



Appeal Decision

Site visit on 18 July 2000

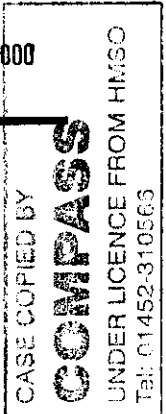
by **B D Bagot BA(Arch) MCP RIBA MRTPI FRSA**

an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions

The Planning Inspectorate
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Date:

26 JUL 2000



Appeal reference: APP/X5210/C/00/1037273
256A West End Lane, London NW6 3LJ

- The appeal is under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeal is by Mr N Soliman against a notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN990814.
- The breach of planning control alleged in the notice is without planning permission, the change of use of the basement and ground floors from a retail shop (Class A1) to a café within Class A3 of the Town and Country Planning (Use Classes) Order 1987.
- The requirement of the notice is: the use of the premises as a café or other use defined in Class A3 of the Town and Country Planning (Use Classes) Order 1987, shall permanently cease.
- The period for compliance with that requirement is 3 months.
- The appeal was made on the grounds set out in Section 174(2)(a), (b), (c) and (f) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld, as set out in the Formal Decision below.

Grounds (b) and (c)

1. I saw at my visit that the ground floor of the appeal premises is now being used for the sale of video recordings, with tea and coffee making machines, a cold drinks cabinet and some confectionery. The basement is in no active use. The appellant believes that there was previously no breach of planning control, as the premises were used as a sandwich bar as indicated on a planning application for a new shopfront. However it was apparent to the Council, from inspections carried out, that the premises were not operated predominantly as a cold food take away. The menu offered included a significant proportion of hot plated meals, and there was seating for 18 customers at tables and against a counter along one wall. On days of fine weather further tables and chairs were provided on the pavement outside. Letters from West Hampstead Amenity and Transport and local residents also supported the view that a café was being operated.
2. On the evidence available, I consider that at the time the notice was issued the use of the premises did include significant proportions of sales of food and drink for consumption on the premises, and of sales of hot food. That use did amount to a material change of use of the premises, for which planning permission should have been obtained. In the absence of planning permission there was a breach of planning control, and the breach of control alleged in the notice did occur. The appeals on grounds (b) and (c) accordingly fail.



Ground (a)

Basis of the appeal

3. The appeal on this ground seeks planning permission for use as a café within Class A3 of the Town and Country Planning (Use Classes) Order 1987, as alleged in the notice. However the appellant states that he seeks consent for use as a sandwich bar within Class A1, and to revert back to the original layout. As I understand it, that would include 2 tables and 8 chairs only. The Council say that to ensure that the use remains within Class A1 there should (among other things) be no more than 6 seats for customers. I have considered this ground of appeal on the basis that the use for which the appellant seeks permission would not be predominantly as a shop within Class A1, but as a café within Class A3.

Development plan

4. The appeal premises are within a primary shopping frontage as defined in the London Borough of Camden Unitary Development Plan adopted in March this year. Policy SH11 of that plan provides that the Council will only permit a net loss of shopping (A1) floorspace in primary shopping frontages where the reduction in floorspace and the nature of the proposed use would not harm the character, function and vitality and viability of the centre. Under policy SH24 the Council, when considering applications for planning permission for A3 use, take into account a number of matters, including the number and distribution of A3 uses and their relationship with other uses, and seek to avoid a cumulatively harmful effect upon the loss of retail outlets, traffic, parking and local residential amenity.

Main issue

5. I consider that the main issue is whether use of the premises as a café would have a harmful effect on the character, function and vitality and viability of the centre.

Reasoning

6. In my view this shopping centre has a diverse character, with a range of different types of outlet serving mainly the local needs of the surrounding residential population. The proportion of units in non A1 uses on the primary shopping frontage is said by the Council to be 30 per cent. That corresponds to the proportion sought by most London boroughs, as found in a report by the London Planning Advisory Committee. There is a low vacancy rate in the centre. In this northern part of the centre there are a number of non A1 uses, including several cafés and restaurants. Except for No 254, where there was no loss of retail use, the Council have consistently opposed further changes of use within the primary shopping frontage, and appeals against the refusals of planning permission for the changes of use of Nos 202 and 248 have recently been dismissed.
7. The appeal premises are small by comparison with other retail units, since they occupy only one half of a divided unit, with retail shops on either side. However the premises occupy a prominent location close to the corner of a street block, and there are other cafés short distances to the north and south. If a café were permitted to operate at these

premises the effect would in my view be to weaken the retail character of this part of the centre, and to strengthen its perception as a location for A3 uses. That would to my mind be detrimental to the function of the centre as a whole, and would undermine its vitality and viability.

8. Use of the premises as a café within Class A3 of the Town and Country Planning (Use Classes) Order 1987 would not be in accordance with the development plan, and the material considerations raised do not indicate a decision in this case otherwise than in accordance with the plan.
9. I have taken into account all the other matters raised in the written representations, including the appellant's willingness to change the name of the premises completely with the Council's approval. However those matters are in my view outweighed by the considerations that have led to my decision. The appeal on ground (a) fails.

Ground (f)

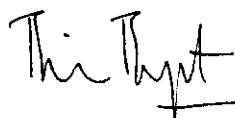
10. In support of this ground the appellant says that he agrees with paragraph 4.18 of the Council's statement; the lesser steps to overcome the objections. That paragraph suggests that to ensure that the use for the sale of food and drink remains within Class A1, a requirement be made that no cooking shall take place on the premises other than the re-heating of previously cooked food and that there should be no more than 2 tables and 6 seats for customers.
11. It seems to me that the appellant does not object in principle to the use of the property as a café or other A3 use being permanently ceased. The detailed requirement suggested by the Council would in my view be a means of clarifying the steps that they would regard as complying with the notice, rather than lesser steps to remedy the breach of planning control. It is not to my mind necessary for that requirement to be specified in the notice itself. The appeal on this ground fails.

Formal decision

12. For the above reasons, and in exercise of the powers transferred to me, I dismiss this appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the amended Act.

Rights of appeal against decision

13. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.



INSPECTOR

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