



Appeal Decision

Hearing held on 7 October 2003

Site visit made on 7 October 2003

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date 20 OCT 2003

Appeal Ref: APP/X5990/A/03/1110470

63 South Moulton Street, London W1K 5ST

- 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 Starbucks Coffee Company (UK) Ltd against the decision of the Council of the City of Westminster.
- The application (Ref. PT/02/08099/FULL), dated 16 October 2002, was refused by notice dated 7 January 2003.
- The development proposed is the change of use to allow a mixed A1/A3 use, and the use of the highway for outdoor seating.

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

Procedural matter

1. As shown on the submitted plans, the application relates to the basement, ground and first floors of the property. I have dealt with the appeal accordingly.

Main issue

2. There is one main issue in this case. That is the effect of the proposal on the vitality and viability of the shopping centre in which the appeal premises are located.

Planning policy

3. The development plan is the City of Westminster Unitary Development Plan (UDP) 1997. The premises are within the defined Central Activities Zone (CAZ), but are not in a prime shopping frontage. In such locations, UDP Policy SS 4 provides that planning permission for a change from a retail shop at ground floor level will not normally be granted where this would be detrimental to the particular retail character and function of the area. Permission for changes from retail at basement and first floor levels should not jeopardise the retail use of the remainder.
4. I have also been referred to the draft replacement City of Westminster Unitary Development Plan (DUDP) 2001 but, whilst this plan is a material consideration, it clearly does not have the same force as the adopted plan. DUDP SS 1 seeks to protect A1 uses generally across the Borough. In the DUDP the premises remain in the CAZ, but not in a prime frontage. DUDP Policy SS 6 states, amongst other matters, that A1 uses at ground, basement or first floor levels will generally be protected.

12. The second criterion is that the proposal should not add to a cumulative change in the character and function of a street from mixed to predominantly A3 and entertainment uses. The Council explained the loss of retail shops within the Central Activities Zone in general, and explained the concern that South Moulton Street should not lose its overwhelmingly retail function. However, the appellant submitted unchallenged evidence that A1 retail uses currently comprise 93.6% of shop units or 91% of the frontage, and that this would reduce to only 92% and 89% if the appeal were allowed. Whilst I accept that changes of use can sometimes create problems due to concentrations of single uses, there is no evidence that the proposal would add to a cumulative change in the character and function of the street. I conclude that the proposal does not conflict with this criterion in the DUDP.
13. The Council raised no objection based on the viability of remaining shops in the road, the creation of a "dead frontage", any over-concentration of service uses, or amenity issues. In addition, the Council raised no objection to the provision of outdoor seating. Based on the submitted evidence, I concur with those assessments. In addition, there was no dispute that the use provides a convenient facility for shoppers, residents and workers, and thereby assists with the maintenance of vitality and viability.
14. Overall, I consider the proposal would not harm the vitality and viability of the shopping centre in which the appeal premises are located. I find that it would not conflict with the adopted and emerging policies which I summarised above.

Other material considerations and conclusion

15. The premises are within the Mayfair Conservation Area and are a Grade II Listed Building. In reaching my decision I have had regard to the fact that Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of conservation areas, and that Section 66(1) of the same Act requires that special regard should be had to the desirability of preserving Listed Buildings, or their setting, or any features of special architectural or historic interest which they possess. In this case, no alterations are proposed to the property and it is clear that the current proposal would have no material effect on the Conservation Area or the building. The area and the building would therefore be preserved.
16. I have considered the conditions discussed and largely agreed at the Hearing in the light of the advice in Circular 11/95. In view of the presence of residential properties close to the appeal site, I agree with the parties that a condition limiting opening hours is necessary. In view of the mixed nature of the use, and in the light of the Council's retail policy, I also agree that a condition preventing use solely for A3 purposes is reasonable. For the same reason, I consider that the indoor seating areas should be limited to those discussed at the Hearing. The outdoor seating area should be limited to that shown on the application plan, so as to avoid any interference with pedestrians or service vehicles. The proposal does not include any ventilation or extraction equipment, and I therefore agree that a condition should be imposed to prevent the primary cooking of food.
17. The suggestion was put forward that one of the existing window seating areas could be replaced by a unit incorporating a display of goods for sale. However, given my conclusions above, I do not consider this to be necessary. Nor am I persuaded that a restriction on the sale of alcohol is necessary as, although it not the appellant's intention, I do not consider that to do so would necessarily alter the nature of the use.

25. Attention is drawn to the requirements of section 76 of the Town & Country Planning Act 1990 concerning provisions for the benefit of the disabled.



Inspector

