



# Appeal Decision

Site visit made on 22 January 2008

by **D Roger Dyer** BA DipArch RIBA  
FCI Arb Barrister

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

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Decision date  
20 February 2008

## Appeal Ref APP/X5210/C/07/2057396 309 West End Lane, London NW6

- 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 Ms Claire Diab against an enforcement notice issued by the Council of the London Borough of Camden
- The Council's reference is EN03/0052
- The notice was issued on 6 September 2007
- The breach of planning control alleged is without planning permission the unauthorised change of use of the ground floor of the Premises from retail use (Use Class A1) to restaurant/cafe (Use Class A3)
- The requirements of the notice are
  - 1 The unauthorised use of the Premises as a restaurant/cafe shall completely and permanently cease
  - 2 The number of tables and chairs within the unit shall be reduced to a maximum of 3 tables and 10 chairs
  - 3 No tables or chairs shall be placed stored or otherwise used on the forecourt
- The period for compliance with the requirements is 3 months  
The appeal is made on the ground set out in section 174(2) (a) (c) and (f) of the 1990 Act as amended

**Summary of Decision** The appeal is allowed, the enforcement notice is quashed and planning permission is granted subject to the conditions set out in the Formal Decision below

### *Procedural matters*

- 1 After the appeal notice was made on the grounds set out above the appellant asked for consideration to be given to an appeal on ground (b) that the alleged change of use has not occurred. The Council has addressed this point in its Statement and accordingly I am satisfied that I may consider that ground of appeal without any prejudice to either party

### *Preliminary matters*

- 2 The appellant's property occupies the ground floor of a building within the West Hampstead District Centre and within the West End Lane Conservation Area. An earlier occupier applied for permission in 2005 for the retention of a change of use from Class A1 to Class A3 including the placing of tables and chairs on the forecourt. That application was refused on the grounds that the loss of retail use would have a harmful impact that would adversely affect the vitality and viability of the District Centre

***The appeal on ground (b) that the breach of control alleged has not occurred as a matter of fact***

- 3 The appellant's case on this ground of appeal is that the Council has wrongly identified the current use of the premises in issuing the enforcement notice and in issuing its refusal. It is said that the operation of the premises is exactly the same now as when it was first brought to the Council's attention. The numbers of chairs and tables has not varied nor has the range and type of food and drink sold. Equally the ratio of cold food sales to hot food sales has remained constant. It is indicated on behalf of the appellant that the officer's report to the committee in 2005 demonstrates that retrospective permission for an A3 use was not being sought. The report referred in two places to a mixed use.
- 4 For my part I have no substantial evidence of a former use. I note though that the planning history of the site in the report indicates the lawful use in 2002 as a shop with ancillary office and storage accommodation. If that is right I do not consider that the enforcement notice is incorrect. When I visited the site I saw that the appeal property is used for the sale of hot and cold foods which may be eaten on the premises or may be taken away. It is clear that hot food is included even though it is only heated by microwave ovens and a toaster. It follows that the appeal on ground (b) must fail.

***The appeal on ground (c) that there has not been a breach of control***

- 5 The case for the appellant repeats the submission that the manner of operation of the premises remains within Class A1. On her behalf it is said that the Council's sole concern seems to be the numbers of chairs and tables rather than the nature of the food sold. The appellant believes that her operation appears to equate with many similar outlets nationwide and those are considered generally to remain within Class A1. On that basis the limitation on the numbers of tables and chairs is said to be arbitrary and has no basis in planning law.
- 6 As indicated in my review of the ground (b) appeal the previous use or the date of any changes in that use is unclear from the written submissions before me. The Planning (Use Classes) Order 1987 modified in June 2006 provides that an A1 use excludes the retail sale of hot food. As I have no confirmation of an authorised A3 use or even a mixed A1/A3 use I must conclude that there has been a breach of control and the appeal on ground (c) must fail.

***The appeal, on ground (a) that planning permission should be granted for what is alleged in the notice***

*The main issues*

- 7 The principal consideration in this case is the acceptability of the current use in its surroundings and its effect on the vitality and viability of the District Centre.

*The policy background*

- 8 The development plan for the area is the London Borough of Camden Replacement Unitary Development Plan (UDP) adopted in June 2006. Relevant to this appeal are policies R2 - general impact of retail and entertainment.

uses R3 – Assessment of food and drink uses and licensed entertainment and R7 – Protection of shopping frontages and local Shops

- 9 In reaching my decision I have taken account of Government advice in Planning Policy Statement 1 (PPS1) Delivering Sustainable Development PPS6 Planning for Town Centres and Planning Policy Guidance Note 18 Enforcing Planning Control

*Reasons*

- 10 The Council has drawn my attention to a preponderance of A3 uses in the frontage between Ingleby Road to Carlton House/West Cottages This is said to have reduced the retail provision within the Centre and has affected the overall mix of uses The Council acknowledges that the appeal site is near the northern edge of the Centre but says it still clearly falls within its defined boundary Although some other inspectors have indicated that A3 uses have consolidated the area as a destination for eating out the Council has determined that the retail function of the Centre should be maintained and protected Accordingly in September 2005 the Council adopted its Supplementary Guidance for West Hampstead – Retail Food Drink and Entertainment Uses Supplementary Planning Document (SPD) The document aims to provide specific guidance in order to ensure that the policy objectives set out in the UDP are implemented
- 11 The Council's SPD aims to ensure that food outlets are appropriately located do not harm the retail function and character of the centre, and do not create harmful impacts either individually or cumulatively It recognises that West Hampstead contains a variety of uses but it regards the primary role of the centre is as a local convenience shopping destination There are a significant number of food and drink uses mainly independent cafes and restaurants but there are relatively few public houses or bars and no entertainment uses The growth of food and drink establishments in recent years is in line with national trends The SPD recognises that food and drink uses make a positive contribution to West Hampstead but says they can also create harmful impacts that are itemised Adverse impacts, though include the loss of retail outlets and traffic congestion Accordingly the SPD seeks to protect the overall mix of uses by limiting food drink and entertainment uses to a maximum of 25% of total units of each individual commercial frontage
- 12 I saw that there are indeed, many cafes and restaurants locally I consider that those that have taken advantage of wide pavements add vitality to the street scene While the food/drink and entertainment uses in this parade account for a high percentage of the frontage I am not persuaded that another retail shop would enhance the locality having regard to the forecourt of the appeal premises which is hemmed in by the uses on either side I note that there are other shops nearby in my judgement enough to maintain the retail presence of this small part of the District Centre The arrangement of the appeal property is ideal for the use to which it is put at present it matches the character of the immediate locality as an attraction for eating out In my judgement the viability and vitality of this part of the Centre depends more on cafes and restaurants than on retail outlets I consider also that the use of the forecourt for tables and chairs adds to the vitality that local policies seek I

am satisfied that the current use of the appeal property does not harm the function or character of the Centre as one that attracts shoppers nor does it create any other harm identified in the SPD

- 13 Local residents have expressed concern that an increase in the intensity of the present use would demand the introduction of extraction and ventilation equipment that would spread cooking fumes with consequent loss of residential amenity. It is apparent to me though that while the range of hot food can be heated only by microwave ovens and the like as at present extract facilities would not be required. In that respect I consider that suitable conditions to limit the means of cooking or heating food would protect occupiers of nearby premises. I shall also impose a condition on the hours of use in the terms offered on behalf of the appellant. The Council has suggested a condition to place a limit on the number of tables but I am not persuaded that such a provision would be necessary in the distinct circumstances of this case. Subject to the above conditions I allow the appeal on ground (a) and grant planning permission for the continued use of the premises as at present.

***The appeal on ground (f) that lesser steps would overcome objections***

- 14 In view of my decision on the ground (a) appeal I need not address the appeal on ground (f)

***Conclusions***

- 15 In my judgement the present use of the premises represents an attractive part of the District Centre and contributes to its vitality and viability. Although there are other similar uses nearby the grouping of these establishments has an appeal that adds lustre during the day and evenings. Subject to the conditions that I shall attach hereto I allow the appeal and grant planning permission. In reaching my decision I have taken account of all matters drawn to my attention in writing but I have found nothing that outweighs the main planning considerations in this case.

***Formal Decision***

- 16 I allow the appeal, quash the enforcement notice and grant planning permission on the application deemed to have been made under section 177(5) of the Act for the continued use of premises at 309 West End Lane, London NW6 1RD for the sale of food and drink subject to the following conditions:
- (1) Any heated food sold on or from the premises shall be restricted to products that are reheated by means of a microwave oven, electric toaster or the existing panini grille and shall not include food heated by other means that require ventilation equipment.
  - (2) The use hereby permitted shall not be open to customers outside the hours of 0800 to 2000 hours.

D Roger Dyer  
INSPECTOR