



The Planning Inspectorate

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Ms Amanda Brown
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LONDON
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Your reference:
ALB
Council reference:
E/96/298/S & TP/97/0383
Our reference:
APP/C/97/K5600/646751 &
APP/K5600/A/97/283206/P6
Date: **30 DEC 1997**

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 174 AND
SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MS J LAXTON OF CORNERSTONES COFFEE CO.
LAND AND BUILDINGS AT 178 FULHAM RD, LONDON SW10.

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeals against an enforcement notice issued by the Council of the Royal London Borough of Kensington and Chelsea and a refusal of planning permission by the same Council, both concerning the above mentioned land and buildings. I held an inquiry into the appeals on 11, 12 and 13 November 1997, and I carried out an inspection of the site and surrounds on 20 November. At the inquiry, applications were made on behalf of Ms Laxton for awards of costs against the Council. These are the subject of a separate letter.

The Notice

2. (1) The notice was issued on 6 February 1997.
- (2) The breach of planning control as alleged in the notice is the material change of use of the premises from a shop (Class A1) to a café (Class A3), as defined by the Town and Country Planning (Use Classes) Order 1987.
- (3) The requirement of the notice is to cease the unauthorised use of the premises as a café.
- (4) The period for compliance with this requirement is 3 calendar months.

Grounds of appeal

3. This appeal is proceeding on the grounds set out in sections 174(2)(a), (b), (c), (f) and (g) of the 1990 Act as amended by the Planning and Compensation Act 1991.

The appeal under section 78

4. The development for which the Council has refused planning permission is the removal of condition No. 3 from the permission referenced TP/96/1681 for the installation

of a new shopfront at the premises, granted on 20 January 1997. The said condition states that "the shopfront window hereby permitted shall not be open at anytime without the prior approval in writing of the local planning authority and details of the method by which it is to be kept closed shall be submitted to the Executive Director of Planning and Conservation within fourteen days of the date of this permission". The condition was imposed to protect the privacy and amenity of neighbouring properties. The breach has occurred and your client in effect seeks a retrospective permission. I shall therefore deal with this appeal under section 73A(2)(c) of the Act, as amended.

Preliminary matters

5. At the commencement of the inquiry you informed me that, inadvertently, the appeals site notice had not been posted until the preceding Thursday. The Council do not take issue with you on this point, and in the context of their extensive notification I am satisfied that no party has been prejudiced.

6. As to the Notice itself, the allegation refers to the change of use of the "premises" whereas to my mind it should more correctly relate to the "ground floor and basement". I propose to correct the Notice accordingly, and am satisfied that I may do so without injustice being caused.

The site and surrounds

7. No. 178, comprising basement, ground floor, and two upper floors, is located on the north side of Fulham Road, at its junction with Gilston Road. It lies at the western end of a terrace characterised by shops at ground floor with residential and office uses on upper floors. The upper floors of the appeals premises consist of 2 flats. The Fulham Road frontage is mostly commercial and Gilston Road predominantly residential. Nearby in Gilston Road is the boundary of The Boltons Conservation Area.

Background to the appeals

8. The Cornerstones Coffee Co. is a product of the import from North America of a growing interest in speciality coffee. The only other Cornerstones premises in the UK is in Brighton. Similar operators include the Seattle Coffee Co., Aroma, Cafe Select, Canadian Muffin and Pret a Manger. The appeals premises opened on 2 November 1996, having been substantially refurbished since its purchase some 5 months earlier. The premises had been vacant on purchase; it had been formerly occupied for at least 12 years by Le Boulevard, a patisserie.

9. An application for the installation of a new shopfront was submitted on 30 July 1996. The works proceeded, and planning permission was granted on 20 January 1997, incorporating the condition No. 3 that I have described in paragraph 4 above. During the course of processing this and a further application concerning the premises the Council received a complaint regarding alleged unauthorised building works. A subsequent investigation revealed amongst other things that the ground floor had opened as a café with seating for around 20 people in early November 1996. It was considered that a change of use from Class A1 to Class A3 had occurred and enforcement proceedings were authorised.

The s.174 enforcement appeal - grounds (b) and (c)

10. Given the degree to which the appeals on these grounds are interlinked it is appropriate to consider them together. It is necessary out the outset to consider the nature of the previous use by Le Boulevard and in this regard the Council do not seek to challenge your indication that this involved the retail sale of cakes, pastries and savouries with some hot drinks and warmed food heated by a microwave oven. There was no seating on the

premises. The parties are agreed that the hot food component was ancillary to the main retail use which fell within Class A1 of the Use Classes Order. This is a view that I share.

11. The Cornerstones business involves the retail sale of goods which includes coffee beans, coffee merchandise and coffee to drink either on the premises or to take away. There is no sale of hot food, nor indeed any means by which to cook food on the premises. The only food which is sold is a limited range of cold food snacks for consumption on the premises. Although there have been changes to the location of some of the shelves, the premises is basically arranged as it was at the time the Notice was issued. Inside the entrance and to the right there are leaflets explaining the history of coffee, how to make coffee at home, the conditions of coffee growing and roasting, and coffee terminology. To the left, occupying around 45% of the ground floor, are 9 small tables with 20 chairs. Beyond the leaflets/brochures is the takeaway drinks centre where customers can add sugar and chocolate/cinnamon sprinkles to their drinks. On a higher shelf is a display of home espresso machines and grinders.

12. Towards the centre of the premises on the right is the serving bar, with a pastry case displaying items such as cold savoury pies, muffins, cakes, pastries and sandwiches. Beyond this is the espresso machine, and behind the counter are bean silos containing different types of coffee. Beside the bean silos is a display of various syrups both for retail sale and to be added to coffee drinks to enhance flavour. Opposite this counter on the wall leading down the stairs is a display of home coffee machines, coffee bags and other retail items. At basement level there is an office/storage area, a WC and a room containing cleaning materials.

13. The sales breakdown over 3 months (July - September 1997) identifies 43% of customers as consuming on the premises, with 57% being takeaway customers and less than 1% purchasing coffee beans and novelty items. As regards turnover, consumption on the premises amounted 40.9%, takeaway sales comprised 54.3% and coffee bean and novelty items 4.8%. There is no suggestion that these figures are untypical of what has been happening from the outset. Since the premises opened in November 1996 there have been just slight changes in opening hours; from August 1997 these have been 08.00 to 20.00 hours from Monday to Saturday and 09.00 to 20.00 hours on Sundays.

14. The ground (b) appeal focuses on whether or not this is a coffee shop or a café. You regard it as the former but could accept the Council's café description were it not for the specific reference to Class A3. What is basically at issue is the ground (c) consideration as to whether or not there has been a material change of use as alleged. Of particular relevance in this respect is Circular 13/87, paragraph 8, which makes clear that such an assessment is a matter for determination in each individual case as a matter of fact and degree. This Circular advice states that it is necessary to consider more than simply the amount of floorspace occupied by different uses, and that it is the main purpose of the use that is to be considered.

15. You refer me to various cases where local planning authorities have made determinations as to whether or not coffee establishments such as Cornerstones would fall within Use Class A1 or A3. These include a Seattle Coffee Co. premises in Hammersmith and Fulham, a prospective Seattle premises in Wimbledon (LB Merton) and the Cornerstones property in Brighton. As operated at present, or as proposed, and subject to provisos as to future changes, these have been agreed to be A1 uses. Each of these properties, however, has its own individual characteristics in terms for example of the amount of seating available and the proportion of consumption on the premises and I do not rely unduly on these other decisions. Nor, for the same reason, do I assign great weight to the comparisons drawn with certain other premises along the Fulham Road.

16. The products themselves, the quote from Ernest Hemingway which is prominent on the wall just inside the entrance and the various leaflets and brochures, combine to emphasise the Cornerstones coffee concept. Whilst I readily accept that more than a few customers may eat on the premises, there is a predominance of speciality coffee sales whether on or off the site. This to my mind is clearly the main purpose of the use. The amenity concerns which have been raised relate to potential environmental nuisances such as parking difficulties and late night activity close to a residential area. With all the above factors in mind, and when taking into account the absence of amenity objections to the Cornerstones activity itself, I conclude as a matter of fact and degree that there has not been a material change of use. There has thus been no breach of planning control and accordingly your appeal on ground (c) succeeds.

17. In view of the success on legal grounds, the appeals on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under S177(5) of the amended Act do not fall to be considered.

The s.78 appeal

18. The shopfront development concerned alterations to both the Fulham Road and Gilston Road frontages. The Council has since indicated by letter dated 30 September 1997 that condition no. 3 should not apply to the shop front onto Fulham Road. The Council asks that in the event of the condition being upheld it be re-phrased to refer only to the window inserted into the previously blank elevation on to Gilston Road.

19. The condition was imposed to protect the amenities of neighbouring properties. Whilst this aspect still remains a matter of concern, the reason for refusal and the Council's principal objection to allowing this window to be opened relates rather to the resultant visual impact upon the nearby Boltons Conservation Area. From what I have heard, read and seen I believe these matters comprise the main issues in this appeal.

20. The statutory plan for the purposes of s.54A of the Act is the Council's Unitary Development Plan (UDP) which was adopted in August 1995. Policy STRAT 5 seeks to ensure that all development preserves or enhances the residential character of the Royal Borough and STRAT 6 seeks, amongst other matters, to preserve and enhance the character or appearance of Conservation Areas. Conservation Policy CD54 requires consideration to be given to the effect of proposals on views identified in the Conservation Areas proposals statement, and generally within, into, and out of the Conservation Areas, and the effect of development of sites adjacent to such areas. CD65 seeks to resist open shopfronts and CD44 permits alterations only where the external appearance of buildings or the surrounding area would not be harmed.

21. I am directed also to supplementary guidance indicating that open shopfronts will usually be resisted. This guidance states that generally a shopfront will be considered to be predominantly open if the total openings constitute significantly more than the total retail frontage in any one elevation. As a non-statutory document, however, this does not carry the weight that I assign to the UDP.

22. Dealing first with the question of residential amenity, the objections relate in essence to the potential noise nuisance which might arise from an unrestricted Class A3 use. The Council acknowledge however that a condition restricting a change in the character of the use would sufficiently protect residential amenity. In the event, I have found the present use to fall within Class A1, and there is no evidence of noise nuisance being caused by the Cornerstones use. Accordingly, and when considering also the background noise of traffic on the busy Fulham Road, I find no compelling objection to the removal of the condition on this account.

23. The Boltons Conservation Area is residential in character and comprises substantial town houses. Having seen your photographs of the appeal building prior to the recent

alterations I am in no doubt that the provision of the window itself, in conjunction with the matching Fulham Road window, has greatly enhanced the local scene. A previously run down corner has been replaced by a development of quality. The consent for this side window and canopy has of itself brought the commercial presence of the development into Gilston Road. Whilst the window can be seen from the Conservation Area it is viewed at an oblique angle and any difference between it being open or closed is minimal in visual terms. The effect upon the Conservation Area is not such as to make the condition in question necessary. The removal of the condition would not be at odds with the UDP policies described above.

24. I do not regard an openable window, in itself, as amounting to an open shopfront in the terms of the supplementary guidance. If I am wrong on this, however, I consider the total retail frontage on Gilston Road as extending beyond merely the window. Even on the basis, moreover, of the Council's interpretation I would not regard the opening as constituting "significantly" more than a third of the total retail frontage in this elevation.

25. In summary on this matter I conclude that the said condition does not meet the test of need as set out in Circular 11/95 and intend therefore to allow this appeal. The remaining conditions which are not appealed against will be re-imposed, apart from condition no. 1 which is no longer required now that the development has been carried out. I find no convincing need to impose the condition suggested by the Council requiring the window to be closed between 19.00 hours and 10.00 hours the following day.

26. In reaching my conclusions on the grounds of appeal I have considered all the other matters raised but none outweighs the factors which have led to my decision.

FORMAL DECISIONS

27. In exercise of the powers transferred to me, and for the reasons given above, I hereby determine these appeals as follows:

The s.174 appeal, referenced APP/C/97/K5600/646751

i. I correct the enforcement notice by the deletion from clause 3 - the breach of control - of the word "premises", and the substitution therefor of the words "ground floor and basement".

ii. Subject thereto I allow this appeal and quash the enforcement notice.

The s.78 appeal, referenced APP/K5600/A/97/283206

I allow this appeal and grant planning permission for the retention of new shopfront at 178 Fulham Road, SW10, in accordance with the application no. TP/97/0383 made on 21 February 1997, without complying with condition no. 3 set out in planning permission no. TP/96/1681 granted on 20 January 1997 by the Council of the Royal Borough of Kensington and Chelsea, but otherwise subject to the following conditions:

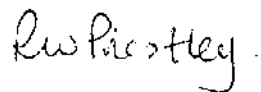
- a. the window glass of the shopfront shall not at any time be painted, screened or otherwise obscured and shall contain a display which shall be permanently retained; and
- b. the area to the front of the shopfront shall not be used for seating.

28. This decision does not convey any approval or consent required under any enactment, bylaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

RIGHTS OF APPEAL AGAINST DECISIONS

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

Yours faithfully

A handwritten signature in cursive script that reads "R W Priestley".

**R W Priestley BA(Hons) DipTP MRTPI FRGS
Inspector**

APPEARANCES

FOR THE APPELLANT

Mr S McNaught - Solicitor, Garretts, 180 Strand, London, WC2R 2NN.

He called:

Ms J Laxton - Managing Director, Cornerstones Coffee Co.

Ms A Brown BSc(Hons) DipTP
DipPD MRTPI - Senior Planner, Colliers Erdman Lewis

FOR THE LOCAL PLANNING AUTHORITY

Miss LeVerne Parker - Solicitor, Royal Borough of Kensington and Chelsea.

She called:

Mr T Trotter BA(Hons) MRTPI - Senior Planning Enforcement Officer, Royal Borough of Kensington and Chelsea.

Mr B Mount BSc(Hons) MPhil
CEng MICE - Leader, Transportation and Road Safety Group, Royal Borough of Kensington and Chelsea.

Mr D Cassells BA(Hons) DipTP
MRTPI - Deputy Area Planning Officer, Royal Borough of Kensington and Chelsea.

INTERESTED PERSONS

Prof. A J Seeds - 114, Beaufort St., London SW3 6BU, Chairman, Elm Park and Chelsea Park Residents Association.

Mr P English - 14 Milborne Grove SW10, The Boltons Association.

Mr C L R Jackson - 3 Gilston Road, SW10 9SJ, Planning Controller, The Boltons Association.

DOCUMENTS

- Document 1(1-3) - Lists of persons present at the Inquiry.
- Document 2 - The Council's letter of notification of the Inquiry and list of persons notified.
- Document 3(1-2) - Letters of objection from The Boltons Association.
- Document 4(1-61) - Questionnaire completed by customers, handed in by Ms Laxton.
- Document 5(A-K & M-O) - Appendices to the evidence of Ms A Brown.
- Document 6(A-B) - Appendices to the evidence of Ms J Laxton.
- Document 7(1-21) - Appendices to the evidence of Mr T Trotter.
- Document 8 - Letter dated 10 November 1997 from Junior League of London to Ms J Laxton.
- Document 9 - Extract from Encyclopedia of Planning [s.172(1)].
- Document 10 - Table of occupiers: Fulham Road and High Street Kensington.
- Document 11 - Retail rents 1987 to 1997, Colliers Erdman Lewis.
- Document 12 - Supplementary information on Class A1 percentages in Fulham Road, handed in by the Council.
- Document 13 - Photo. of the Cornerstones wall sign.
- Document 14 - Letter to the Council from Colliers Erdman Lewis, 4 April 1997.
- Document 15 - Transcript of case, RBKC v. SSE & Pier Luigi Molinaro, 10 January 1997 re. 359-361 Fulham Road SW10.
- Document 16 - Appeal decision letter dated 22 November 1995 re. MGM Cinema at 142-150 Fulham Road SW10.
- Document 17 - Appendices to the evidence of Mr B Mount.
- Document 18 - List of suggested planning conditions.

PLANS

- Plan A - The plan attached to the Notice.
- Plan B - Plan of the window, with related measurements, on the Gilston Road frontage.



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Your Ref:
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APP/C/97/K5600/646751 &
APP/K5600/A/97/283206/P6
Date:

30 DEC 1997

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 and 174 & SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATIONS FOR COSTS BY MS J LAXTON OF CORNERSTONES COFFEE CO.

1. I refer to your applications for awards of costs against the Royal Borough of Kensington and Chelsea which were made at the Inquiry held at the Kensington Town Hall on 11 to 13 November 1997. The Inquiry was in connection with (a), an appeal under s.174 of the Act against an enforcement notice alleging the material change of use of the premises at 178 Fulham Road, London SW10, from a shop (Class A1) to a café (Class A3), as defined by the Town and Country Planning (Use Classes) Order 1987; and (b), an appeal under s.78 of the Act against the Council's decision to refuse planning permission for the removal of condition No. 3 from the permission referenced TP/96/1681 for the installation of a new shopfront at the premises, granted on 20 January 1997. A copy of my appeals decision letter is enclosed.

2. Costs are sought in respect of both the s.78 and s.174 appeals. The application insofar as relates to the s.78 appeal is made both in its own right and as part of the continuum from the enforcement proceedings.

3. *In support of your application* you refer to the general conditions for such awards set out in paragraph 6 of Annex 1 to Circular 8/93. Paragraphs 21 and 22 of Annex 3 are especially relevant to the enforcement action. Paragraph 22 includes the indication that planning authorities will be expected to exercise care to ensure that their decision to issue a notice takes full account of relevant judicial authority, Government guidance in PPG 18 and well-publicised appeal decisions.

4. The Council has failed woefully in the context of the above advice. On the enforcement, it did not wait for the outcome of the High Court challenge against the appeal decision allowing a change of use from A1 to A3 at Luigi's at 359 Fulham Road.¹ That appeal decision was well known to the Council's planning team. There are two possible explanations: either the Council had made clear the need to issue decisions as quickly as possible or the Officers failed to report the matter clearly. Those enforced against are entitled to expect the Members to receive reports dealing with all the issues. Here, there was a clear failure to advise the decision makers of all the considerations. What could have been more material than the appeal decision concerning No. 359.

¹ Document 5 (F) and Document 15

5. If the advice in PPG 18 had been followed Members would have had more facts at their disposal and could have come to a different decision. They could, for example, have found that there was no breach of control, or decided to defer matters for 6 months. Other options could have been the issue of a Planning Contravention Notice (PCN) or the invitation of an application for a mixed retail/café development on the lines of the permission later granted in respect of the Hip Bagel premises at No. 323.² A range of options were thus available. Paragraph 24 of Annex 3 states that it will generally be regarded as unreasonable for a planning authority to issue an enforcement notice solely to remedy the absence of a valid planning permission. In this case there is no evidence to suggest a need for urgency and no evidence of discussions prior to the issue of the notice.

6. The costs application in respect of the s.78 appeal flows in part from the enforcement in that the s.78 case alone would not have necessitated a 3 day inquiry. Alternatively, the application is made in its own right, and paragraph 20 of Annex 3 states that the imposition of conditions which fail to meet the relevant criteria (now set out in Circular 11/95) may lead to an award of costs against a local authority. Against this background the Council only belatedly acknowledged that the Fulham Road frontage was not in dispute, after time had been spent on that matter. On the broader issue, there has been inconsistency and confused thinking by the Council as to the reason for objecting to the window being opened. Clarification that the real objection was to the introduction of the commercial frontage into Gilston Road only emerged at the inquiry. There is no evidence justifying references to various policies in the UDP, especially the policy concerning open shop fronts and the creation of an undesirable gap.

7. *In response the Council* refer me to the three provisos at paragraph 6 of Annex 1 and say that an award of costs does not follow the event of an appeal succeeding. As to the enforcement, whether or not the Council has complied with PPG 18 the inquiry would still have taken place. In evidence, Mr Trotter indicated that if he had had all the information before him when preparing the enforcement report his recommendation would not have changed. The argument that the Local Authority should have waited for the High Court decision on No. 359 is irrelevant; the use at No. 178 has to be considered on its own merits. The High Court was simply upholding the approach of one Inspector to a particular decision. This had no bearing on whether or not this enforcement notice should have been issued.

8. This is not a case where the service of a notice could have been avoided by the submission of a planning application and the imposition of conditions. A meeting on 14 April 1997 between the parties did suggest some steps which might be taken but these were not acted upon and the appellant has not explained why. A mixed A1/A3 permission similar to Hip Bagel was suggested as a possible way forward but was not followed up. The matter therefore would always have resulted in the inquiry. Even if there has been unreasonable behaviour it has not therefore resulted in unnecessary expense being incurred. The Council has complied with the advice at paragraph 25 in respect of discussions continuing whilst the appeal is in progress, with the aim of seeking a compromise and avoiding these proceedings. Paragraph 22 of Annex 3 concerns a situation where a notice may be withdrawn; this is not the case here.

9. As to the s.78 appeal, success on the merits is no reason for an award of costs. The Council's decision has been supported by evidence and there has not been unreasonable behaviour. The reason for imposing the condition was reasonable and appropriate in the context of the use being carried out. The Local Authority did not require an inquiry and do not accept that unnecessary expense has been caused by including it in the inquiry

² Document 5 (1)

proceedings. The letter of 30 September³ to the appellant clarifying the scope of condition no. 3 was written in an endeavour to narrow the issues of dispute. The Council should not be criticised for what in effect was in accord with the advice at paragraph 25 to Annex 3 of the Circular.

10. *In reply you said that* whilst it was not the Council's decision to have an inquiry it should have realised before issuing the notice that this was a serious possibility. It was obviously the right route but it flowed from the initial decision to issue the notice. The relevant facts could have been gathered through a PCN or discussions; it is not right to say that the matter was destined for inquiry. The Committee may have come to a different decision had all the relevant information been available. The other material considerations should have been explored. The Council's decision to issue a Breach of Condition Notice⁴ in respect of condition 3 cannot be described as conciliatory.

Conclusions

11. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

12. Dealing first with the enforcement action, and whilst I do not regard the decision to proceed with enforcement in advance of the High Court judgment as in itself unreasonable, I find the absence of any reference in the enforcement report to the appeal decision at No. 359 to be unreasonable given that directly comparable Class A1/A3 issues were involved. The respective sites, moreover, are in quite close proximity. That appeal decision was dated July 1996 and the effect upon the vitality and viability of the Fulham Road West Principal Shopping Centre, highly relevant to the planning merits of Cornerstones, had been one of the main issues under consideration. The appeal decision at No. 359 preceded the Council's enforcement report by just five months and in my view was a highly material consideration.

13. The Council in my consideration has also failed to pay sufficient regard to national guidance as expressed in PPG 18. The action has been pursued with vigour yet to my mind none of the three criteria set out in paragraph 13 can properly be said to have applied. The breach did not take place in the full knowledge that planning permission was needed; your client was not asked to submit an application; and there is no evidence of the breach having caused serious harm to public amenity in the neighbourhood of the site. The Council failed to explore whether the business could be allowed to continue operating acceptably on the site. From the time of Ms Laxton's telephone conversation with Mr Cassels shortly before the purchase in July 1996 up until the discussions in April 1997 there was no contact from the Council on the question of the use. The Notice, in the terms of paragraph 16 of PPG 18, came as a "bolt from the blue".

14. I appreciate that paragraph 6 (3) of Annex 1 to the Circular also requires the unreasonable behaviour to have caused the party seeking costs to have incurred or wasted expense unnecessarily, and have considered your submission that the matter was destined for appeal. I am mindful also that the case Officer would have made the same recommendation in the event of all the material factors being taken into account. Even so, given such striking similarities with the appeal at No 359 and the acknowledged relevance of PPG 18, I share your view that these matters should have been explored and that the Council may well have come to a different decision had these material facts been available. A PCN might usefully have been issued in this instance.

³ Document 7 (6)

⁴ Document 7 (5)

15. As to the s.78 case, the fact that this was linked with the enforcement appeal to be heard at inquiry is not a matter justifying an award of costs against the Local Authority. I am of the view, moreover, that the Council's letter of 30 September 1997 as to the scope/intentions of condition 3 was sufficiently in advance of the inquiry to have avoided wasted expense on your client's part. The Council's approach as to the reason for the condition has clearly changed since it was first imposed, with the Conservation Area aspect being introduced. Be that as it may, and even though your case on the merits has been successful, the Council's position has not been wholly unsupportable. In this regard I do not consider that the Council has acted unreasonably such as to justify the award that is sought.

16. My overall conclusion, therefore, is that your application for an award of costs in relation to the s.174 appeal is justified but that your application in relation to the s.78 appeal is not.

FORMAL DECISIONS

17. Accordingly, in exercise of my powers under Section 250(5) of the Local Government Act 1972 and paragraph 6(4) of Schedule 6 to the Town and Country Planning Act 1990, and all other enabling powers, I determine these applications as follows:

The s.174 appeal referenced APP/C/97/K5600/646751

I HEREBY ORDER that the Council of the Royal Borough of Kensington and Chelsea shall pay to Ms J Laxton of Cornerstones Coffee Co., the costs of the proceedings of this inquiry, such costs to be taxed in default of agreement as to the amount thereof. The subject of the proceedings was an appeal under Section 174 against an enforcement notice issued on 6 February 1997 alleging the material change of use of the premises at No. 178 Fulham Road, London SW10, from a shop (Class A1) to a café (Class A3), as defined by the Town and Country Planning (Use Classes) Order 1987.

The s.78 appeal referenced APP/K5600/A/97/283206

I HEREBY REFUSE the application by Ms J Laxton of Cornerstones Coffee Co. for an award of costs against the Council of the Royal Borough of Kensington and Chelsea.

18. You are now invited to submit to the Council of the Royal Borough of Kensington and Chelsea, to whom a copy of this letter has been sent, details of those costs incurred in the s.174 appeal with a view to reaching agreement on the amount. A copy of the guidance note on taxation procedure, referred to in Circular 8/93, is enclosed.

Yours faithfully



R W Priestley BA(Hons) DipTP MRTPI FRGS
Inspector