not in practice result in compliance with the enforcement notice's requirements.*
12. Having carefully considered all the submitted representations, I regard Appeals A and B as very finely balanced on planning merits. However, I conclude that the reasonable approach in this case is to grant a three-year time-limited, personal planning permission for the restaurant use of the ground floor, which would enable the appellant to continue an apparently popular and thriving business while also helping to maintain the Council's planning control over these business activities and ensuring (in so far as practicable) that the restaurant use of the ground floor is not taken over by what the Council describe as 'an A3 chain operator'. I shall therefore grant conditional planning permission in identical terms on both Appeals; and I need not consider Appeal A on an assumed ground (f) in order to vary the requirements (as indicated in paragraph 2 above).
13. The Council's written statement contingently suggests imposing two planning conditions in the event of allowing the appeals. The first condition replicates Condition 2 imposed on the permission granted on 6 September 1996: this suggested condition seems to me necessary and reasonable. The second suggested condition has two limbs. The first limb would not permit customers to be on the ground-floor premises before 0700 or after 2300 on any day: the second limb would prohibit, within any adjoining premises, any audible sound emanating from the appeals premises between these hours. In my opinion, it is necessary and reasonable, in the interests of neighbours' amenity, to limit the operation of the ground-floor restaurant to the hours proposed in the appellant's planning application (which are slightly shorter in duration than the Council suggest). However, I consider that the second limb is unreasonable in requiring that 'no sound' shall be audible in adjoining premises; and it may well be unenforceable in practice. The Council have not maintained that the proposed flue extract system should not be permitted or suggested that any condition should be imposed on it. As this aspect of the proposal seems likely to result in some environmental improvement, I consider it should be permitted unconditionally.
14. I have taken into account all the other matters raised in the representations, including those of Leighton Road Neighbourhood Association, Kelly Street Residents' Association and Kentish Town Road Action. However, none of these matters outweighs the balance of considerations leading to my conclusions.

Formal decision

15. I determine the appeals as follows:

Appeal A (reference No APP/X5210/C/06/2022306)

I allow the appeal and direct that the enforcement notice issued on 4 July 2006 be quashed. I hereby grant planning permission on the deemed application under section 177(5) of the 1990 Act for the development already carried out, namely a change of use of the ground floor of the premises at 225 Kentish Town Road, London NW5, from a retail use to a restaurant use (within the scope of Class A3 in Part A of the Schedule to the Town and Country Planning (Use Classes) Order 1987), subject to the following conditions:

- (1) The use of the ground floor premises hereby permitted shall be carried on only by Mr Hanifi Alagoz and shall be for a limited period, being the period of three years from the date of this decision, or the period during which the premises are occupied by Mr Hanifi Alagoz whichever is the shorter.
- (2) When the ground floor premises cease to be occupied by Mr Hanifi Alagoz or at the end of three years whichever shall first occur, the use hereby permitted shall cease forthwith and all materials and equipment brought on to the ground floor premises in connection with the use shall be permanently removed.
- (3) At 1 metre outside the windows of any neighbouring habitable room the level of noise from all plant and machinery shall be at all times at least 5 decibels below the existing background noise level, expressed in dB(A) at such locations. Where the noise from the plant and machinery is tonal in character the differences between these levels shall be at least 10dB(A).
- (4) No customers of the use hereby permitted shall be present in the ground floor premises outside the following hours:
 - (i) 0800 to 2300 on any Monday to Saturday inclusive;
 - (ii) 0900 to 2230 on any Sunday or Public Holiday.

Appeal B (reference No APP/X5210/A/06/2021844/NWF)

I allow the appeal and grant planning permission for the change of use of the ground floor premises at 225 Kentish Town Road, London NW5, to a restaurant use (within the scope of Class A3 in Part A of the Schedule to the Town and Country Planning (Use Classes) Order 1987) and for the installation of an extraction flue system in accordance with the terms of the application (reference No 2006/1094/P) dated 25 February 2006 and the plans submitted therewith, subject to conditions identical to those imposed on the grant of planning permission in respect of Appeal A above.

DN Donaldson

INSPECTOR