



## Appeal Decision

Inquiry held on 22 August 2006

Site visit made on the same date

by **Gloria McFarlane LLB(Hons) BA(Hons) Solicitor**  
(Non-practising)

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

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Date 11 SEP 2006

Appeal Ref: APP/G2245/A/05/1189586  
112 High Street, Sevenoaks, TN13 1UZ

- 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 Nero Holdings Ltd against the decision of Sevenoaks District Council.
- The application Ref SE/05/00096/FUL, dated 12 January 2005, was refused by notice dated 29 March 2005.
- The development proposed is the retention of use as mixed A1/A3 shop.

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

### Procedural Matters

1. At the inquiry an application for costs was made by the Appellant Company against the Council. This application is the subject of a separate decision.

### Main Issue

2. In this appeal I consider the main issue is whether the proposal would undermine the retail function of the town centre.

### Planning Policy

3. The development plan for the area includes the Kent and Medway Structure Plan adopted in 2006 and the Sevenoaks District Local Plan adopted in 2000. Policy EP14 of the structure plan sets out, among other things, the strategic hierarchy of retail and service centres in Kent in which Sevenoaks is designated as a 'Principal Town Centre'. Policy SS5 of the structure plan supports development which assists town centres to be prosperous and vibrant and goes on to say that within the core, priority should attach to retail, service and leisure uses. The following local plan policies were referred to on the notice of refusal. Policy ST1A defines the Sevenoaks Town Centre by reference to the proposals map. Policy ST2 says, among other things, that within the primary frontage as defined on the proposals map only ground floor uses within Class A1 will be permitted. Policy S1 sets out a presumption for proposals within town centres which, among other things, enhance the retail function and expand and diversify opportunities for service and leisure uses appropriate and complimentary to the retail use, provided they do not displace Class A1 uses from primary shopping frontages. Policy S6 sets out criteria with which proposals for restaurant and hot food take-away businesses must comply which include the premises not being located in a primary retail frontage in an existing town centre.



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4. I have also been referred to national planning guidance in Planning Policy Statement 1 'Delivering Sustainable Development' (PPS1) and Planning Policy Statement 6 'Planning for Town Centres' (PPS6).
5. Since the application was considered by the Council, the Town and Country Planning (Use Classes) Order 1987 has been amended and, among other things, the former Class A3 'Food and Drink' has been disaggregated into 3 classes. Circular 3/2005 'Changes of Use of Buildings and Land' provides guidance amounting to an interpretation of the Use Classes Order, as amended. Coffee shops and sandwich bars are considered in the Circular under Class A1 but with provisos in each case that the primary purpose of sandwich bars has to be taken into account and that coffee shops should be considered on a case by case basis.

#### Reasoning

6. The appeal premises occupy a prominent position within Sevenoaks Town Centre. They are within the 'primary shopping frontage' as defined on the proposals map and are located in the middle of the High Street facing the central pedestrian core of the town centre. The appeal site forms part of a terrace of buildings occupied by a variety of commercial uses. 112 High Street is within the Conservation Area that covers the majority of the town centre. There is no dispute between the Parties that the visual appearance of the appeal premises does not harm the character and appearance of the Conservation Area.
7. No.112 was a retail outlet with a Class A1 use which had closed prior to the Appellant Company becoming involved. The Appellant Company commenced business in December 2004 before the current shop front, which comprises folding windows on the front elevation, was granted planning permission. Planning permission for the shop front was granted in January 2005 and the Appellant Company was also engaged in correspondence with the Council about, among other things, the necessity for a planning application in respect of the coffee shop use. In January 2005 the application was made for the retention of a mixed Class A1/A3 use that is the subject of this appeal.
8. At the time of the inquiry the use of the appeal premises by the Appellant Company had been in operation for over 18 months and, because of this period of time, the Appellant Company was able to produce information relating to its business. This information showed, among other things, that between 3,000 and 4,000 customers used the coffee shop every week; approximately 80% of the business comprised eating and drinking on the premises and the remaining 20% was takeaway; and coffee sales, both for consumption on and off the premises, comprised about 60% of the value of sales. In addition, the Appellant Company undertook pedestrian flow counts and carried out surveys of its customers and nearby shop managers. The figures relating to the business and those in the surveys and counts were not challenged by the Council.
9. A considerable amount of inquiry time was taken up with exploring the different characteristics of Class A1 and Class A3 uses in relation to sandwich bars/coffee shops. There was also a suggestion by the Council that the appeal premises comprised a Class A5 use. In my opinion, in this case, attempting to label the uses of the appeal premises is not particularly helpful and instead it is more appropriate to look at what is actually happening. I do not believe that the premises can be classified under Class A5 as they are not, for example, premises where the existing primary use is the sale of hot food to take away. It seems to me clear from Circular 03/2005 that coffee is not considered to be 'hot food' for

the purposes of the Use Classes Order. From the evidence presented by the Appellant Company relating to its sales and its method of operation, it seems to me that the Class A3 use is predominant given that it forms 80% of the business and takes up the majority of the floor space. However, I was told by the Appellant Company, and I have no reason to doubt what I was told, that the 20% Class A1 use was considered to be significant in commercial terms so as to justify retention of the unit for that purpose only. I therefore consider as a matter of fact and degree that the use of the appeal premises is as described in the application, that is, a mixed Class A1/A3. I am therefore of the opinion that policy S6 which relates to restaurants and hot-food takeaways is not relevant in this appeal.

10. 20% of the current use of Caffè Nero is Class A1 use. Whilst in percentage terms this use is considerably less than the Class A3 use, in numerical terms it represents a high number of customers, some 600-800 per week. From the Customer Count Surveys it appears that this number of customers compares favourably with nearby retail (Class A1) units. It therefore seems to me that the retail function of the unit is vibrant and it cannot be said that the current use has resulted in the displacement of the retail function from this primary shopping frontage.
11. The surveys undertaken by the Appellant Company show, among other things, that the present use generates a considerable amount of activity in this part of the High Street. Many customers stated that coming to the coffee shop was their main reason for visiting the High Street. The question whether this was their sole reason for visiting the High Street was not asked, but given the findings of the survey I consider I can reasonably assume that customers to Caffè Nero also visit other shops/services in the town centre. This is particularly likely as the town centre is compact and the appeal premises are in close proximity to the Blighs Meadow development which is described in the Sevenoaks Retail Study prepared for the Council by GVA Grimley in May 2005 as the 'new focal point in the heart of Sevenoaks'.
12. In the Retail Study, Sevenoaks itself is considered to be a vital and viable town centre. It is accepted that shops and services in town centres feed off each other and a use such as the appeal site which generates a large number of customers would, in my opinion, not undermine the retail function of the primary shopping area. This view is also borne out by the Retail Study which says that, in general, coffee shops in town centres are important to attract shoppers and encourage longer stays. When asked to comment on the Caffè Nero use GVA Grimley took the view that 'the proposed use would be unlikely to detract from the current health of the centre'. The evidence I read and heard in the inquiry gave me no reason to disagree with this view.
13. From the street the appearance of the appeal premises is one of a restaurant because of the location of sofas and tables and chairs close to the front of the unit. However, I believe that most people know about establishments such as Caffè Nero and, whatever its appearance, their function as purveyors of coffee and food for consumption on or off the premises is well known. In this respect I do not consider that the appearance of the appeal premises has any adverse impact on its retail function.
14. I therefore conclude that, although the mixed Class A1/A3 does not fully accord with the relevant development plan policies to which I have been referred, the mixed use of the appeal premises would not have an adverse effect on the retail function of the town centre.

**Other Matters**

15. The Council was concerned that if the appeal was allowed it would set a precedent for other similar applications which it would find difficult to refuse and the cumulative effect of which would result in considerable harm to the retail function of the town centre. I have not been provided with any information as to the likelihood of any similar applications and I take into account that the vacancy rate of units in the town centre is low and that GVA Grimley have advised that 'there is currently a good range of convenience and comparison goods provision in the town centre, there is not, however, a huge choice of coffee shops'. In any event, the mere fact that allowing one appeal may lead to further planning applications is not of itself a reason for refusing planning permission. Each application has to be treated on its own merits.
16. I was referred to a number of decisions relating to other appeals made by the Appellant Company and other similar businesses. These decisions, although in different towns and having different circumstances so far as, for example, location and local policies are concerned, raised similar issues with regard to the vitality and viability of shopping centres. In this respect, I have taken them into account in this appeal.

**Conditions**

17. Three conditions were suggested and agreed by the Parties. These conditions relate to, for example, the use of the premises as a coffee bar with no primary cooking on the premises and its hours of opening. In reaching the conclusion on the main issue I have taken into account the particular circumstances of this Appellant Company and its business. As the proposed conditions relate to matters that are fundamental to this particular proposal I consider that they are essential. The proposed conditions also meet the tests set out in Circular 11/95 'The Use of Conditions in Planning Permissions'.

**Conclusions**

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

**Formal Decision**

19. I allow the appeal, and grant planning permission for the retention of use as mixed A1/A3 shop at 112 High Street, Sevenoaks, TN13 1UZ in accordance with the terms of the application, Ref SE/05/00096/FUL, dated 12 January 2005 and the plans submitted with it, subject to the following conditions:
- 1) The premises shall not be used other than as a coffee bar serving coffee, other hot and cold drinks, sandwiches and similar light refreshments for consumption on or off the premises.
  - 2) No primary cooking of unprepared food shall be carried on within the premises. Only reheated or cold food that has been prepared elsewhere shall be served within the premises.
  - 3) The premises shall remain closed from 2000 hours to 0700 hours and no alcoholic drinks shall be displayed or served on the premises.

INSPECTOR



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**APPEARANCES**

**FOR THE APPELLANT COMPANY**

**Mr J Findlay, of Counsel**      **Instructed by Brian Madge Ltd, Chartered Town Planner**

**He called**

**Mr B Price**      **Finance Director, Caffè Nero Group plc**

**Mr SCT Arnold**      **Managing Partner, The Development Planning Partnership,**  
**MA(Cantab) (MA)TP**      **21 The Crescent, Bedford, MK40 2RT**  
**MRTPI MRICS**

**FOR THE LOCAL PLANNING AUTHORITY**

**Mr J Leach**      **Principal Solicitor, Sevenoaks District Council**

**He called**

**Mr S Copping**      **Director, WS Planning, 15 Bell Street, Reigate, RH2 7AD**  
**BA(Hons) DipTP MRTPI**

**INTERESTED PERSONS**

**Cllr P Fleming**      **Sevenoaks District Council**

**DOCUMENTS SUBMITTED AT THE INQUIRY**

- Document 1** -      **Letter from Mrs C Beaumont**
- Document 2** -      **Letter from Mr A O'Dowd**
- Document 3** -      **Pedestrian counts, submitted by the Appellant Company**
- Document 4** -      **Extracts from the structure plan, submitted by the Appellant Company**
- Document 5**      **Copy of planning permission Ref. SE/00/00660/CONVAR and accompanying documents, submitted by the Council**

