



# Appeal Decision

Site visit made on 27 September 2010

by **Ian Currie** BA MPhil MRICS MRTPI

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

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Decision date:  
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## Appeal Ref: APP/X1545/A/10/2129106 80-82 High Street, Maldon, Essex, CM9 5ET

- 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 Costa Coffee against the decision of Maldon District Council.
- The application (Ref:- FUL/MAL/09/00889), dated 20 October 2009, was refused by notice dated 20 January 2010.
- The development proposed is change of use to a coffee shop (mixed A1/A3) with external seating.

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### Decision

1. I allow the appeal, and grant planning permission for change of use to a coffee shop (mixed A1/A3) with external seating at 80-82 High Street, Maldon, Essex, CM9 5ET, in accordance with the terms of the application (Ref:- FUL/MAL/09/00889), dated 20 October 2009, and the plans submitted with it, subject to the following conditions:-
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:- SEA Design Group drawing number 28157/09 and OS Licence 40006978, Licence number 100004955 Scale 1:1,250.
  - 3) The premises shall be used as a coffee shop and for no other purpose, including any other purpose in Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
  - 4) No primary cooking of unprepared food shall be carried on within the premises; only reheated or cold food, which has been prepared elsewhere, shall be served within the premises.

### Informative

This permission relates solely to a material change of use of the ground floor of these premises, and any alterations to the front elevation of the former retail unit (although it is recognised that planning permission for a new shopfront and advertisement consent for signs have already been granted), and/or to the building as a whole resulting from any external ventilation or extraction equipment required in conjunction with the use hereby approved, will need to be the subject of a further planning application to the local planning authority.

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## **Main Issues**

2. I consider that the main issues in this appeal are firstly, the impact of the use of these ground floor premises as a mixed Class A1/A3 on the vitality and viability of the retail function of Maldon Town Centre, having regard to the provisions of Policy SH1 of the adopted Maldon District Replacement Local Plan 2005, and secondly the physical and visual impact of its use upon the character and appearance of the Maldon Conservation Area.

## **Reasons**

Impact on vitality and viability of Maldon Town Centre shopping function

3. The appeal premises are a two-storey flat roofed building, dating from the 1960s and situated on the south side the High Street well within the eastern and western extremities of this linear town centre. The premises had operated as independent electrical retailers for many years before trading ceased in 2008. According to the submitted drawings, only the ground floor of the building is to be used for the proposed coffee shop, the first floor former ancillary storage and office space presumably to be left unused. The premises lie within a reasonably continuous frontage of ground floor retail uses. The lighting store to its east is a Grade II listed building, beyond which are a travel agency, hairdressers' premises, and clothes and shoe shops. To the west are a jewellery store, a clothes shop and a greengrocery, before the first non-retail use, a bank, is encountered.
4. Section 38(6) of the Planning & Compulsory Purchase Act says that if regard is to be had to the development plan, for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. Policy SH1 of the adopted Maldon District Replacement Local Plan 2005 states that within the core retail areas of Maldon (which includes the appeal premises) and Burnham-on-Crouch town centres, and Heybridge district centre, ground floor retail units will be protected from changes to other uses with the exception of Class D1(a) uses relating to the provision of medical and health services. Within these areas, only changes of use that result in A1 retail uses or D1(a) uses will be permitted.
5. Clearly, the use of the ground floor premises in the core retail area of Maldon Town Centre, as a Class A1/A3 coffee shop, which is neither a wholly class A1 retail use, nor as a D1(a) medical use, conflicts with Local Plan Policy SH1. Moreover, this policy has been 'saved' by virtue of a letter from the Government Office for the East of England dated 23 September 2008. However, as is evident from paragraph 3 above, it cannot be argued that if this use were permitted it would lead to a significant concentration of non-retail/non-medical uses in this part of Maldon High Street. As far as this part of the town centre is concerned, it would represent something of a 'one-off'.
6. In that regard, a section 38(6) 'material consideration' is, in my opinion, highly significant. PPS4, "Planning for Sustainable Economic Growth", was issued in December 2009. It is therefore a recent statement of government policy, which not only post-dates Local Plan Policy SH1 by a considerable margin, but is also much more up-to-date than the Go-East letter saving the Local Plan Policy. Its Policy EC4.1(a) states that local planning authorities should

proactively plan to promote competitive town centre environments and provide consumer choice by supporting a diverse range of uses which appeal to a wide range of age and social groups, ensuring that these are distributed throughout the centre.

7. Policy EC4.2(a) goes on to say that local planning authorities should manage the evening and night-time economy in centres, taking account of and complementing the local authority's Statement of Licensing Policy and the promotion of the licensing objectives under the Licensing Act 2003. Policies should encourage a diverse range of complementary evening and night-time uses that appeal to a wide range of age and social groups, making provision, where appropriate, for leisure, cultural and tourism activities such as cinemas, theatres, restaurants, public houses, bars, nightclubs and cafés. In these particular circumstances, I consider that, if there is conflict between the provisions of the adopted Local Plan and those of PPS4, then the latter should be given greater weight. Those considerations should determine the outcome of this appeal.
8. The introduction of a Class A1/A3 coffee shop to Maldon Town Centre, where none exist at present, particularly in a part of the High Street with a significant preponderance of Class A1 retail uses, would add to consumer choice by increasing the range of town centre activities to a wider sector of the local urban population and its rural hinterland. Although this particular use is unlikely to contribute greatly to the night-time economy, it may well maintain activity in a part of the town centre where most of the retail outlets would appear to close early. The local planning authority objects to the principle of a Class A1/A3 coffee shop use but provides no evidence to refute the firm representations made on behalf of the appellants that such a use can be an important generator of trade in a town centre in its own right, even if it is not a wholly retail use.
9. I note what is said by local traders, especially established cafés, that they fear competition from a national chain. However, market considerations cannot be an overriding consideration when recent government advice indicates that there should be greater variety in an overall town centre 'offer' to cater for as wide a cross-section of the community as possible. In any event, it seems to me that an independent café/tea-room can continue to cater successfully to its established market. Such outlets will still be able to provide a wide variety of hot and cold food and beverages, prepared and cooked on the premises, to their customers, in contrast with the limitations normally imposed on a Class A1/A3 coffee shop, if the latter is meant to retain its important retail element in a primarily shopping environment.

Impact on character and appearance of Maldon Conservation Area

10. The reason for refusal refers to loss of retail floor space depriving Maldon of an opportunity to attract a retailer requiring more floorspace than is generally available in single units within the town centre, reducing the potential for greater representation by national chains in Maldon, which is perceived to be weakness in the town's retail offer. I accept the Council's arguments that this is unlikely to be met by the amalgamation of the significant number of listed buildings adjoining one another. Such development would be likely to require listed building consent, which may be difficult to achieve. Even if this approach

were confined to merging non-listed buildings within the conservation area, this may well lead to unacceptable erosion of the character and appearance of the conservation area as a whole.

11. On that basis, the loss of such a large fairly modern shop unit from orthodox retailing is unfortunate. If the premises were on the south side of the High Street in the immediate vicinity of the mini-roundabout junction with Market Hill, where most of the national retail chain representatives in Maldon tend to congregate, then I consider that a case for the protection of a larger shop unit of this sort for retailing may be justified. However, these particular premises are sited well to the east, among mainly smaller independent specialist retailers, where the first coffee shop chain representative in Maldon may become a significant magnet, in its own right, for generating additional business to its immediate neighbours. Overall, I do not consider that the proposed change of use in these particular premises would have any more than a neutral impact upon the character and appearance of the conservation area and is therefore acceptable.
12. However, although the building is of little if any architectural merit, it is worth reminding the appellants, by means of an informative attached to the decision, that planning permission is likely to be required for any significant alterations to its front elevation, especially if they are not carried in accordance with an extant planning permission. This informative can be expanded to point out that further planning permission is also likely to be necessary for any form of external extraction or ventilation system that may be necessary, as indicated in condition 4 of the Council's conditions suggested in paragraph 8.1 of its statement. With regard to the others set out in that paragraph, I accept the need for conditions requiring development to start within three years, for development to be carried in accordance with submitted drawings and for premises to be limited to hot and cold drinks and light refreshments. This can be achieved by limiting Class A3 activity as well as precluding the cooking of food prepared on the premises. On the other hand, I see no need for control over opening hours in a town centre location with few residents living close to this particular site.

### **Conclusions**

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

*Ian Currie*

Inspector