



81 High Street
Chatham, Kent ME4 4EE
Telephone: 01634 811118
Fax: 01634 831046
Email: mail@kslaw.co.uk
Web: www.kslaw.co.uk

Our ref – 13/ZB/NA00501

Your ref –

Date 20 August 2015

Ms J Chivers
Development Manager
Camden Council
Camden Town Hall Extension
Argyle Street
London WC1H 8EQ

By email: Jennifer.Chivers@camden.gov.uk; planning@camden.gov.uk

Dear Madam

2015/3447/P

We are instructed to submit a representation objecting to the proposal in the above application for development described as "minor alterations to existing shopfront" at 57 Southend Road Hampstead London NW3 2QB. We are instructed by the immediate occupiers of a flat above the application premises/floor space, who have already submitted their own representation, named Nakouzi.

The Council granted a lawful development certificate dated 9 June 2015 under reference 2015/0882/P that *use of part of ground floor as pet grooming facility ancillary to the A1 retail use at ground and basement level* would be lawful. The reasoning was that it was considered "*collectively classed as A1 use*". The informative is important. Being a proposed use the LPA was entirely reliant upon the information and particularity of the documentation submitted by the applicant at that time i.e. at the date that the application was received. The officer delegated report clearly relied upon the representation of Savills that the floor space to be used by the grooming enterprise would be 14% of the total. This was set out in Savills letter of 12 February 2015. Paragraph 3.10 of the officer report refers. Argument in respect of sales from grooming being 14%, referred to 3.12 does not explain why at 3.13 reference is made to "noise" or why this would unlikely to be excessive as this was not part of the legal assessment. However the current application does engage planning merit assessment.

Savills letter of 4 August 2015 confirms that the entire floor space is affected by "negative pressuring". Negative pressuring is not required for a shop. It is noted that the ventilation system is for the entirety of the floor space. There was no account taken of this when the LDC was determined as it was not disclosed and could have been material as it raises doubt as to whether the grooming business will, after all, be "ancillary" in functional terms. It is not clear why Savills suggest that the extraction system terminates at the condensing units, given that the ducting runs to the shopfront. Savills seek to persuade the LPA that

Kingsley Smith Solicitors LLP is a limited liability partnership registered in England and Wales under registration number OC305935, and is authorised and regulated by the Solicitors Regulation Authority.

A list of members may be inspected at 81 High Street, Chatham, Kent ME4 4EE, its registered office.

All members of Kingsley Smith Solicitors LLP are solicitors.



the ventilation system will perform satisfactorily as justification for the venting at the shopfront, but it is not considered that the applicant has properly engaged with whether this development is sustainable as defined by NPPF.

Whilst the grills may be described as such they are exhausts. NPPF requires the three dimensions set out at paragraph 7 to be met as confirmed by paragraph 8. Paragraph 9 confirms *positive improvements to historic environment as well as people's quality of life is required*. Amongst the positives required is *improvement to the conditions in which people live work travel and take leisure*. Paragraph 10 confirms *decisions need to take local circumstances into account and respond to the different opportunity for achieving sustainable development*. The degree of harm to a heritage asset is a matter for assessment as a matter of fact and degree by the LPA. However as NPPF 132 states, even where a development proposal is determined to lead to *less than substantial harm to designated heritage assets, the harm should be weighed against the public benefits proposal including in securing its optimum viable use*. It is a balanced judgment but crucial is the requirement to establish "public benefit" even if it is less than substantial harm (which is not accepted by our client, who feels it is substantial harm).

Our client has already explained to the LPA why there is significant and demonstrable harm by reason of what will be expelled from the grills in the shopfront. These grills are high up and will result in fumes venting directly beneath our client's windows that will then have be kept fixed shut. Our client has already explained their son's acute medical sensitivity and submitted corroborative medical evidence.

Whilst Aircon/heating grills are not uncommon in High Street frontages, even in conservation areas, there is no analysis by the applicant, nor does there appear to be any significant concern expressed by third parties, as to the matter of odour. Even presupposing that the filtration system removes 100% of dander, hair, fur, fluff etc (which plainly it will not as no such system is fool proof, as our client has already explained to you) the issue of dog wash smells has not been grasped.

For those that keep a dog as a pet and groom it, the attendant smell is significant and well-known, since the animal's dry hair captures the majority but this is expressed into the air when washed. This is why such activity is normally undertaken in the open or at least in an outbuilding to provide some shelter, with a significant amount of free air to disperse the odours. But this is a High Street in a conservation area. The number of dogs to be groomed are unknown. The applicant says nothing. However it is not unreasonable to presume that there will be a significant number for the purposes of the viability and the sheer expense of the ventilation system and staffing proposed. The information provided by the applicant is inadequate and it is requested that the LPA delve into the details of this and if necessary attend other business (not the applicants') premises to make fair comparisons.

Washing one dog alone in a confined space will result in the vented odours to the street front unpleasant and significant to passers-by as well as surrounding occupiers of land. However the number of dogs that are likely to pass over the threshold it is reasonable to assume will result in considerable odour emission. There is no limit to the trading hours of

these premises. It is already known that the premises will be trading 7 days a week, and whilst a shop is one thing, a grooming parlour is quite another. The application form at panel 20 does not even "know" what the opening hours are and imagine that Savills expect the LPA to impose some opening hours condition. The reality is that many owners of dogs have limited spare time to take their animals in for grooming inside working hours, so outside 9-5 Monday to Friday is more likely to result in significant footfall. The consequent noise and disturbance of animals to-ing and fro-ing outside working hours is a serious concern. This was not a matter that was assessed in the LDC and the comparable referred at Wilmslow has no residential accommodation above, distinguishing this case. There is a limit to which the LDC is a material planning consideration, to which we return further below. The principal point at this stage which our client wishes the LPA to take into account is that the environment in which the odours will be expelled is a heritage asset, a high-street location with predictably a great amount of passing by pedestrians; there are restaurants with open seating areas at the front nearby. Moreover there are other retailers selling food products, but even those selling comestibles or clothing could also find loss of trade from the immediate environment to escape the smell.

Whilst the LPA determined the LDC application on the basis of the evidence before it, it is unfortunate that the LPA accepted Savill's argument as to its functionality, even if the predictions as to the percentage of sales were correct, which is considered questionable. The contention that the ancillary floor space (i.e. for grooming) was only 14% of the total, was based upon the basement area not being used for grooming, but there was no evidence to support the assertion that the basement was to be used solely for primary retail use. In fact of the ground retail floor, 36% is intended for grooming (a cage room, a spa room and a grooming room) with the extraction unit running through the retail area to the front of the store. The basement is for an office, a staff room and storage which would no doubt serve both grooming and retail. Moreover, and of most significance, the contention that the functional use of the floor space could properly have been assessed in respect only of sales, omitted the crucial analysis that dogs are almost universally not welcome in A1 shops. Yet a lawful development certificate was given on the basis that an A1 shop would be compatible with dogs of an unlimited number. This seems nonsensical.


The functional use of the floor space/land will not be comparable to A1 shop from an objective bystander view. The impacts of the proposal were relevant to the analysis as to whether the use would be ancillary retail. To assess on the basis of a store in Wilmslow, which has no residents above, is all very well but each case must be considered on its merit, not because other LPA's or decisions should be followed as if they must be correct. It is considered the LPA should reconsider its LDC as part of its analysis in this case.

Given there was a mistake in terms of the percentage floor space to be taken by grooming, and failure to note dogs are not compatible with A1 shops, the fall back position in respect of the lawful development certificate can only be given limited weight. It was after all, a proposal, not an assessment of the actual use and impacts to the public realm and occupiers of adjoining land, as now required for the purposes determining this application.

It is not possible to control by condition a land-users emissions of odours that come from groomed dogs. Nor is it possible to successfully mask this by some perfume effect in the

ventilation system and the noxious smells in terms of sustainability means our client urges the Council when considering the balancing exercise, to give significant weight to the environmental harm, as well as social harm, either of which significantly and demonstrably outweigh any economic benefit to the applicant, there being no "public benefit".

Yours faithfully


Kingsley Smith Solicitors LLP

For and on behalf of Kingsley Smith Solicitors LLP
direct fax : 01634 831046
eMail : nks@kslaw.co.uk