



# Appeal Decision

Inquiry held on 15 and 16 May 2007  
Site visits made on 14 and 16 May  
2007

by **D L Burrows** DipTP MRTPI

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

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**Appeal Ref: APP/B1930/A/06/2026933**

**Caffe Nero, 2-4 High Street, Harpenden AL5 2SN**

- 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 St Albans City & District Council.
- The application Ref 5/06/1133, dated 22 May 2006, was refused by notice dated 18 July 2006.
- The development proposed is change of use to mixed A1/A3.

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

## Preliminary matters

1. I understand the appeal site had been in A1 retail use (a furniture store) as defined by the Town and Country Planning Order (Use Classes) Order 1987 before Caffe Nero occupied the premises in the Spring of 2006. The evidence includes some debate as to whether the actual use of the premises by the appellant company falls within Class A1 or is a mixed Class A1/A3 one. However it was agreed by the parties that the application was for and the Caffe Nero operation is a mixed A1/A3 use and I shall determine the application on this basis.
2. The Council and the appellant have produced different figures for the proportion of retail vis service uses within the centre of Harpenden. The Council's figures are based on the Goad classification which breaks the categories down into A1 convenience, A1 comparison, service uses, miscellaneous and vacant. The appellants base their figures on the Use Classes Order.
3. The Goad approach, unlike the Use Classes Order, classifies a number of uses such as hairdressers, dry cleaners etc as service uses. This means that using the Goad figures does not allow a like with like assessment of how the centre is performing in terms of policy. The adopted City and District of St Albans Local Plan Review policies and the Council's annual shopping monitoring reports are all based on the Use Classes Order. Given these circumstances, whilst I appreciate the Goad classification permits comparison with other centres nationwide, I believe it would be more appropriate to use figures based on the Use Classes Order in reaching a decision.

4. I note that there are minor differences between the parties resulting from the extent of the town centre chosen, but these do not fundamentally affect the generality of the figures put forward and are not, to my mind, critical in reaching a decision.

### **Main issue**

5. From all I have seen, heard and read on the matter I consider the main issue to be the effect of the change of use on the vitality and viability of Harpenden town centre

### **Planning policy**

6. National policy and guidance on town centres is set out in *PPS6: Planning for Town Centres*. The Government's key objective for town centres is to promote their viability and vitality. A number of health checks for measuring vitality and viability are to be found in paragraph 4. These include monitoring key indicators such as diversity of town centre uses, type and amount of floorspace, vacant properties, pedestrian flows, customer and residents' views and the like. PPS6 says that shopping frontages should be realistically defined and that primary shopping frontages should contain a high proportion of retail uses.
7. The development plan policies most relevant to the appeal are contained in the City and District of St Albans Local Plan Review 1994 (LP). In the LP the appeal site is located within Harpenden town centre where policy 51 seeks to maintain/enhance its vitality and viability as a minor town centre. Policy 130(4F) goes on to identify 2 High Street as a redevelopment site for shopping on the ground floor and B1 uses above. It says that permission has been granted for 320sqm of shops and 750 sqm of offices. However following adoption of the LP, a further application (5/97/0574) for 2 storey shops, offices and restaurant was permitted and it is this later permission which was implemented.
8. Under policy 53 the appeal site is allocated as part of a primary shopping frontage (PSF 6) where policy 57 is permissive of service uses (classes A2/A3) subject to policy 56 which says that the loss of retail (A1) floorspace will only be acceptable if at least 90% of the built up length of the frontage at ground level remains in retail use.

### **Reasons**

9. Under the Town and Country Planning Uses (Classes Order) 1987 (as amended), the use applied for is a *sui generis* one consisting of a mixture of A1 and A3. It is agreed that the split between the uses is 75% A3 and 25% A1. According to the Council's 2006 Shopping Monitoring report PSF 6 has a frontage of 96m of which 35% was at that time in A1 use. The frontage was therefore already dominated by non A1 uses and the report indicates that the level of A1 usage had remained constant since 2001. Given that the appeal site has a frontage of 10m, approval of the proposal would mean that the proportion of A1 uses on the PSF 6 frontage reduce to about 25%. The change of use would be clearly contrary to policy 56. In reaching this conclusion I have taken account of the element of A1 within the mixed use which would remain at the appeal site.

10. S38(6) introduced by the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accord with the development plan unless material considerations indicate otherwise. There are a number of considerations to be taken into account in this case.
11. Harpenden is a second tier centre in the district and all parties agree it is a thriving and vital place with a consistently low vacancy rate. The January 2007 survey indicates only 2 vacant properties and I saw that this has changed little.
12. The centre is linear, based on High Street, a busy through route which runs north to south. To its west, Leyton Road runs parallel to it, whilst to the east of High Street - Vaughan Road and Station Road are at right angles and also contain shopping frontages. The 2006 St Albans and District Council Retail and Leisure Study confirms that Harpenden functions as a minor district centre catering for convenience and weekly grocery shopping needs of residents as well as providing a small range of comparison goods and services with the retail offer aimed at the more affluent market. My impression was that a significant proportion of the comparison shopping was in the fashion/clothing sector.
13. Although there are a number of pedestrian crossing points of High Street, the road causes a degree of fragmentation in the centre. And whilst the landscape creates an impression of spaciousness it also adds to the fragmentation of frontages. There is also a significant level of on-street parking, but despite the potential conflict of pedestrians and drivers the centre is an attractive one with its numerous areas of greenery and mature trees. I saw at my visits, on a late Monday afternoon and a Wednesday lunchtime, that there was a busy and vibrant atmosphere.
14. 2-4 High Street mark the southern most extent of the town centre on the western side of High Street. The premises are set back behind a pavement and planting area and immediately to their south is a grassed area with mature trees containing a small toilet block, beyond that a link road between Leyton Road and High Street marks the northernmost part of Harpenden Common.
15. The defined primary shopping frontages face either High Street or Leyton Road. They contain the highest concentration of A1 uses. However only PSF 1 and PSF 5 (both facing Leyton Road and containing a Waitrose supermarket and Marks and Spencer "Simply Food" have a frontage in A1 use of over 90%. The other PSF frontages vary in percentage with PSF 6 having the lowest proportion of A1 uses.
16. The PSF 6 frontage was defined in the 1994 adopted local plan when the LP inquiry inspector considered that the block marked the gateway to the shopping core and was vital in creating a good first impression to travellers from the south. If it wasn't designated as primary shopping frontage he thought it likely that the block could become almost entirely dominated by service uses which could unbalance the public perception of the shopping centre and even affect its long term vitality and viability. At that time I understand the site was boarded up and had previously been used by a car sales showroom.
17. Things have moved on since the LP was adopted. Planning permission was granted and implemented for the major part of the frontage of 2-4 High Street

to be developed as a restaurant. The Pizza Express premises occupy all the south facing frontage and a proportion of that on High Street. It is these premises which are the most prominent when approaching from the south although the greenery in front of them means they do not dominate the street scene and the design of the building is in keeping with its surroundings.

18. By its set back the appeal site frontage is not to my mind as prominent as the restaurant. I agree that when passing the frontage the perception is one of a significant amount of seating and tables rather than a shop counter, but such frontages are these days common on main shopping streets. They do not present a dead frontage, but permit the passer-by to see into the premises where the internal activity creates interest. They are daytime uses which to a certain extent rely on a relatively high turnover of customers rather than the more traditional café/restaurant where the primary purpose is to sit for longer and have a meal. As such they can attract a relatively high level of day time custom commensurate with any number of A1 uses.
19. When quoting from the Council's case, the LP report says that PSF 6 was predominantly in service usage at the time of the LP inquiry. It therefore appears that the frontage has always had an imbalance of uses and not functioned as a PSF. The situation at that time, together with the Council's approval of a significant length of A3 frontage with the redevelopment of the appeal site means that the PSF 6 frontage remains dominated by services even without the change of use of the appeal premises. At present apart from the appeal site there is only one High Street property in PSF 6 which is in A1 use. Despite this, there is no substantive evidence to indicate that this has or will cause material harm to the vitality and viability of either the centre or the PSF frontage. Overall I find the block provides an attractive entrance to the town centre, albeit is not primarily in A1 use.
20. The appellant company has undertaken pedestrian flow and customer inflow counts which show, even when discounting for longer opening hours, the appeal use compares favourably with the amount of activity generated by other nearby uses including the A1 use next door but one. Moreover the customer surveys show that for a small percentage (10%) the primary purpose was to visit Caffe Nero whilst 27% of customers visited the High Street more often than they did before the premises opened.
21. I note there were no figures to compare the views of Caffe Nero customers to other shoppers in the centre and it is possible that there may be an element of coincidence about the increased number of visits to the centre. The figures need to be treated with some caution. However the survey does indicate that the premises are, for some, an attractor in their own right. It seems to me that the evidence points generally to the use being an attractor to rather than a detractor of the centre.
22. There is no substantive evidence which demonstrates that the loss of A1 use has caused harm. The Council are concerned about diverted trade from other premises, but the evidence on this point relates primarily to a letter from another business which says that coffee custom has reduced since the appeal premises were opened. That letter whilst it demonstrates competition between businesses does not mean that there has been or will be harm to the centre as a whole.

23. The 2006 retail and leisure study, amongst other things, found that Harpenden was a vital and viable centre, albeit a number of retail units were under pressure from A3, A4 and A5 operators with various parties believing the centre was reaching saturation point for those type of uses. It was clarified at the inquiry that those parties were principally the Town Council and Council officers. However the Town Council are supportive of the change of the use of the appeal site. A letter from them dated 5 April 2007 says that .... *On balance, perhaps a fine line needs to be drawn on whether the district plan is sacrosanct or whether common sense dictates in this case that the change of use be allowed...* The Chamber of Commerce by letter of 1 May 2007 take the view that ....*that there is a substantial case for an exception to be made (to policy)*. There is therefore support for the proposal from local organisations.
24. I appreciate the Council's concerns about a preponderance of A3, A4, A5 uses causing an imbalance in the centre and thus harming vitality and viability, but the use is a mixed, daytime one which complements the retail function. It is not an evening economy use which presents a dead daytime frontage and even though there may be pressure for the operation to change over time, I consider the planning conditions suggested by the Council would ensure that its fundamental nature did not change.
25. The LP policies have been adopted since 1994 at which time the block was not a prime shopping frontage, nor since then has it become so. It was and remains service use dominated. Despite this the locality has every appearance of being viable and vital. There are concerns about precedent, but I am required to treat each case primarily on its own merits in the light of the development plan. Should there be pressure for A3, A4 or A5 uses or even mixed A1/A3 uses they would need to be assessed taking into account, amongst other things, the nature of the use, the size and location of premises together with the health of the centre and its vitality and viability. I do not consider my findings in this particular case would create a precedent. For similar reasons I give little weight to the two previous appeals referred to by the Council.
26. I have taken account of the previous appeal (APP/B1930/A/98/294408) on the site, but the circumstances of that development were different. It was for a different use at a time when the premises had only been recently completed and not used for retail purposes.
27. The appellant has said categorically that should planning permission be refused for a mixed use, the premises would continue trading as an A1 use with ancillary A3 provision. This would mean that the premises would be likely to attract less customers which would have a consequent impact on activity generated by the premises and thus to my mind be more likely to harm vitality and viability than the present proposal.
28. I have taken into account all the other matters raised but find none which are sufficient to alter my conclusions that, even though the proposal would be contrary to development plan policy, it would nevertheless be acceptable as it would not harm the vitality and viability of the centre which is the underlying objective of both national and local plan policies.

29. I have looked at the conditions suggested by the Council in the light of Circular 11/95. I consider them all to be necessary to control the nature of the use in the interests of vitality and viability. For the reasons given in para 18 I do not consider it necessary to impose a condition requiring a shop front as suggested by the appellant company.

**Conclusions**

30. For the reasons given above, I conclude that the appeal should be allowed.

**Formal Decision**

**Appeal Ref: APP/B1930/A/06/2026933**

31. I allow the appeal, and grant planning permission for the change of use to mixed A1/A3 at 2-4 High Street, Harpenden AL5 2SN in accordance with the terms of the application, Ref 5/06/1133, dated 22 May 2006, 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 20.00 hours until 07.00 hours and no alcoholic drinks shall be displayed or served on the premises.

*D L Burrows*

INSPECTOR