



planning & Development Ltd

JMS PLANNING AND DEVELOPMENT LTD

Statement of Case in Support of an Appeal

At

325 Kentish Town Road
London NW5 2TJ

JUNE 2016

CONTENTS

SECTION 1:	INTRODUCTION	1
SECTION 2:	PROFILE	3
SECTION 3:	THE APPEAL SITE	4
SECTION 4:	THE APPEAL SITE PLANNING HISTORY	5
SECTION 5:	THE APPEAL PROPOSAL	7
SECTION 6:	RELEVANT PLANNING POLICY	14
SECTION 7:	THE CASE FOR THE COUNCIL	21
SECTION 8:	THE APPELLANT'S RESPONSE TO THE REASON FOR REFUSAL	25
SECTION 9:	OTHER RELEVANT ISSUES	57
SECTION 10:	THIRD PARTY REPRESENTATIONS	62
SECTION 11:	CONCLUSIONS	64
APPENDICES		
APPENDIX 1:	COPY OF OFFICER'S REPORT IN RESPECT OF THE APPEALED APPLICATION	
APPENDIX 2:	PATRONAGE AND FOOTFALL SURVEY FROM STARBUCKS 19-23 HIGH STREET, PINNER, HA5 5PJ	
APPENDIX 3:	CUSTOMER SURVEY FROM STARBUCKS 19-23 HIGH STREET, PINNER, HA5 5PJ	
APPENDIX 4;	APPEAL DECISION RELATING TO 115 ST JAMES STREET, BRIGHTON	
APPENDIX 5	APPEAL DECISION RELATING TO CAFÉ NERO, HIGH STREET, WINCHESTER	
APPENDIX 6:	APPEAL DECISION RELATING TO CAFÉ NERO AT 112 HIGH STREET, SEVENOAKS	
APPENDIX 7:	APPEAL DECISION RELATING TO STARBUCKS AT 63 SOUTH MOLTON STREET, LONDON	
APPENDIX 8:	APPEAL DECISION RELATING TO 66-68 HIGH STREET, STAINES	
APPENDIX 9:	APPEAL DECISION RELATING TO CAFÉ NERO, MARKET PLACE, RUGBY	
APPENDIX 10:	APPEAL DECISION RELATING TO PROPOSED CAFÉ NERO, 2-4 HIGH STREET, HARPENDEN	
APPENDIX 11:	APPEAL DECISION RELATING TO PROPOSED COSTA COFFEE, 230 HIGH ROAD, LOUGHTON	
APPENDIX 12:	APPEAL DECISION RELATING TO COSTA COFFEE AT 80-82 HIGH STREET, MALDON	
APPENDIX 13:	APPEAL DECISION RELATING TO 19-23 HIGH STREET, PINNER	
APPENDIX 14:	APPEAL DECISION RELATING TO 47 HIGH STREET, KEYNSHAM	
APPENDIX 15	APPEAL DECISION RELATING TO 71 LONDON ROAD, HEADINGTON	
APPENDIX 16:	APPEAL DECISION RELATING TO 221-222 HIGH STREET, MARLBOROUGH	
APPENDIX: 17:	APPEAL DECISION RELATING TO 148 COMMERCIAL ROAD, PORTSMOUTH	
APPENDIX: 18:	APPEAL DECISION RELATING TO 40-42 SHEEP STREET, SKIPTON	
APPENDIX 19:	APPEAL DECISION RELATING TO 89 SIDCUP HIGH STREET, SIDCUP	
APPENDIX 20:	COMMITTEE REPORT RELATING TO CAFÉ NERO 271 HIGH STREET, EPPING	
APPENDIX 21:	DECISION NOTICE AND COMMITTEE MINUTES RELATING TO CAFÉ NERO 271 HIGH STREET, EPPING	
APPENDIX 22:	RETAIL HEALTH CHECK OF KENTISH TOWN TOWN CENTRE	

SECTION 1: INTRODUCTION

- 1.1 This Statement has been prepared on behalf of Treats Foods Ltd (*“the Appellant”*) in support of an appeal against the refusal of planning permission by the London Borough of Camden (*“The Council”*) by decision notice dated 10 March 2016 of an application for *“Change of use of ground floor from retail (Class A1) to a coffee shop (mixed Use Class A1/class A3) and alterations to shopfront.”* at 325 Kentish Town Road, London NW5 2TJ (*“the Appeal Site”*).
- 1.2 The decision notice records that the application was refused for one reason only. Namely: *“The proposed change of use from retail (Class A1) to a coffee shop (mixed use Class A1/Class A3) would result in the loss of a retail unit which would be harmful to the overall character, function, vitality and viability of the Kentish Town Centre, contrary to policy CS7 (Promoting Camden’s centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) [sic] the London Borough of Camden Local Development Framework Development Policies.”*
- 1.3 The appeal proposal seeks the use of the Appeal Site as a Starbucks’ Coffee Shop to be operated by the franchisee, Treats Foods Ltd. Whilst the proposal comprises predominantly a retail outlet for the sale of drinks, cold food and other products, it does also contain a degree of seating for the consumption of food and drink on the premises.
- 1.4 The Appellant considers that the proposal is acceptable in respect to national and local policies relating to town centre uses. A full assessment of the proposal in the context of relevant policies and other material considerations was set out in the Planning Statement which accompanied the submitted Appeal Proposal.

1.5 This Statement sets out the case in support of the Appellant's proposed development of the Appeal Site and responds to The Council's sole reason for refusal as detailed on the decision notice and in the associated Officer's Report. In particular, this Statement sets out that the Appeal Proposal:-

- Will bring the ground floor of the appeal site back into gainful use and would be of positive benefit to Kentish Town Town Centre;
- Will enhance the vitality and viability of Kentish Town Centre and bring associated economic benefits through '*linked*' spending;
- Will create employment opportunities, creating new jobs;
- Will provide an important new facility for commuters using Kentish Town Underground and Railway Station;
- Will be in keeping with the local streetscene and would add visual interest to Kentish Town Town Centre;
- Is of considerable benefit to the London Borough of Camden representing sustainable development and providing an appropriate town centre use in an accessible and sustainable location.

1.6 In summary the Appellant considers that The Council's singular reason for refusal of the application is without merit and requests that planning permission be granted.

SECTION 2: PROFILE

- 2.1 This Appeal Statement has been written by Julian Mark Sutton who holds a Master of Science Degree in City and Regional Planning from the University of Wales from 1994. This section sets out details of the author and for expedience is written in the first person.
- 2.2 I have been a member of the Royal Town Planning Institute since 1994 and have practised in the private sector for the duration of my career and have some 22 years' experience advising a variety of clients including landowners, retail/leisure operators, developers and house builders.
- 2.3 I am the Managing Director of JMS Planning & Development Ltd which is an independent, boutique, town planning consultancy operating on a nationwide basis. Prior to this I was employed by Signet Planning as London Regional Director from March 2008 to October 2015. Prior to this I was Planning Director at GL Hearn from the period February 2004 to March 2008 and before this Associate Director in the specialist, retail and leisure firm Chase & Partners for the period January 2003 to February 2004. Prior to this I was employed by Rapleys Property and Planning Advisers from 1994 to 2003.
- 2.4 I have advised on many High Street change of uses both for coffee shops and for other uses. This has included acting as St Albans District Council's Planning and Retail Witness in respect to an Appeal Hearing concerning an unauthorised Café Nero unit at 2-4 High Street, Harpenden which is referenced later within this Statement.
- 2.5 I have visited the appeal premises and am familiar with the site and surroundings and the wider Kentish Town area. The evidence contained within this Appeal Statement is true and has been prepared and given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

SECTION 3: THE APPEAL SITE

- 3.1 The Appeal Site lies on the western side of Kentish Town Road (A400) in close proximity to Kentish Town Underground Station (Northern Line) and National Rail Station. The Appeal Site comprises a three-storey property with a vacant shop (Use Class A1) on the ground floor and a former residential unit (Use Class C3) above.
- 3.2 The Appeal Site is not located within a conservation area; neither is the property a listed building or a locally listed building.
- 3.3 The Appeal Site fronts directly onto Kentish Town Road and is located within a Core Shopping Frontage of Kentish Town Town Centre. Kentish Town Town Centre provides a range of shopping and service uses and is acknowledged by The Council within its planning guidance on Town Centre's, Retail and Employment (CPG 5) as having a good range of shops and services for its size including many independent traders and food and drink uses.
- 3.4 The Appeal Site is long and narrow and fronts directly onto the pavement of Kentish Town Road; at the rear the Appeal Site fronts York Mews. Kentish Town Road is served by numerous bus routes whilst (as stated above) the Appeal Site is located in close proximity to Kentish Town Underground and Railway Station. As a consequence, the Appeal Site has an excellent level of accessibility with a Public Transport Accessibility Level (PTAL) of 6a.

SECTION 4: APPEAL SITE PLANNING HISTORY

- 4.1 This section of the Appellant's Appeal Statement provides an overview of the key applications on the Appeal Site.
- 4.2 Planning permission (LPA Ref: 2015/2605/P) was granted dated 17th December 2015 for the development of the site for: *"Rear extension to existing retail unit (Class A1), erection of mansard roof extension and three-storey rear extension at 1st, 2nd and 3rd floor level of No. 325 Kentish Town Road and conversion of the 1 No. 3 bed self-contained flat to create 3 No. 1 bed self-contained flats at first, second and third floor level. Erection of three-storey rear extension to infill space known as 10 York Mews to provide ground floor storage space and cycle store and 1 No. 3 bed maisonette on first and second floor. Provision of internal courtyard/terrace at first floor level with access from 10 York Mews and installation of green wall at first and second floor level of 10 York Mews (internal elevation)."*
- 4.3 Previous to this, an application (LPA Ref: 2010/5366/P) for a change of use of the ground floor from a retail unit (Class A1) to financial and professional services (Class A2) was refused by decision dated 2 December 2010. This application was submitted with no supporting information and was refused planning permission by a decision dated 2 December 2010 on the grounds that the loss of a retail unit would be harmful to the overall character, function, vitality and viability of Kentish Town Centre.
- 4.4 Prior to this, planning permission was refused on 25 August 2009 for the erection of two-storey rear extension and creation of additional third storey with mansard roof (LPA Ref: 2009/1685/P).
- 4.5 On 21 May 2008 planning permission was granted under application LPA Ref: 2008/0925/P for shop alterations to provide a new side entrance door and allow access to the residential unit at upper floor level, and replacement of rear door with window following the removal of existing rear access staircase.

- 4.6 Planning permission was granted on 14 August 2007 (LPA Ref: 2007/3033/P) for the existing use of a rear part of the ground floor as a cheque cashing and money transfer service and associated office.
- 4.7 A part three-storey, part single-storey extension and mansard roof extension to existing shops and flats above to increase the floorspace above the shop and to provide a 1 x 1-bedroom unit at first floor level and 1 x 3 bed maisonette at upper levels was granted on 5 November 2004 (LPA Ref: PEX0300166/P).
- 4.8 Planning permission was granted on 31 January 1991 (LPA Ref: 8903083) for the erection of an additional storey at third floor level, an extension at rear first floor level and works for conversion to form three bedsitting flats and one-bedroom flat.
- 4.9 More historically, planning permission was granted for an application (LPA Ref: 33398) on 2 March 1982 for the erection of a single storey rear extension for storage. On 11 September 1974 planning permission was granted for the installation of a new shopfront under application (LPA Ref: 19200). Planning permission was granted on 3 April 1967 for the installation of a new shopfront and the erection of a canopy at the rear of the premises (LPA Ref: 3339).

Summary

- 4.10 There have been a number of applications at the Appeal Site. The key relevant application is LPA Ref: 2010/5366/P which was refused planning permission by a decision dated 2 December 2010 for the change of use of the site from retail use to financial and professional services (Class A2). This application was submitted with no supporting information or justification to explain why planning permission should be granted. As this Statement will demonstrate, there are key differences between this previous application proposal and the proposed use of the site by Starbucks. It is widely established through numerous appeal decisions which are discussed later within this statement that national multiple coffee shop operators provide significant enhancements to the vitality and viability of shopping centres.

SECTION 5: THE APPEAL PROPOSAL

- 5.1 This section of the Appellant’s Appeal Statement provides a detailed overview of the Appeal Proposal, an overview of Starbucks and some relevant background to the UK coffee shop market.

The Appeal Proposal

- 5.2 The Appeal Proposal consists of the change of use of 325 Kentish Town Road from a shop (Use Class A1) to a mixed Class A1/Class A3 use to facilitate the use of the premises as a Starbucks coffee shop.

About Starbucks

- 5.3 Starbucks was founded in 1971 as a roaster and retailer of whole-bean and ground coffee, teas and spices with a single store in Seattle’s Pike Place Market. The name, inspired by Moby Dick, evoked the romance of the high seas and the seafaring tradition of the early coffee traders.
- 5.4 From the beginning, Starbucks set out to be a different kind of company. One that not only celebrated coffee in the rich tradition, but that also brought a feeling of connection. The Company’s mission is to inspire and nurture the human spirit – *“one person, one cup and one neighbourhood at a time”*. The care and special attention that goes into selecting, preparing and roasting their beans is what makes Starbucks distinctive and so popular. All of its staff are specially trained baristas so that the customers can enjoy the perfect product at its best.
- 5.5 Today the company is the largest coffee house company in the world with over 22,000 stores in more than 50 countries worldwide. Starbucks locations serve hot and cold beverages, whole-bean coffee, micro-ground instant coffee, espresso, café latte, full-leaf teas, pastries and snacks. Stores also sell pre-packaged food items, hot and cold

sandwiches and merchandising items. Starbucks believes in serving the best coffee possible with a goal for all of its coffee to be grown under the highest standards of quality, using ethical sourcing practices. Starbucks first entered the UK in May 1998 through the acquisition of 65 Seattle Coffee Company Stores.

5.6 Starbucks has entered into franchise agreements with a limited number of small companies and individuals, which has allowed Starbucks to continue its expansion into more towns and cities across the country. One of these agreements is with the Appellant.

5.7 Within the London Borough of Camden Starbucks is represented at a number of outlets including at Camden Parkway, Camden Lock Keeper's Cottage and at Pentonville Road in King's Cross. The company is also represented in a number of other locations within the Borough including at Swiss Cottage and various outlets at King's Cross Station and St Pancras etc. Based on the unit's turnover divided by an average spend per customer (£4.50), in February 2016, the relevant Starbucks units below had the following estimated number of transactions:-

SITE	PATRON COUNT
Camden Parkway 4-6 Parkway, Camden, NW1 7AA	13,414
289 Camden High Street, Suffolk Walk, London, Eng NW1	11,401
296 Pentonville Road, Regent's Corner, N1 9NR	18,071
Hampstead 5-7 Southend Road, South Hampstead, NW3T P2	15,335
Hampstead 201 West End Lane, London, Eng NW6 2LJ	9,833
TOTAL	68,054

Source: Starbucks March 2016.

5.8 Whilst a number of the transactions in the above table will be from repeat visitors, it is apparent therefore that Starbucks is an extremely well patronised operator within the London Borough of Camden. This is discussed later within this Statement.

The Starbucks Operation

5.9 The Starbucks' operation does not involve the cooking of any hot food on the premises. There is consequently no need for substantial extraction equipment or any other associated ventilation. Any plant that may be required will be the subject of a condition or a separate application.

5.10 Whilst there are no cooking facilities, some sandwiches can be toasted upon request. All sandwiches and cakes are prepared and packaged off-site and delivered to each unit on a daily basis. All customers choose goods from the same range, and will choose whether to consume their goods on or off the premises. Either way, it will be the same product. There is no waiter service.

5.11 The proposed use requires one delivery per day and delivery will be at a time to minimise any disturbance or inconvenience to other users of Kentish Town Road. Waste will be collected by a private contractor.

5.12 No external changes are proposed as part of the application. The ground floor layout plan shows a counter on the right-hand side, and disabled toilet. The proposed unit will be of a high quality with an inviting interior. The large glass window will allow actively to be seen inside thereby creating visual interest within the street scene.

5.13 The Appeal Proposal seeks hours of opening between 6.30 am until 9.00 pm seven days a week (including bank holidays).

5.14 The overall proposed design approach aims to signify the high quality, independent nature of Starbucks. No changes to the front elevation from those permitted are proposed. The large window frontage is retained providing clear views into the

proposed coffee shop, thereby increasing the visibility of the unit and its interactivity with the surrounding street scene. The existing building was previously a poor quality shop. The use of this unit by Starbucks will provide visual enhancements to Kentish Town Road and through the use of the large window display will create visual interest in the street scene as well.

5.15 It should be noted, that the relevant signage for the proposed Starbucks use will be the subject of a separate advertisement application to be submitted separately. Issues relating to the proposed signage are therefore, not for consideration as part of this application.

5.16 In respect to inclusive access, Starbucks believes that it is not merely physical barriers that can cause difficulties for customers. Employees receive Disability Awareness Sessions as part of their basic training, to understand the challenges customers with disabilities may face, and to ensure that their needs are met.

5.17 The Appeal Site's town centre location ensures easy access on foot, by bicycle and by public transport. Access to the unit is to be ramped from a well-maintained pavement. The proposed layout has been carefully considered in order to accommodate the needs of those who have a physical impairment. A disabled toilet is provided on the ground floor. Other facilities provided to assist customers include:

- Assistance dogs welcome;
- Assisted wheelchair use is welcome;
- Non-assisted wheelchair access;
- Assistance for the mobility impaired;
- Facilities for the hearing impaired;
- Induction loop available;
- Staff assistance;
- Space for parents with pushchairs;
- Assistance for the visually impaired or the blind.

The Third Place

- 5.18 Starbucks have been pioneering in the concept of “*The Third Place*” – a place between home and work where people can go to relax or meet family and friends in a welcoming environment with a great cup of coffee.
- 5.19 In addition, Starbucks is often used for business meetings. It is a common occurrence to see either formal or informal meetings taking place in Starbucks’ stores. The company offers free Wi Fi to customers who are part of Starbucks’ Card Rewards loyalty programme.

Key Characteristics of Starbucks Use

- 5.20 As a proposed Starbucks outlet there is some specific information relative to this particular use which is of significance to the determination of this Appeal Proposal. Namely:
- Starbucks operates frequently under a Class A1 retail permission due to fact that its outlets primarily sell hot and cold drinks, cold food and other food products which are taken away from the premises. However, in this instance, the proposed use is considered to be a mix of A1 and A3 uses. Nevertheless, the A1 component is a significant proportion of the overall offer.
 - As stated above, Starbucks coffee shops do not sell any hot food which is prepared on the premises. The only warm food which is sold, which typically comprises less than 4% of all sales, is prepared elsewhere and then simply heated up on site. This is typically warmed up on a griddle behind the main servery and does not require a separate kitchen or extractor that discharges odours.

- A further contribution to the Class A1 element is the sale of merchandise which includes consumable and comparison goods such as coffee beans, luxury chocolates and branded merchandise.
- Starbucks can be a considerable draw/attraction to shoppers in their own right. A survey of customers visiting a store in Pinner (discussed later within this statement) revealed that 23% of the customers were visiting for shopping purposes, 14% visiting for leisure/tourism, 14.5% were in the District Centre for work purposes and 27% were in the area primarily to visit Starbucks. (Customer Survey, Pinner – by KJK Market Research). The same survey revealed that 45% of interviewees indicated that they visited the District Centre more often since the Starbucks opened.
- Local Authorities and Inspectors have widely accepted that a Starbucks provides a significant contribution to the vitality and viability of a town centre. This has been found to be the case for coffee shops in general, as demonstrated in the numerous appeal decisions which are detailed later within this statement.
- The proposed hours of operation are compatible with the existing situation of the town centre and will add to the retail offer, encouraging customers to undertake “*linked trips*” during daytime hours, as well as early in the morning and contributing towards the evening economy.

5.21 The above is considered in more detail later within this Statement.

Growth of the Coffee Shop Market

5.22 The overall coffee shop market in the UK recorded a 6.4% increase in sales in 2013 and there were 16,501 coffee shops across the country by the end of 2013. However, whilst the coffee shop market has continued to grow, coffee consumption per head

has not. Indeed, consumption levels are now lower than they were in 2006. Britain is currently consuming approximately 2.8 kg per head, just a fraction of the 7 kg consumed in Germany, 7.1 kg in Sweden and 5.5 kg in France. As a result, the growth of coffee shops has not increased the UK's consumption of coffee; rather, it is the way in which coffee is being consumed that has changed with people now visiting coffee shops where they had previously consumed instant coffee at home or in the workplace.

- 5.23 The coffee shop market has also been boosted by the decline in the British public house industry and accordingly, the coffee shop has increased as a social venue. Coffee shops have also been boosted by people shopping more online, and instead of spending their weekends trawling the shops, Britain's are meeting up with friends at their local coffee shop/Café. Indeed, it is now widely acknowledged that coffee shops are very much part of the fabric of our society now (Daily Telegraph – 9 September 2014).

SECTION 6: RELEVANT PLANNING POLICY

- 6.1 This section of the supporting statement sets out relevant national and local planning policy relevant to the Appeal Proposal. In accordance with Planning Inspectorate (PINS) guidance, National Planning Guidance is not reiterated at length, only key elements are referenced.
- 6.2 Equally, with reference to Development Plan Policy, only policies referenced on the decision notice or considered to be key to the Appellant's case, are included.

National Planning Guidance

National planning Policy Framework (March 2012)

- 6.3 The National Planning Policy Framework (NPPF) was published on 27 March 2012 and now constitutes guidance for local planning authorities and decision takers.
- 6.4 The NPPF confirms the purpose of the planning system is to contribute to the achievement of sustainable development (paragraph 6). Accordingly, the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore, significant weight should be placed on the need to support economic growth through the planning system (paragraph 19).
- 6.5 To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century (paragraph 20).
- 6.6 Investment in business should not be over-burdened by the combined requirements of planning policy expectations (paragraph 21).

6.7 Planning policies should promote competitive town centre environments. Local planning authorities should, inter alia:

- Recognise town centres as the heart of their communities and pursue policies to support their viability and vitality.
- Promote competitive town centres that provide customer choice and a diverse retail offer which reflects the individuality of town centres (paragraph 23).

The Development Plan

6.8 For the purposes of Section 38 of the Planning and Compulsory Purchase Act 2004, the statutory development plan comprises The London Plan (Consolidated With Alterations Since 2011) (March 2015), the Camden Core Strategy 2010-2025 (November 2010) and the Camden Development Policies 2010-2025 (November 2010).

The London Plan (Consolidated With Alterations Since 2011) (March 2015)

6.9 Policy 2.9 (Inner London) states that the Mayor will, and boroughs and other stakeholders should, work to realise the potential of inner London in ways that sustain and enhance its recent economic and demographic growth while also improving its distinct environment, neighbourhoods and public realm, supporting and sustaining existing and new communities, addressing its unique concentrations of deprivation, ensuring the availability of appropriate workspaces for the area's changing economy and improving quality of life and health for those living, working, studying or visiting there.

6.10 Policy 4.7 (Retail and Town Centre Development) confirms that the Mayor supports retail, commercial culture and leisure development within town centres. The policy confirms that in taking planning decisions on proposed retail and town centre development, the following, inter alia, should be applied:-

- The scale of retail, commercial culture and leisure development should be related to the size, role and function of a town centre and its catchment;
- Retail, commercial, cultural and leisure development should be focused on sites within town centres, or if no in-centre sites are available, on sites on the edge of centres that are, or can be, well integrated with the existing centre and public transport;

6.11 Policy 4.8 (Supporting a Successful and Diverse Retail Sector and Related Facilities and Services) confirms that Boroughs should take a proactive approach to planning for retail and related facilities and services.

Camden Core Strategy 2010 (November 2010)

6.12 The Key Diagram Map 1 confirms the Appeal Site lies both within the Central Activity Zone and within the defined Highly Accessible Area.

6.13 Policy CS1 – (Distribution of Growth) confirms that The Council will promote the most efficient use of land and buildings in Camden by, inter alia, seeking development that makes a full use of its site, taking into account quality of its design, its surroundings, sustainability, amenity, heritage, transport, accessibility and any other considerations relevant to the site whilst resisting development that makes inefficient use of Camden’s limited land.

6.14 Policy CS3 (Other Highly Accessible Areas) confirms The Council will promote appropriate development in the highly accessible areas of, inter alia, central London. This is considered to be a suitable location for the provision of homes, shops, food,

drink and entertainment uses, office, community facilities and is particularly suitable for uses that are likely to significantly increase the demand for travel.

- 6.15 Policy CS5 (Managing the Impact of Growth and Development) confirms The Council will manage the impact of growth and development in Camden through a variety of means. Including, providing uses that meet the needs of Camden's population and contribute to the Borough's London-wide role and protecting and enhancing the environment and heritage and amenity and quality of life of local communities.
- 6.16 Policy CS7 (Promoting Camden's Centres and Shops) states that The Council will promote successful and vibrant centres including The Council's Neighbourhood Centres throughout the Borough to serve the needs of residents, workers and visitors. This includes providing for and maintaining, a range of shops, services, food, drink and entertainment and other suitable uses to provide variety, vibrancy and choice. Associated Map 2: Town Centres confirms Kentish Town to be a Town Centre.
- 6.17 Policy CS8 (Promoting a Successful and Inclusive Camden Economy) confirms The Council will seek to secure a strong economy in Camden and seek to ensure that no one is excluded from its success.

Camden Development Policies 2010-2025 (November 2010)

- 6.18 Policy DP1 (Mixed use Development) confirms The Council will require a mix of uses and development where appropriate in all parts of the Borough.
- 6.19 Policy DP12 (Supporting Strong Centres and Managing the Impact of Food, Drink, Entertainment and Other Town Centre Uses) confirms The Council will ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. In achieving this, The Council will, inter alia, consider the effect of non-retail development on shopping provision and the

character of the centre in which it is located, the cumulative impact of food, drink and entertainment uses taking into account the number and distribution of existing uses and non-implemented planning permissions, any record of harm caused by such uses and the impact of the development on nearby residential uses and amenity and any prejudice to future residential development.

Camden Planning Guidance 5 – Town Centres, Retail and Employment (September 2013)

- 6.20 This document (CPG 5) provides more detailed guidance on The Council’s approach to its town centres. Section 3 of the guidance confirms that Camden has six successful town centres, each with their own character which includes Kentish Town. The Section confirms that The Council will protect the shopping function of its town centres by ensuring there is a high proportion of premises in retail use and that it will control food, drinking and entertainment uses to ensure that its town centres are balanced and vibrant as well as ensuring that these uses do not harm the amenity of local residents and businesses.
- 6.21 Kentish Town is considered at page 21. The guidance confirms that: *“Kentish Town Town Centre provides shopping service uses for the local area. It has a good range of shops and services for its size, with many independent traders and a significant amount of food and drink uses.”*
- 6.22 An accompanying map shows a breakdown of core and secondary frontages and confirms that the site is located within a Core Shopping Frontage.
- 6.23 Paragraph 3.46 confirms that The Council will generally resist proposals that would result in:
- Less than 75% of the premises and core frontages being in retail use, or;
 - Less than 50% of the premises in secondary frontages being in retail use.

6.24 Subsequent paragraph 3.48 confirms that in accordance with Policy DP12 of Camden's Development Policies, The Council will seek to prevent concentrations of uses that would harm a centre's attractiveness to shoppers or its residential amenity. The Council will therefore generally resist proposals that would result in:

- More than two consecutive premises within the core frontages being in non-retail use;
- More than three consecutive premises in non-retail use within secondary frontages.

6.25 Appendix 3 of the guidance sets out how to calculate the percentage of uses and frontages, and confirms that the approach and policies apply to only ground floor uses and relate only to the existing lawful use of properties (paragraph 8.6).

Emerging Planning Policy

Kentish Town Neighbourhood Plan

6.26 The Kentish Town Neighbourhood Plan will proceed to Cabinet on 14 September 2016 and Full Council on 19 September 2016 when a decision on whether to adopt the plan will be made. A referendum was held on 9 June 2016 supporting the use of the plan albeit it with only a turnout of only 13.75%.

6.27 However, having reviewed the Kentish Town Neighbourhood Plan there are no policies within it which relate either to the application site or to the change of use of retail units within core shopping frontages.

Other Relevant Documents

Camden Retail and Town Centre Study (November 2013)

- 6.28 The Camden Retail and Town Centre Study produced by GVA Grimley Ltd dated November 2013 provides a Borough wide review of retail provision within Camden's Town Centre and Central London Frontages to provide an update on previous retail studies in the Borough and to provide an evidence base to inform future development plan documents, the scope for future retail development within the Borough and sets out a recommended strategy for the Borough's six town centres (including Kentish Town).
- 6.29 The Study identifies current and future retail floorspace capacity for growth and particular deficiencies relating to the centres, and advises on the appropriateness of retail frontages and town centre boundaries in order to enable The Council to plan positively for an appropriate scale and form of development within the Borough. Some of the conclusions of this document are detailed later within this Statement.

SECTION 7: THE CASE FOR THE COUNCIL

7.1 This section of the Appellant's Appeal Statement provides an overview of The Council's single reason for refusal as detailed within the Officer's Report. The response by the Appellant to this reason for refusal is set out within the following section.

7.2 The Council refused the appealed application for one reason only. Namely;

"The proposed change of use from retail (Class A1) to a coffee shop (mixed use Class A1/Class A3) would result in the loss of a retail unit which would be harmful to the overall character, function, vitality and viability of the Kentish Town Centre, contrary to policy CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) [sic] the London Borough of Camden Local Development Framework Development Policies."

7.3 The Officer's Report at paragraph 2.5 confirms that by The Council's calculations, of the 14 units in the frontage nine of them are operating as an A1 use (64%) and as such the frontage fails to comply with the CPG5 requirement for at least 75% of the premises in core frontages to be in retail use.

7.4 At paragraph 2.6, the Officer's Report acknowledges the various appeal decisions which were submitted in support of the application and highlights that Inspectors have allowed such proposals (i.e. national multiple coffee shops) for reasons including:-

"

- *The coffee shops would not have an adverse effect on the vitality and viability of the shopping centres;*
- *The coffee shops would attract large numbers of customers/strong patronage;*

- *The coffee shops would perform a complementary function to the town centre/facilities for breaks and refreshment are required in town centres/proposal would add to consumer choice by increasing the range of town centre activities*
- *Allowing the use of vacant premises.”*

7.5 The Officer’s Report states (paragraph 2.7) that the appeal decisions provided relate mostly to locations outside London (although the relevance of this comment is not explained) and that each case must be assessed on its own merits. The Officer’s Report provides no further overview or rebuttal of these decisions. Effectively, The Council has disregarded the appeal decisions submitted in support of the original application without any meaningful consideration or analysis.

7.6 Whilst it is correct that each application/appeal must be determined on its own individual merits, the key points and rationale (which were detailed at length in the supporting planning statement submitted with the original application) arising from the appeal decisions provided (and which are also set out within this Appeal Statement) relate to the nature and operational characteristics of national multiple coffee shops such as Starbucks, Costa Coffee, Café Nero etc. which are prevalent in UK high streets and shopping centres throughout the country. It is the nature and characteristics of the operation of these uses (and thus the likely operational characteristics of the appeal proposal) which is key.

7.7 The Officer’s Report does acknowledge that competition between retailers and whether or not there is a need for another coffee shop in Kentish Town are not material planning considerations. Similarly, the Officer’s Report confirms that the nature of the proposed occupier (in this case Starbucks) is not relevant to the determination of the application.

- 7.8 At paragraph 2.8 of the Officer's Report, The Council states that *"If the change of use was allowed, only 57% of the units in the frontage would remain in A1 use. Whilst coffee shops such as Starbucks may attract large visitor numbers, in this case the coffee shop would not perform a complementary role because there are a variety of other coffee shops in the local area already. Instead, the proposal would further reduce the range of shopping services provided in this part of Kentish Town, which may deter shoppers from coming to this area for the purposes of shopping, which in turn may impact on the remaining shops in the frontage and their ability to attract shoppers/continue operating."*
- 7.9 The continued use of the word *"may"* in the above paragraph implies that The Council's view on the application is less than firm. The Officers acknowledge that a Starbucks would attract a large number of visitors but do not attach any weight to this despite acknowledging at paragraph 2.6 of the Officer's Report the benefits such a coffee shop can have. Equally Officers do not consider or attach any weight to the various other benefits which can arise from the inclusion of a national multiple coffee shops within a centre
- 7.10 The Officer's Report concludes at paragraph 2.9 that *"the proposal would result in fewer than 75% of the units in the frontage being in retail use, contrary to CPG5 guidance. As a result, the proposal would cause harm to the character, function and vitality and viability of the shopping frontage."* On this basis The Council duly refused the application. A copy of the Officer's Report is contained at **Appendix One**.
- 7.11 The Officer's Report thus confirms that The Council has refused the application solely based on its failure to comply with relevant planning policy regarding the percentage of A1 uses in the relevant section of Core Frontage (notwithstanding that the frontage is already below the relevant threshold in respect to the number of A1 units present) and that no detailed assessment of the well-established precedents set out in the various appeal decisions submitted by the applicant were considered.

Summary

7.12 The Appellant has acknowledged the existing conflict with The Council's Supplementary Planning Guidance document (PG5) from the outset but has highlighted that there are relevant material considerations which justify the grant of planning permission. The relevant policy (on which basis The Council have refused the application) is intended to maintain and enhance the vitality and viability of the relevant Core Frontage and Shopping Centre as a whole. It is the evidence of the Appellant that a change of use of the Appeal Site to a Starbucks Coffee Shop will result in an enhancement of the vitality and viability and health of Kentish Town Town Centre. The basis for this is set out within the following section.

SECTION 8: THE APPELLANT'S RESPONSE TO THE REASON FOR REFUSAL

8.1 This section of the Appellant's Statement sets out the response of the Appellant to The Council's single reason for refusal. Having reviewed the decision notice and the Officer's report the key issue in the determination of the appeal is the impact of the proposal on the vitality and viability of Kentish Town Town Centre. In relation to this point, the following sub-issues require detailed examination:-

- i) The nature of the proposed Starbucks use;
- ii) The long-term effect of the proposal on the vitality and viability of the retail function of Kentish Town Town Centre, which the Appellant considers justifies a policy departure.
- iii) The contribution of the appeal proposal as a retail unit to the vitality and viability of Kentish Town Town Centre and an assessment of the overall health of Kentish Town Town Centre.
- iv) Whether the proposal would create a harmful concentration of non-retail uses; and

8.2 In addition to the above matters which require detailed assessment and which support the Appellant's response to the reason for refusal and the Appellant's view that the planning permission should be granted, there are other former relevant material considerations not directly related to the reason for refusal which are considered to weigh in favour of a grant of planning permission and which also form part of the planning "*balancing exercise*" These are considered separately at Section 9 of this Statement.

The Nature of the Proposed Starbucks Use

- 8.3 The proposed Starbucks will comprise a mixture of A1 and A3 activities with customers purchasing an item to either takeaway or consume on the premises. These activities are very closely related, making use of exactly the same products sold in the same way over the same sales counter. Whether the sales amounts to an A1 or an A3 activity will depend solely on the customer's choice to either sit down or walk out the door. These different activities are inseparably linked and take place within the same planning unit.
- 8.4 Starbucks operates frequently under a Class A1 retail permission due to fact that its outlets primarily sell hot and cold drinks, cold food and other food products which are taken away from the premises. However, in this instance, the proposed use is considered to be a mix of A1 and A3 uses. Nevertheless, the A1 component is a significant proportion of the overall offer.
- 8.5 As stated above, Starbucks coffee shops do not sell any hot food which is prepared on the premises. The only warm food which is sold, which typically comprises less than 4% of all sales, is prepared elsewhere and then simply heated up on site. This is typically warmed up on a griddle behind the main servery and does not require a separate kitchen or extractor that discharges odours.
- 8.6 A further contribution to the Class A1 element is the sale of merchandise which includes consumable and comparison goods such as coffee beans, luxury chocolates and branded merchandise.
- 8.7 Starbucks can be a considerable draw/attraction to shoppers in their own right. A survey of customers visiting a store in Pinner (discussed later within this statement) revealed that 23% of the customers were visiting for shopping purposes, 14% visiting for leisure/tourism, 14.5% were in the District Centre for work purposes and 27% were in the area primarily to visit Starbucks. (Customer Survey, Pinner – by KJK Market

Research). The same survey revealed that 45% of interviewees indicated that they visited the District Centre more often since the Starbucks opened.

- 8.8 Local Authorities and Inspectors have widely accepted that a Starbucks provides a significant contribution to the vitality and viability of a town centre. This has been found to be the case for coffee shops in general, as demonstrated in the numerous appeal decisions which are detailed later within this statement.
- 8.9 The proposed hours of operation are compatible with the existing situation of the town centre and will add to the retail offer, encouraging customers to undertake “linked trips” during daytime hours, as well as early in the morning and contributing towards the evening economy.
- 8.10 As such, it should be recognised that the appeal proposal does not result in the extinguishment of all of the A1 floorspace on the site. Rather, a significant amount of A1 floorspace will remain in situ but in the form a mixed unit also incorporating A3 restaurant floorspace.
- 8.11 There are retail display units and a counter/server from which these goods are sold. These represent a strong A1 use and these elements of the operation are located at the front of the store. The A3 element allows for certain customers, purchasing exactly the same range, if they would prefer to consume the goods on the premises.
- 8.12 An interesting point is that The Council produces an annual Retail Survey of all of its town centres setting out the diversity of uses within each of its Town and Neighbourhood Centres. The 2016 Retail Survey has only very recently been published and is still in a “beta” version. Notwithstanding this the beta version also includes the uses for particular sites in the three preceding years as well, i.e. 2015/2014/2013. Within The Council’s Retail Survey 2016 throughout its identified centres there are 18 Starbucks uses identified. In each case, the use is identified as a café and defined

as Use Class A1. Similarly, the Costa Coffee unit at 307-309 Kentish Town Road is also classified as an A1 use.

- 8.13 Notwithstanding that the 2016 Survey is still a “beta” version, it is unlikely that all 18 entries are errors. Furthermore, the document confirms that for the last two years in the preceding Surveys The Council has considered Starbucks to be an A1 use. Effectively, it would appear that The Council is happy to treat Starbucks as an A1 use.
- 8.14 Nowhere in The Council’s assessment of the application within the Officer’s Report does it appear that any consideration of this point has been made. Rather, The Council has, as is clear from the Officer’s Report, simply and “slavishly” sought to consider the proposal purely on the basis of whether it is a straight A1 retail use or not without any detailed consideration of the appeal proposal’s actual trading characteristics or nature.
- 8.15 The Council’s Retail Survey 2016 is in the form of a large Excel spreadsheet which does not translate well. A link to The Council’s Retail Survey can be found at the Camden Open Data web page.

The long-term effect of the proposal on the vitality and viability of the retail function of Kentish Town Town Centre

- 8.16 As will be determined within this section of the Appellant’s Statement, it is well established that coffee shops uses are well-used and generate comparative and better levels of footfall and patronage compared to many other A1 uses which impact positively upon the vitality and viability of the individual shopping frontage.
- 8.17 It is considered that the appeal proposal will have a positive impact on the vitality and viability of Kentish Town Town Centre. This is for a number of reasons. First there is always a flow of people in and out of the stores which occurs at all times during the day. This increases activity in the street and creates a feeling of vibrancy, as customers

enter and exit out of the store or sit at tables and chairs located outside etc. Starbucks is also a compatible use to the existing shops and services in Kentish Town Town Centre, providing a use which shoppers have come to expect to be available. The evidence contained within this statement identifies the benefits of Starbucks to the retail environment of a town centre. In particular, such a use can increase the dwell time of visitors and thus increase the opportunity for *“linked trips”*. Conveniently located high quality refreshment facilities provided by Starbucks can assist in both attracting and prolong shopper stays within retail frontages. The opportunity to take a break from shopping in a convenient location, i.e. within the prime retail area assists in both attracting people to the area, and prolongs their dwell time, to the benefit of the wider retail frontage.

8.18 The proposed use will also act as a meeting place, (*“the Third Place”* described earlier in this Statement), thus acting to draw more members of the public into the retail area and Kentish Town Town Centre. In this sense, the proposed coffee shop will act as an attractor that lends itself to the vitality and viability of the shopping area.

8.19 It is also widely recognised that coffee shops are subject to a higher frequency of visits than most shops, as customers often visit on a daily basis. They are also more likely to spend more time in a coffee shop than in a retail store. Studies have shown that these longer dwell times will increase the likelihood of more *“linked trips”*, therefore meaning that the average time spent in the centre rises. More detailed evidence of this is set out below.

Patronage

8.20 It is widely accepted that the patronage for coffee shops is significantly greater than for many other solely retail operators. This is demonstrated in numerous patronage surveys which have been submitted during the course of the various appeals which are referenced within this statement below.

- 8.21 Attached at **Appendix Two** is a Patronage and Footfall Survey undertaken at the Starbucks premises at 19-23 High Street, Pinner, HA5 5PJ in support of an appeal on this site (discussed further below). The surveys were undertaken at the Starbuck premises, the subject of the appeal, as well as other locations in Pinner. The former predicts weekly numbers of persons entering the store (compared to persons passing it), whilst the latter assesses the amount of persons passing the outside of the store.
- 8.22 The survey was undertaken in February 2010 and a number of count points were selected in the District Centre, encompassing different retailers and uses throughout the District Centre. The Patronage Survey was carried out by an independent market research company (PMRS). The survey counts people entering some of the chosen stores and predicts weekly patronage from the counts undertaken (the method of doing so is explained in the Survey Report). The stores were identified on the basis of their nature; their comparable size; and location within the town centre to ensure that the survey covered a broad cross-sample and representation of local retailers, as well as some other Class A3 uses.
- 8.23 At six locations, pedestrian flows past the shop and the number of people entering the shop (the patronage) were counted. The following results were obtained:-

	SITE	ESTIMATED WEEKLY FOOTFALL (MON-SAT) (PERSONS)	ESTIMATED WEEKLY PATRONAGE (MON-SAT) (PERSONS)	PERCENTAGE PATRONAGE
1.	Starbucks Coffee(A1/A3), 19-23 High Street	9,571	2,062	21.5%
2	Café Rouge, 13 High Street	11,363	812	7.2%
3.	The New Leaf Bookshop, 1 Red Lion Parade	19,506	318	1.6%
4.	Carters Chemist, 24 Bridge Street	20,846	1,383	6.6%
7.	Clinton Cards, 23-31 Bridge Street	22,947	1,809	7.9%
11.	Lines Interior Décor, 26 High Street	6,033	125	2.1%

- 8.24 From the above information it can be concluded that Starbucks compares favourably with the estimated weekly patronage associated with a number of other A1 retailers, as well as Café Rouge (Class A3). None of the other premises surveyed had an estimated weekly patronage higher than Starbucks. The table above demonstrates

the percentage of passing trade which each retailer attracts. These results show that Starbucks attracts more passing footfall than any of the other surveyed uses. Indeed, it is apparent that Starbucks, which attracts 21.5% of passing trade, attracts a greater proportion of passing footfall than the next highest attractor (Clinton Cards) a conventional “High Street” retailer with a larger frontage, floor area and passing footfall by 13.6%. The above information also demonstrates (in conjunction with the Pinner market research survey referenced below) that Starbucks acts as a destination in its own right given the degree of trade and patronage it attracts, a significant benefit.

8.25 It is of considerable note that the PMRS study shows that on Saturdays between 5.00 p.m. and 6.00 p.m., 47.5% of passing footfall enter the Starbucks. This is a significant percentage and it can be speculated that these customers have spent the afternoon shopping in Pinner and are using part of their visit to the District Centre to purposely visit Starbucks for refreshment/relaxation purposes.

8.26 A site specific patronage survey was also undertaken at the existing Costa Coffee premises at Praed Street, Westminster in August 2011 in order to compare the use of the coffee shop with other purely Class A1 retailers. The table below shows the number of people entering the surveyed units throughout a normal shopping day:

	9.00 am-10.00 am	10.00 am-11.00 am	11.00 am-12.00 pm	12.00 pm-1.00 pm	1.00 pm-2.00 pm.	2.00 pm-3.00 pm	3.00 pm-4.00 pm	4.00 pm-5.00 pm	Daily	Hourly Average
Costa Coffee 137-130 Praed Street	48	66	47	46	41	36	41	31	359	45
Bagel Factory 141 Praed Street	19	16	8	13	35	17	19	14	141	18
Barry Bros Locksmith 121-123 Praed Street	5	4	11	17	16	14	8	12	87	11
London Souvenirs 16 Craven Road	35	22	31	19	25	13	18	16	179	22

8.27 The other shops surveyed were chosen in order to understand how comparatively sized Class A1 units were patronised.

8.28 Similar patronage calculations were undertaken in order to determine what proportion of the passing pedestrians were attracted into the units. The number of people entering a particular unit, divided by the numbers of people passing it by gives the patronage, which in itself is an indicator of the contribution that the use makes to the frontage.

8.29 The patronages arising from the survey were as follows:

- Costa Coffee - 9%
- Locksmiths - 2.3%
- London Souvenirs - 4.5%

8.30 The data demonstrates that the number of people who entered the Costa were significantly higher at all times of the day than those who entered the other surveyed A1 uses and it draws a high percentage of passers-by in comparable to A1 units and users. This confirms, as per the national trend outlined in the results below, that a coffee shop is well-used and generates considerable levels of activity, resulting in a significant positive impact on the vitality and viability of the frontage.

8.31 The table below shows the collective results of a further number of patronage surveys by PMRS, an independent market research company.

	FRIDAY			SATURDAY			ESTIMATED WEEKLY		
	Costa	Retailer 1	Retailer 2	Costa	Retailer 1	Retailer 2	Costa	Retailer 1	Retailer 2
Durham	424	462	683	639	729	912	2,501	2,802	3,753
Farnham	259	207	101	282	289	139	1273	1,167	565
Horsham	544	118	422	622	180	549	2,744	701	2,295
Salisbury	144	58	62	162	73	87	720	308	351
Welwyn G.C	205	47	9	89	52	12	692	233	49
Total	1,576	892	1,277	1,794	1,323	1,699	7,930	5,211	7,003
Average	315.2	178.4	255.4	358.8	264.6	339.8	1,588	1,042.2	1,400.6

Durham – Survey Dates: 23 July and 24 July 2011

Retailer 1 = Stationery Box

Retailer 2 = AllSports Farnham

Farnham – Survey Dates: 11 June and 12 June 2011

Retailer 1 = Currys

Retailer 2 = Specsavers

Horsham – Survey Dates: 16 July and 17 July 2011

Retailer 1 = Wakefield Jewellers

Retailer 2 = Birthdays

Salisbury – Survey Dates: 16 July and 17 July 2011

Retailer 1 = Fat Face

Retailer 2 = Whittards

Welwyn Garden City Survey Dates: 23 July and 24 July 2011

Retailer 1 = Holland & Barratt

Retailer 2 = Going Places

- 8.32 The above table illustrates the patronage of Costa Coffee compared with other High Street branded retail outlets, such as AllSports, Currys, Whittards, Fat Face and Going Places in a number of different town centres. The figures demonstrate that Costa Coffee is consistently higher than the other surveyed retailers in terms of patronage on both Friday and Saturday (the only exception being AllSports in Durham). Averaged over the five towns, Costa attracts more footfall on both Friday and Saturday than the other retailers.
- 8.33 These above surveys demonstrate that a national coffee shop generates significant levels of customers, comparable with, and indeed in excess of, other Class A1 retailers.

Customer Surveys

- 8.34 Customer surveys were undertaken at the Starbucks store at Pinner in January 2010 by KJK Market Research. The survey results are attached at **Appendix Three**.
- 8.35 Such surveys also assist in assessing the vitality and viability of retail centres, and have been considered as useful evidence to Inspectors in the determination of other appeals (see below). It is accepted that the persons surveyed were Starbucks's customers, but this is necessary in order to establish the reasons for visiting.
- 8.36 The market research survey was undertaken on a weekday and a Saturday. The combined results of the survey of 200 people are reproduced on page 6 of the report.
- 8.37 Question 2A sought to determine the main purpose of customer visits to Pinner that particular day. The results show that 23% of the customers were visiting for shopping purposes, 14% were visiting for leisure/tourism, 14/5% were in the District Centre for work purposes and 27% were in the area principally to visit Starbucks.

- 8.38 This demonstrates the presence of Starbucks draws customers to the District Centre in its own right. It also demonstrates that the coffee shop provides a service to a variety of types of visitors to the area. The largest percentage of visitors to the store were people who were principally visiting Pinner to use Starbucks itself, by 4% more than those who were already using the centre for shopping purposes. The Starbucks store in Pinner was therefore shown to provide a significant complementary feature within the District Centre whilst drawing a significant proportion of customers to the District Centre in its own right.
- 8.39 Furthermore, of those respondents to Questions 2b *“What else will you be doing in Pinner District Centre today?”*, 70 people said they would be shopping, 10 people window shopping, two people were visiting a hair salon, one person an internet café and one person using the Post Office. As such, 84 people (42% of those surveyed) were engaging in some form of shopping activity, in addition to the 23% of people who were primarily in Pinner for shopping purposes. Quite evidently the need for coffee shops in the ‘high street’ is not only the norm, but an expectation for people as part of their typical shopping visit. In addition, this shows a clear regularity of users of a District Centre undertaking *“linked trips”* combining visits to a Starbucks with undertaking shopping.
- 8.40 The results to question 4 *“Did you especially plan to visit Starbucks today or just passing?”* is another clear indicator that a Starbucks within Pinner attracts people to the District Centre. Answers revealed that 79% of the interviewees had planned to visit Starbucks as part of their visit to the Centre.
- 8.41 Furthermore, the results to question 7 indicate that a Starbucks Coffee shop within a District Centre location improves attractiveness to users of the Centre. In this regard, 45% of the interviewees stated that they visit the District Centre more often since Starbucks opened. This shows that for almost half of the respondents, the Starbucks had increased the attraction of Pinner.

- 8.42 In response to question 6a *“Do you feel that Starbucks adds to the vitality of Pinner District Centre?”* 86.5% of the respondents answered in the positive. This is a strong indicator that the presence of Starbucks improves the attractiveness of the District Centre from a potential customer’s perspective and therefore complements the retail vitality and viability given the additional trade that the store generates.
- 8.43 In terms of Question 6b, respondents were asked why they felt that Starbucks adds to the vitality of Pinner. A number of customers noted that since the recent closure of nearby branches of Starbucks in Watford Borders Bookstore and Northwood, they now come to Pinner specifically to visit the Starbucks and also visit other parts of the District Centre as part of their trip.
- 8.44 Similar surveys have also been undertaken at other branches of Starbucks at Brighton, Exeter and Headington (as a result of planning appeals).
- 8.45 Market survey results were obtained in Brighton in respect to an appeal regarding a Starbucks unit at 115 St James Street and presented to the Public Inquiry for that appeal. The Inspector in the Brighton case noted at para 32 of the relevant appeal decision;

“...I have regard to the customer survey carried out for Starbucks. This was conducted by a market research expert and I have no reason to doubt the credibility of the methodology or the results. As I have already mentioned, The Council have produced no survey information of their own to set against these findings. The Council have commented that the survey reveals that only 6% were visiting SJS to shop. This not correct. The 6% (or 12 people) is in answer to question 2a “What is the main purpose for your visit to SJS”. 35% answered for work, 22.5% for leisure purposes and 18% to visit Starbucks. Question 2b asked “What else will you be doing in SJS today”. The answer to this included a variety of responses but 42 (21%) said for shopping/supermarket and a few other responses mentioning browsing/window shopping (3) visiting a post

office (2), off licence (1) or photo shop (1). So I conclude that over 20% of this amounts to a number of combined trips. It should also be noted that it is the vitality and viability of the Centre as a whole that I am concerned with and that combined trips were also noted in respect of other attracts in SJS (e.g. language school, dentist)."

- 8.46 A copy of this appeal decision is attached at **Appendix Four**.
- 8.47 Consequently, it is considered that the above demonstrates that such evidence is not only useful to the decision maker, but generally coffee shops can have a positive influence on the visits of members of the public to town and district centres. It also demonstrates that they were well used and provide not only a complementary function to other retail uses but also attract people to a town or district centre in their own right.
- 8.48 Furthermore, a nationally recognised operator such as Starbucks would raise the profile of the frontage of and may improve the confidence of other retailers who to locate in to the centre. Indeed, many retail businesses welcome coffee shops into primary shopping streets for these reasons, namely that they attract customers to an area in the first instance. Therefore, the general perception is that the presence of coffee shops improves the general shopping experience and can increase custom. As such, the introduction of a coffee shop on the Appeal Site should be seen as having a positive influence on the health of a centre.
- 8.49 This view is supported by the many appeal decisions relating to national coffee shop proposals where Inspectors have accepted that coffee shops attract significant flows of customers throughout the day and would be no adverse impact on vitality and viability and would maintain pedestrian flows and be a complementary and acceptable use within a primary shopping frontage.

Precedents Relating to Coffee Shop Uses

8.50 Coffee shops by their nature seek to locate in primary shopping frontages. Accordingly, there is a significant volume of appeal decisions relating to the impact of coffee shops on the health, vitality and viability of shopping centres. However, the overwhelming outcome of such appeal decisions is the decisive views of Inspectors that uses such as Starbucks, Costa Coffee or Café Nero etc are entirely supportive of town centre environments and as uses with a significant degree of A1 floorspace are a wholly appropriate use for primary shopping frontages.

Café Nero – High Street, Winchester

8.51 The decision notice attached at **Appendix Five** relates to an Enforcement appeal regarding a Café Nero within Winchester High Street. This appeal decision highlights an Inspector's view on the benefit of coffee shops within primary shopping areas. In summary the Inspector's main conclusions are set out below:

- At Paragraph 9 the Inspector accepts evidence that coffee shop uses attract significant flows of customers throughout the day. The Inspector states that he would be very surprised if a wholly A1 use occupying the same floorspace would attract so many more customers that it would be in a different league to the coffee shop use. He stated that it would be very likely that many A1 uses will attract significantly fewer customers;
- The Inspector accepted survey evidence that revealed that a significant number of customers are attracted to the town centre by the presence of high quality coffee shops;
- At paragraph 15 the Inspector concludes that the coffee shop use in question would have no adverse effect on the vitality or viability of a shopping centre. It is stated that it would maintain pedestrian flows, accepts that it is a use which needs to be located at ground floor level within a

primary shopping area and compliments the retail frontage of the primary shopping areas drawing people into them;

- 8.46 Notably, in the Winchester case, the proposal would have exceeded the percentage threshold of non-A1 uses set out within the local plan policy, (as is the case in this appeal) yet the Inspector felt that there were material considerations which satisfied allowing the appeal (which is the argument made by the Appellant in this instance).

Café Nero - 112 High Street, Sevenoaks

- 8.47 An appeal relating to a proposed Café Nero in Sevenoaks is attached at **Appendix Six**. As with the Café Nero premises in Winchester, the Local Plan policy in Sevenoaks restricted changes of use from A1 to non-A1 uses in that no changes of use from A1 use were permitted within the primary frontages (a more restrictive situation than the current appeal).

- 8.48 Evidence was presented to the Inspector that the proposed use generates a considerable amount of activity within the High Street and that the coffee shop helped to attract visitors to the town centre. The Inspector accepted that shops and services within the town centre feed off each other and that the proposed coffee shop would generate a large number of customers and would, in her opinion, not undermine the retail function of the primary shopping area.

- 8.49 The Inspector concluded that:

“Although the mixed Class A1/A3 does not fully accord with the relevant Plan Policies to which I have been referred, the mixed use of the appeal premises would not have an adverse effect on the retail function of the town centre.”
(Paragraph 14)

Starbucks – 63 South Molton Street, London

- 8.50 Westminster City Council was concerned about the loss of retail shopping floorspace within the South Molton shopping area. In particular, The Council was concerned about the loss of specialist shops. The Inspector's decision, attached at **Appendix Seven**, concludes at paragraph 14 that the appeal proposal for a mixed A1/A3 coffee shop would not harm the vitality and viability of the shopping centre and consequently allowed the appeal.

66-68 High Street, Staines

- 8.51 In this case, the adopted Spelthorne Borough Local Plan required that at least 80% of all the length of the prime retail frontage be maintained in A1 use. Prior to the application being made, the relevant figure for the prime retail frontage was below 75%. The relevant decision is attached in **Appendix Eight**. The Inspector accepted evidence put forward through a Patronage Survey that the proposed use would be likely to attract significant customer flows throughout the day and the overall level of customer activities would be similar to, or greater than, an A1 use of the site. The Customer Survey presented also indicated that the use would be likely to perform a complementary function to the town centre shopping facility as well as attracting people to the town centre in its own right. At paragraph 8 the Inspector stated that he had no reason to disagree with these findings.
- 8.52 At paragraph 10, the Inspector held that the proposed mixed use did not fully accord with the relevant development plan policy but taking into account the particular characteristics of the use proposed, it was concluded that the use would not harm the vitality and viability of the town centre or undermine its retail function. The appeal was therefore allowed.

7 Royal George Buildings, Market Place, Rugby

- 8.53 This appeal related to an Enforcement case in respect of an existing Café Nero at 7 Royal George Buildings in Rugby. The relevant appeal decision is attached at **Appendix Nine**.
- 8.54 In this case, the use was considered to be a mixed Class A1/A3 use; however, the policies within the Local Plan required that ground floor uses within the primary retail frontages should be exclusively used for Class A1 purposes (a more onerous requirement than is the case of this Appeal).
- 8.55 The Inspector accepted evidence that strong customer patronage of the coffee shop use was a material consideration in favour of the proposal, particularly as the customer flow exceeded that of neighbouring shops. In fact, at paragraph 13, the Inspector gives weight to the consideration that if the Café Nero was too close, there was no guarantee that any replacement use would attract as many customers as the existing Café Nero operation.
- 8.56 The appeal was subsequently allowed, contrary to the relevant development plan policies.

Café Nero - 2-4 High Street, Harpenden

- 8.57 In this appeal, the Inspector considered a retrospective application for a Café Nero coffee shop unit within a primary shopping frontage. The decision is attached at **Appendix Ten**.
- 8.58 Whilst the relevant local plan policy sought to retain 90% of the respective retail frontage within Class A1 use and the appeal proposal would have resulted in only 25% of the frontage being retained for such purposes, the appeal was allowed. This level of A1 retention is notably lower than will be the case in respect to the current appeal.

- 8.59 The material considerations that the Inspector took into account are detailed within the decision letter. At paragraph 18, the Inspector recognises that the coffee shop has a large amount of daytime users and relies upon a relatively high turnover of customers rather than the more traditional café/restaurant when the primary purpose is to sit for longer and have a meal. As such, the Inspector recognised that coffee shops can attract a relatively high level of daytime custom, commensurate with any number of A1 uses (as demonstrated by the appeal proposal's operation).
- 8.60 Similarly, at paragraph 20, the Inspector recognised that the coffee shop compared favourably with the amount of activity generated by other nearby uses including A1 uses.
- 8.61 At paragraph 24, the Inspector recognised The Council's concerns regarding the preponderance of A3, A4 and A5 uses and the potential to cause an imbalance within the centre and thus harm vitality and viability. However, the Inspector recognised that the coffee shop was of mixed daytime use, which complemented Harpenden's retail function.

Costa Coffee – 230 High Road, Loughton

- 8.62 At paragraph 6 the Inspector accepted that the A1/A3 use type is an appropriate classification for such a coffee shop use given that the development would not function primarily as a café/restaurant with merely ancillary retail sales.
- 8.63 At paragraph 7, the Inspector recognised the substantial differences between the A1/A3 use and existing A3 type establishments, particularly as the more traditional uses did not keep normal shop hours and had dining areas at the front.
- 8.64 A copy of this appeal decision is attached at **Appendix Eleven**. Notwithstanding that the proposed coffee shop use was compliant with policy, the Inspector made positive comments about the proposed coffee shop and its suitability within a primary frontage location.

Costa Coffee – 80-82 High Street, Maldon

- 8.65 In this appeal, the proposed coffee shop was in conflict with the local planning policy which only permitted changes that resulted in A1 or D1(A) uses (a policy framework more restrictive than the current appeal).
- 8.66 At paragraph 7 the Inspector confirms that there was a conflict between the provisions of the adopted local plan and those of the more recent national planning guidance and that the latter should be given greater weight. The Inspector gave weight to national planning policies which 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.
- 8.67 Accordingly, at paragraph 8 the Inspector confirms that the proposals would add to consumer choice by increasing the range of town centre activities and would maintain activity within the town centre where retail outlets appear to close early. The appeal was subsequently allowed.
- 8.68 The relevant decision is attached at **Appendix Twelve**.

19-23 High Street, Pinner

- 8.69 The appeal in relation to the proposed Starbucks at 19-23 High Street, Pinner has been referenced already within the Appellant's Statement in respect to the relevant Patronage and Customer Surveys submitted in support of this appeal.
- 8.70 In this appeal case, the key issue was the effect of the proposal on the vitality and the viability of the District Centre. Whilst the Inspector accepted that a 25% threshold on non-A1 uses had been breached, the Inspector found (at paragraph 12) that in generating high levels of activity throughout the normal shopping day that the coffee

shop use would be beneficial to the vitality of the relevant primary shopping frontage despite the loss of some retail floorspace and subsequently allowed the appeal.

8.71 This is precisely the point which the Appellant makes in justification for the current Appeal proposal and which The Council has failed to consider.

8.72 A copy of the appeal decision is attached at **Appendix Thirteen**.

47 High Street, Keynsham

8.73 The Inspector considered that the main issue in this case was the impact of the proposal on the vitality and viability of the town centre (as the case in the current appeal). In relation to the proposed use, the Inspector found at paragraph 5 that the proposal was for a mixed A1/A3 use as it would comprise substantial elements of both a shop and a café, and that takeaway merchandise sales would be more than incidental to the A3 use.

8.74 Although the relevant local plan policy did not allow for the loss of any A1 use within the town centre, the Inspector gave weight to national planning guidance which stated that authorities should set flexible policies for their centres which can respond to changing circumstances.

8.75 At paragraph 12, the Inspector considered that the proposed use would generate a reasonable footfall equivalent to other A1 uses, and gave consideration to the fact that the unit had remained vacant for a considerable period of time despite marketing.

8.76 At paragraph 13, the Inspector concluded that despite the conflict with Local Plan policy, that that the appeal proposal would not undermine the retail function of the primary shopping frontage, lead to a fragmentation of retail uses or have a harmful effect on the centre's vitality and viability. The appeal was thus allowed. Again, this is the same point which has been referenced at length extensively above and which the Appellant considers is an important material consideration in the assessment of the

current Appeal proposal. A copy of the appeal decision is attached at **Appendix Fourteen**.

71 London Road, Headington

8.77 In this appeal, the Inspector considered an Enforcement Notice for the change in use from a retail use to an A1/A3 coffee shop within a primary retail frontage. The decision is attached at **Appendix Fifteen**.

8.78 The relevant local planning policy sought to retain 65% of units within the shopping frontage in A1 use, whilst the proposed use took this to 64.6%. However, the appeal was allowed as the Inspector considered that other material considerations were sufficient to outweigh this marginal policy breach. In particular, A1 sales amounted to nearly 50% of the total sales, there was no local concentration of coffee shops, footfall surveys showed the use attracted more customers than A1 shops and customer surveys show that the use encouraged combined trips in pedestrian activity.

8.79 The Inspector found at paragraph 18 that having regard to the above material considerations that there would not be an adverse impact on the vitality and viability of the retail function at the District Centre and as such, the underlying principle of the policy would not be compromised. He considered that cumulatively material considerations justified a departure from the exact wording of the policy.

221-222 High Street, Marlborough

8.80 In a Café Nero appeal decision in respect of a site at 221-222 High Street, Marlborough, it was recognised by the appeal Inspector that shoppers increasingly expect town centres to include facilities for breaks and refreshment and that it was credible for shoppers to be more likely to visit centres where such facilities existed.

8.81 The Inspector's decision allowing the appeal is attached at **Appendix Sixteen**.

148 Commercial Road, Portsmouth

8.82 Local Authorities who have required high levels of Class A1 use in primary shopping frontages have often been requested to show greater flexibility regarding threshold limits by Inspectors. This was reflected in an appeal decision regarding a proposed Costa Coffee in Portsmouth. The application was refused on the basis of the change of use with a result in a 75% Class A1 use threshold (the same as in this case) being breached. In his decision, the inspector considered that the merits of the coffee shop were sufficient to ensure that the retail vitality and viability of the town centre would not be harmed.

8.83 A copy of the relevant appeal decision is attached at **Appendix Seventeen.**

40-42 Sheep Street, Skipton

8.84 This appeal decision is dated June 2012 after the introduction of the NPPF. The Inspector agreed that the LPA's policy was out of date as it was not sufficiently flexible or based upon up-to-date evidence. The Inspector concluded the coffee shop use creates vitality and performs much better in this regard than many other A1 uses on the same street. The Inspector concluded that the coffee shop did not harm the vitality of Skipton Town Centre or its Core Retail Area.

8.85 A copy of the appeal decision is attached at **Appendix Eighteen.**

115 St James' Street, Brighton

8.86 In a recent appeal case for a proposed Starbucks at 115 St James' Street, Brighton, at paragraph 31 the Inspector notes that the appeal use was a "*significant attractor of pedestrian activity in St James Street and the patronage levels are relatively high compared to other uses surveyed.*" The Inspector then advised that "*as a consequence, the use can only realistically be seen as one to contributes to pedestrian activity and vitality during the normal working day*". The Inspector further stated that

there was *“no evidence that the use has acted as a deterrent to pedestrian flows or that pedestrian activity has been stifled since its introduction.”*

- 8.87 Further, at paragraph 58 of the appeal decision, the Inspector stated that he was *“satisfied that although some conflict with policy SR5 is identified other material considerations indicate that the granting of conditional planning permission is justified and that a departure from strict adherence to this policy is warranted. I do not consider that this would set an unfortunate precedent as the policy itself remains and would still apply when considering any future proposals of a similar nature on its merits.”*
- 89 Sidcup High Street, Sidcup*

- 8.88 This Appeal related to an Enforcement Notice. It was contended at the Inquiry that the Council were unable to identify any harm caused by the proposal. At paragraph 18 of the Sidcup decision, the Inspector concluded that the use of the coffee shop *“has been beneficial to the area”*. The Inspector further concluded that upholding the Enforcement Notice could prove *“counter-productive to enhancing the viability and vitality of the Centre, thus making the Centre less attractive”* (paragraph 20). He also confirmed that A3 customers would be lost if the premises reverted to A1 use by virtue of the Enforcement Notice and, in that respect, footfall would be reduced. A copy of this Appeal decision is attached at **Appendix Nineteen**.

271 High Street, Epping

- 8.89 A final case of relevance concerns the Café Nero’s premises at 271 High Street, Epping; a precedent that relates to a complex appeal and application history.
- 8.90 An Enforcement Notice was served on Nero Holdings Limited on 12 October 2006. The Notice was appealed and the Notice was upheld although it was subject to variation. The appeal decision was issued on 6 August 2007. Nero Holdings Limited challenged the appeal but that was not successful. Following the challenge, the Enforcement Notice remained active.

8.91 Epping Forest District Council then invited a new application from Café Nero to seek the retention of the coffee shop uses. The application was registered on 18 June 2009. A copy of the Committee Report (dated 12 August 2009) is attached at **Appendix Twenty**.

8.92 It is noted on the first page of the Committee Report that the current application differs from that which was previously considered as follows:-

- *“The business has now been successfully trading since April 2007 and additional generic information has been supplied detailing consumer habits of customers suggesting the café increases footfall in the High Street.*
- *The current application includes a proposed window display of a floor to ceiling set of 4 shelves to display goods for retail across the front window, replacing existing table and chairs in this area.*
- *The current economic climate differs from when the application was previously considered.*
- *Recent planning applications and appeals which have taken place subsequent to the determination of the previous application.”*

8.93 The report recognises that the size of the unit and habits of consumers results in approximately 21% of customers taking food products away for consumption off the premises, with the remaining eating onsite. The store possesses a total of 52 seats. In policy terms, the continuation of Café Nero within the premises in question would put the non-retail frontage proportion at 32.5%; the Policy states 30% as a threshold. On page 18, the report acknowledges the merits of the scheme and suggests that *“members may view this unit as a function supporting the vitality and viability of the Town Centre.”*

- 8.94 Further, whilst the report concedes that there is a *“departure to planning policy with the presence of Café Nero, the report suggests that the “objective underpinning policy to retain vitality in Town Centres may not have been compromised. This view could be supported by emergent PPS4, which supports flexibility to changing economic climates and consumer trends in line with a view to delivering sustainable development (PPS1),”*
- 8.95 The Committee Report did not provide a definitive recommendation. Members decided that they should recommend approval of the application subject to the application being considered at a higher level (District Development Control Committee) on 6 October 2009. At this Committee, it was decided to grant permission for the coffee shop. A copy of the District Development Control Committee minutes and the decision notice granting planning permission are enclosed at **Appendix Twenty-one.**
- 8.96 This *“volte face”* is a very interesting turn of events; an originally unacceptable use in a primary shopping frontage, which has been taken through the Courts, and has now become a desired use given the clear benefits of such a use, which has now been finally understood by that particular authority. This demonstrates that a *“black and white”* picture, simply as a reflection of a planning policy that may not actually reflect the *“real”* position on the ground, cannot be drawn in circumstances such as Epping and indeed in the context of this Appeal at Kentish Town. Whilst policy breaches may be in existence, the material considerations need to be understood fully before consequential actions are undertaken.

Other Research into the Benefits of Coffee Shops for Town Centres

- 8.97 Allegra Strategies is one of the world’s leading consultancies across the European and global foodservice sector and is the undisputed authority on global coffee trends. The company produces an annual study of the UK coffee market with the 2015 report being published on 15 December 2014.

8.98 The Appellant considers it would be difficult to conclude from a review of this report that Kentish Town will not benefit directly from the presence of Starbucks. In summary, the report confirms:

- Coffee shops boost the local economy;
- 35% of the population use coffee shops;
- Coffee shops are more popular than other eating-out restaurants;
- Choice of coffee shops is equally important as choice of other shops to consumers;
- The presence of coffee shops is influential in a customer's choice of where to shop;
- Customers require a convenient location for their coffee shops;
- A quarter of all visitors to a centre have a coffee shop visit as the prime purpose of their trip;
- The presence of a coffee shop prolongs the length of a visit to a centre, the frequency of those visits and the spend at other outlets;
- Coffee shops are a focal point for social interaction, as they have been for 350 years;
- Coffee shops are one of the main social hubs on the High Street and are seen as safe places to go where people from all backgrounds can congregate;
- They bring people together and provide a safe and comfortable place to meet;

- The presence of coffee shops on the High Street encourages 75% of consumers to shop for longer and 68% of the consumers interviewed would choose to visit another High Street if the one they were on did not have a coffee shop.

Summary

8.99 The Appellant's assessment of the above appeal decisions identifies that, there are recognised material considerations in favour of allowing such uses within primary retail frontages. These considerations, as identified regularly within the above appeal decisions include:

- An acknowledgement that branded coffee shops such as Starbucks generate high levels of patronage, commensurate with other A1 uses that are typically located within primary frontages;
- They are attractors in their own right and typically locate within prime frontages;
- The A1 element of the use is beneficial to retail vitality and viability;
- The encouragement of greater flexibility and diversity of use contained within National Planning Guidance within town centres has been recognised as material in decisions.

8.100 Fundamentally, even when adopted planning policies would not allow any further loss of Class A1 uses, the Inspectors in the above cases have been comfortable in allowing mixed A1/A3 coffee shops because of their characteristics and positive impact that they have on retail frontages and the vitality and viability of shopping centres.

8.101 As such, the relevant appeal decisions included in this evidence demonstrate that Inspectors have found that coffee shops of the type and size proposed at the Appeal Site are mixed use units trading within Class A1/A3. These decisions have also demonstrated that coffee shops have generally been found to contribute to the vitality and viability of town centres; helped increase pedestrian footfall; and provide a complementary facility to the retail function of towns. It is contended that no evidence can be provided to demonstrate that the proposed Starbucks at Kentish Town would act as a deterrent to pedestrian flows or activity, or that it would harm the vitality and viability of the Centre. To the contrary, the evidence submitted points to the exact opposite of all of these indicators namely that the proposed use would be a significant benefit to Kentish Town Town Centre and certainly having an impact no worse than the extant use of the site.

8.102 In terms of The Council's dismissal of the attached Appeal decisions, The Council does not give any detailed consideration to the findings of the various appeal decisions. The Council makes the point at paragraph 2.7 of the Officer's Report that the appeal decisions relate mostly to locations outside London. The relevance of this is not understood. The various appeals have focused on relevant High Street Frontage Policies involving change of use of the premises. These policies, wherever they might be within England, are generally similar in nature. Equally, in terms of relevant National Planning Guidance which seeks to improve the vitality and viability of shopping centres, this applies to all such appeal decisions in England wherever they may be based. Simply put, the fact that appeal decisions such as the Winchester and Brighton decisions are in no way less relevant to this Appeal simply because they do not fall within London. That aside, there are a number of London sites referenced above including specifically, the proposed Starbucks at Pinner for which detailed supporting survey information is attached. As such, the Appellant strongly reposes that The Council's comments in this respect are of any relevance.

8.103 It is an established tenet of planning law that each application is determined on its own merits. The Council avails itself to this principle to discount the appeal decisions submitted concerning coffee shops in core shopping frontages. Notwithstanding this, established principles in respect to the nature and character of the operation of such coffee shops is are a relevant material consideration. Whilst these appeal decisions relate to sites throughout the United Kingdom, they are universally similar in respect that the key issue in each case related to the impact of the proposals on the vitality and viability of the respective shopping area (as is the case in this Appeal). Generally, most of the appeals have resulted as a result of the appeal proposal being contrary to local shopping policy in terms of the number and mix of uses within a particular shopping centre or primary shopping frontage/core frontage etc. They have therefore all been considered in the context of the same issue as this Appeal. National multiple coffee shops such as Starbucks, Costa Coffee, Café Nero all perform similar trading and operational roles and have similar characteristics (as evidenced by the appeal decisions referenced above). These established character traits and established impacts on other shopping centres are relevant in the consideration of this appeal proposal. The effects of such coffee shops are well established and therefore the likely effect of the appeal proposal on the health of Kentish Town Town Centre can be reasonably concluded.

8.104 At paragraph 2.8 of the Officer's Report, The Council states that *"In this case the coffee shop would not perform a complementary role because there are a variety of other coffee shops in the local area already."* Again, the relevance of this is not understood. It is a well-established tenet of the planning system to encourage commercial competition and provide choice to the consumer. The fact that there are already existing coffee shops in the Centre does not mean that a further coffee shop will also not provide such a complementary role. There are a number of coffee shops within Kentish Town Town Centre; only one national multiple namely Costa Coffee. With one or two exceptions the rest of the café/coffee shops in Kentish Town Town Centre are more akin to a traditional *"greasy spoon"* and which also have much greater restricted hours than that proposed with the Appeal proposal.

8.105 However, The Council's approach is flawed, principally because it could be applied to any proposed use entering the centre for which there are other already existing uses, i.e. the presence of the existing Tesco, Sainsbury's, Co-op and Lidl stores should not be seen as a reason to discourage further convenience retail in the Centre.

The contribution of the Appeal proposal as a retail unit to the vitality and viability of Kentish Town Town Centre and assessment of the overall health of Kentish Town Town Centre

8.106 The Appeal Site has previously been used as a small convenience store with an ancillary financial and professional services use at the rear (cheque cashing). Due to the unit's small size, it is unlikely to be attractive to any major national multiples. The unit whilst well located close to Kentish Town Underground Station is not of a size or scale to be considered a key anchor unit within the Centre.

8.107 As such, it is not considered as a matter of principle that the change of use of the Appeal Site from A1 use to a mixed A1/A3 use would result in any significant adverse impacts occurring on the health of Kentish Town Town Centre overall.

8.108 The health of Kentish Town Town Centre has been undertaken. A copy of this Health Check is attached at **Appendix Twenty-two**. This is confirmed that the Centre is considered to be vital and viable and healthy. As such, there is nothing to suggest that the health of the Centre is precarious and that the loss of this very small, limited amount of retail floorspace would unacceptably impact on the health of the Centre.

8.109 Whilst the Appeal Site lies within the core shopping frontage, it is towards the periphery where the core shopping frontage changes to secondary shopping frontage but given its small size, it's not considered that it provides a meaningful contribution to the overall vitality and viability of Kentish Town Town Centre. Certainly, in light of the evidence and arguments submitted above it is considered that the proposed use as a Starbucks will offer a significant enhancement of the Centre's vitality and viability.

Will the proposal create a harmful concentration of non-retail uses?

8.110 In line with the requirements of Camden’s CPG 5, an assessment of the diversity of uses within the relevant Core Frontage has been undertaken. The relevant frontage extends from Regis Road to York Mews. The diversity of uses within the Frontage are set out in a table below:-

Number	Occupier	Use Class
317	Vacant	A1
321	Day Lewis Pharmacy	A1
323	Beef + Brew	A3
325	Appeal Site (vacant)	A1
327	Tolli	A1
329-333	Sainsbury’s	A1
335	Everbest Greengrocers	A1
337	Sam’s Chicken Takeaway	A5
339	London Bread Company	A1
341	Pret A Manger	A1
343	Gulshaan	A3
345	William Hill Bookmakers	A2
347	Dry Cleaners	A1

8.111 With reference to the table above, it can be seen that the existing percentage of A1 uses within the frontage at present is 64%, a figure already below the 75% threshold. The effect on the diversity of uses in terms of the granting of planning permission for this application would be that the relevant percentage would drop to 57% (notwithstanding that a significant part of the floorspace on the existing site would remain in A1 use).

8.112 In terms of the requirement of paragraph 3.48 of CPG 5 it should be noted that the unit will not result in more than two retail uses in a row. The application proposal

therefore complies with this element of The Council's guidelines. It is therefore not considered that the Appeal proposal results in an unacceptable concentration of non-A1 units at this location.

8.113 The wording of Policy DP12 (Supporting Strong Centres and Managing the Impact of Food, Drink, Entertainment and Other Town Centre Uses) and the wording of CPG 5 confirms that The Council will generally (our emphasis) resist proposals that would result in less than 75% of each Core Frontage being in retail use. The precise wording does therefore allow some exemptions to this requirement. Furthermore, whilst the application proposal would result in less than 75% of the premises in the relevant Core Frontage being in retail use, it is important to note that the level of A1 uses within the Core Frontage is already below 75% (currently standing at 62%). As such, the application proposal will not result in an adverse 'tipping point' being reached and exceeded.

8.114 It is not considered that the above level of uses in a Core Shopping Frontage is unreasonable. For instance, inspectors have suggested in various appeal cases elsewhere that an acceptable proportion of non-A1 uses in town centres could be as high as 50% and still retain their vitality and viability.

8.115 Whilst the application proposal will lower the existing non-A1 units in the frontage from a figure already below 75%. This ignores the fact that the significant proportion of the floorspace of the proposed Starbucks will be an A1 use and that the particular characteristics of the use means it attracts customers to a significantly greater degree than many A1 uses. This is considered to be a material consideration which justifies the granting of planning permission.

8.116 The current frontage is therefore already contrary to the policy guidance. It is therefore relevant to consider whether the appeal proposal in this situation is likely to have benefits to the vitality and viability to this core frontage and to the shopping centre as a whole. For reasons explained already, the Appellant is firmly of the view that this is the case.

8.117 Section 5 (Town Centre and Central London Frontage Audit) of the GVA Grimley Camden Retail and Town Centre Study (November 2013) notes that from the 2013 health checks Kentish Town is considered to be performing well in relation to the provision of convenience and service units. At paragraph 5.58 it is stated that *“over the plan period, it will be important for the Centre...to improve the overall quality in the retail and service offer. At present the retail offer is diluted along the length of Kentish Town Town Centre. If vacancies within the Centre continue to increase, the Centre may benefit from consolidation of the retail core and greater land use flexibility in more peripheral areas”*.

8.118 Whilst the Appeal Site lies within a core frontage, it is towards the end of the core frontage, at the northern end and it is considered that this would be a suitable location for introduction of a service use such as a coffee shop.

8.119 In summary then, it is not considered that the proposal will give rise to an unacceptable concentration of non-retail uses at this location.

SECTION 9: OTHER RELEVANT ISSUES

9.1 This section of the Appellant's Statement considers other relevant planning issues which support the proposed appeal including:-

- Whether the Appeal proposal represents sustainable development?
- Amenity Issues;
- Job Creation;
- The Need for the Proposal.

9.2 The above are factors which should be considered as part of any "*balancing exercise*" into the merits of the appealed application. These are separate issues which the Appellant considers weigh in favour of a grant of planning permission but which don't directly form part of the response to The Council's single reason for refusal. It is notable that the Officer's Report confirms that The Council has not considered any of the above issues as part of its assessment of the appealed application. This supports the Appellant's assertion that The Council has not properly considered the application or undertaken the appropriate "*balancing exercise*" as required. Each of the above issues are now considered in turn below.

Does the Appeal Proposal Represent Sustainable Development?

9.3 As stated earlier within this Statement the NPPF confirms that the purpose of the planning system is to contribute to the achievement of sustainable development (paragraph 6).

- 9.4 The NPPF confirms that these roles should not be undertaken in isolation because they are mutually dependant. In order to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. It is confirmed the planning system should play an active role in guiding development to sustainable solutions. It is confirmed that at the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
- 9.5 The NPPF thus promotes sustainable economic development through focusing main town centre uses in existing centres. The document places substantial weight on re-using sustainably located buildings and land, securing economic growth and creating jobs and prosperity through the planning system. The proposed development would support this aim by maintaining the property in gainful use, adding an attractive new coffee shop into Kentish Town Centre and providing local employment. The Appeal Site comprises previously developed land and is therefore a brownfield site. As such, the development of the Appeal Site also represents sustainable development by virtue of the recycling of previously developed land within the identified centre. The Appeal Site, the proposal will thus re-use a vacant unit, it will increase trade and activity, encourage '*linked trips*' and longer stays thereby assisting in meeting the wider retail aims of Kentish Town Centre.
- 9.6 The Appeal Site lies within a Core Shopping Frontage within Kentish Town Town Centre. As such, the Appeal Site is located within a sequentially preferable location and one where town centre uses, such as coffee shops, should be directed. As such, the Appeal Site is by its very nature a sustainable location in planning terms. In addition, the Appeal Site is located in a highly accessible location in close proximity to Kentish Town Underground and Railway Station and has a PTAL level of 6a. This again provides evidence that the Appeal Site is highly sustainable.
- 9.7 On the basis that the Appeal Site represents sustainable development, there is as set out above a presumption in favour of the grant of planning permission. This weighs heavily in favour of the proposal.

Amenity Issues

9.8 The Council does not raise any objection to the proposal on amenity grounds. It is not considered that the Appeal proposal has any adverse impacts on any surrounding occupiers or other in respect to its use. This is borne out by the lack of any objection by The Council on these grounds.

9.9 With regard to amenity and environmental health issues, the following aspects of the proposal are highlighted:

- The coffee shop will have proposed opening hours of 6.30 am to 9.00 pm seven days a week;
- No hot food will be cooked on the premises. Only pre-prepared cold food will be heated, meaning there is no requirement for fume extraction as there will be no smell or odours from food cooking;
- The unit will include on-site facilities for refuse storage to the rear;
- Servicing will be as existing from York Mews. Thus, no adverse amenity impact should arise because there will be no noise or disturbance from late night opening. Litter and waste can be dealt with internally and by normal collection arrangements. There will also be no additional highway impacts as the servicing arrangement will be the same as previous. It is not considered that the unit will have a greater servicing arrangement than an A1 operation previously on the site or as could occupy the unit under the extant use.
- No plant is proposed as part of this application. Therefore, there is no impact on residents of any plant arising being proposed. Any air

conditioning plant that will be required will be the subject of a separate application or to be dealt with via condition.

- 9.10 In light of the above, and the absence of any objection from The Council on these grounds, it is considered the absence of any amenity objection is another material consideration which weighs in favour of a grant of planning permission.

Job Creation

- 9.11 The new store will create a range of high quality, permanent jobs. Approximately 12 full-time and part-time jobs will be created at a variety of levels (from baristas to managers) for people at different stages of their careers. These jobs will offer long-term, sustainable employment opportunities. Consequently, the long-term investment and job creation that will result from this proposal will provide sustainable economic growth by creating new jobs, attracting inward investment and returning a currently vacant property back into an economically viable use.

The Need for the Proposal

- 9.12 It is acknowledged by the Applicant that a “*need*” for the proposal is not required to be demonstrated. As such, a lack of “*need*” for the proposal is not grounds for refusal of the Appeal. Notwithstanding this, in assessing whether or not a Starbucks will be of greater benefit to the shopping centre than the existing use, it is relevant to consider other issues including the need for the proposal (juxtaposed to the need retaining the retail floorspace at this location).
- 9.13 The Appeal Site is located in close proximity to Kentish Town Underground and Railway Station. As such, the Appeal Site is located in a prime position to provide coffee and sustenance for customers utilising Kentish Town Station. At present, in the vicinity of this important transport node, the only dedicated national multiple coffee shops are the Costa Coffee at 307-309 Kentish Town Road (slightly further away from the underground/train station) and the Pret A Manger at 341 Kentish Town High Road.

These are the only such facilities in the immediate vicinity of the Underground and Railway Station. Given the volume of pedestrian traffic which goes through the station on a regular basis, it is considered that there is a significant demand for such coffee shop provision in the Kentish Town Major Town Centre to address this need. The appeal proposal will therefore meet this need.

SECTION 10: THIRD PARTY REPRESENTATIONS

- 10.1 This section of the Appellant's Statement gives consideration to those third party representations received in respect of the appealed application. The Officer's Report confirms that in total 37 objections were received. In addition, objections were received from four local resident groups. Generally, these objections were based on the operator being Starbucks. Many of the third party representations objected to Starbucks in principle as a company, but also on the basis that there were sufficient coffee shops in Kentish Town Town Centre already and that there was no need for any more and that the proposal would take business away from other coffee shops in the Centre.
- 10.2 Overall, in terms of the number of users of Kentish Town Town Centre, this number of objections is very small. As set out in Section 5 of this Statement already, Starbucks serves over 68,000 people in Camden on a monthly basis. This is based simply on a review of only a selected number of Starbucks units within Camden and excludes many outlets that the company has within the Borough. It should be recognised therefore that the support by patrons of Starbucks in Camden far outweighs those who have raised an objection.
- 10.3 In respect to the objections raised by these parties it is not the role of the planning system to assess the appropriateness of an individual occupier, rather, it is the proposed land use which is relevant. An objection to a particular individual coffee shop operator based upon the nature of the occupier, is not a material consideration relevant to this Appeal.
- 10.4 There has never been a requirement to demonstrate a "need" for a town centre use within a town centre location. Similarly, the impact of one retailer/occupier within a centre on another retailer/occupier within the same centre is not a matter of planning control, this is simply commercial competition rather than trade diversion. Furthermore, National Planning Guidance is very clear that it seeks to foster

competition. As such, the local resident third party objections which have been received, are almost without exception based upon issues which are not material planning considerations in the context of this Appeal.

- 10.5 The above is acknowledged within the Officer's report. In respect to the overview of local resident objections, the Officer's report states:

"Competition between retailers and whether or not there is a need for another coffee shop is not a planning consideration. Similarly, the proposed occupier (in this case Starbucks) is not relevant to the determination of the application."

- 10.6 In summary the third party representations that have been received have predominantly been based around an *"anti-Starbucks"* campaign. The principle basis for these objections are not material considerations relevant to this Appeal.

SECTION 11: CONCLUSIONS

- 11.1 This Appeal focuses on the refusal of a planning application by The Council for the change of use of the Appeal Site from a retail shop (Use Class A1) use as a Starbucks coffee shop (mixed A1/A3 use). The concept of a coffee shop as a mixed A1/A3 use is well-established through a number of appeals and is widely accepted by planning Inspectors and local planning authorities.
- 11.2 The Council has refused the application simply because it is considered contrary to policy in terms of the percentage of A1 uses in the existing core frontage. Notwithstanding that the level of A1 uses is already below the threshold, The Council has not undertaken any *“balancing exercise”* or any detailed consideration of the proposed use, its particular characteristics and nature and its consequential impact on the future vitality and viability of Kentish Town Town Centre. Without this detailed consideration, The Council has singularly failed to understand and properly appreciate the appeal proposal. The Council’s assertion that the appeal proposal will be detrimental to the health of Kentish Town Town Centre is to fundamentally misunderstand the role and nature of such coffee shops and their well-established trading traits and acknowledged positive impacts on shopping centres.
- 11.3 Whilst it is acknowledged that the level of A1 uses in the relevant Core Shopping Frontage following the proposed change of use would be at odds with Policy DP12 (Supporting Strong Centres and Managing the Impact of Food, Drink, Entertainment and Other Town Centre Uses) of the Camden Development Policies 2010-2015 (November 2010) and the relevant CPG 5, Policy DP12 does allow exceptions to the requirements of the policy. Notwithstanding the terms of the policy, the policy is intended to preserve the vitality and viability and health of the relevant Core Frontage. The evidence contained within this Statement illustrates that overwhelmingly a Starbucks use of the Appeal Site would be a positive benefit to Kentish Town Town Centre.

- 11.4 The appropriateness of a Starbucks use at this location is that in the Council's annual Retail Survey it currently and historically has always considered the Starbucks units within Camden to be classed as A1 units. Equally, the Costa Coffee unit at Kentish Town Road is also considered to be Use Class A1.
- 11.5 Research by Allegra Strategies highlights the benefits that a branded coffee shop brings to a town centre. A Starbucks outlet would bring the ground floor of the application property back into gainful use supporting the vitality and viability of Kentish Town Town Centre and bringing associated economic benefits through linked spending in the surrounding area. The proposal will create employment opportunities and provide an important facility for commuters using Kentish Town Underground and Railway Station.
- 11.6 There is a significant volume of appeals which have been detailed within this report in respect to Class A1/A3 coffee shop uses, it is clear that Inspectors have considered that there are significant material considerations in favour of allowing coffee shop uses within retail frontages. These have been detailed in previous sections. Whilst it is correct that each application should be determined on its own merits, the significant volume of appeal decisions have all focused on the same issue which is focal to this Appeal. Namely, the impact of the proposed use on the health, vitality and viability of Kentish Town Town Centre. The submitted Patronage Surveys and Customer Surveys of Starbucks use coupled with the volume of other supporting information confirms that such uses will be a positive addition to the town centre.
- 11.7 Whilst the Council have "*slavishly*" applied the policy they have not given any consideration to the reason behind the policy which is to protect the vitality and viability of the town centre. On the basis of the evidence submitted, the proposed use can be considered to be beneficial to the town centre and in which case is in accordance with the thrust of the relevant policies.
- 11.8 In summary it is respectfully requested that this Appeal be granted.



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APPENDIX 1

Delegated Report		Analysis sheet		Expiry Date:	18/02/2016
		N/A / attached		Consultation Expiry Date:	11/02/2016
Officer			Application Number(s)		
Kate Phillips			2015/7282/P		
Application Address			Drawing Numbers		
325 Kentish Town Road London NW5 2TJ			Refer to Draft Decision Notice		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Change of use of ground floor from retail (Class A1) to a coffee shop (mixed use Class A1 / Class A3) and alterations to shopfront					
Recommendation(s):					
Application Type:	Full Planning Permission				

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	14	No. of responses	37	No. of objections	37
			No. electronic	00		
Summary of consultation responses:	<p>Objections have been received from the following parties: (listed alphabetically by road name)</p> <ul style="list-style-type: none"> • 17a Bartholomew Road • 32 Bartholomew Villas • 159 Burnley Road • 68 Caversham Road • 20 College Lane x2 • 9 Dunollie Place • Gaisford Street (unknown) • 27c Gaisford Street, Kentish Town • 75b Falkland Road • 49 Falkland Road • 73 Fortess Road • 193 Kentish Town Road (The Wine Cellar) • 235 Kentish Town Road (Meadows Coffee Shop) • Flat 1, 269 Kentish Town Road • 16 Leighton Place • 5 Leverton Street • Flat 4, 48 Leverton Street x2 • 13 Mansfield Road • 53 St Margarets Road • 5 Oakeshott Avenue • 17 Ospringe Road • 96 Queen's Crescent x2 • 4 Raglan Street • 6 Raglan Street x2 • Unknown addresses x7 <p>Objections were also received from the following ward councillors:</p> <ul style="list-style-type: none"> • Meric Apak (Kentish Town) • Jenny Headlam-Wells (Kentish Town) <p>The objections are summarised below:</p> <ul style="list-style-type: none"> • Contrary to DP12 and CPG5 guidance • Impact on the character of the area • Stripping the village character of Kentish Town • Won't create many jobs for local people • Ratio of retail to food/drink uses • Sufficient coffee shops already / no requirement for more • Will take business away from the other coffee shops • Need to support local / independent businesses • Don't want/like Starbucks / unethical / doesn't pay tax / poor reputation • In the list of 14 Appeals granted in favour of Starbucks in the whole of the 					

	<p>UK only 1 appeal has been won in central London.</p> <p>Officer comment</p> <p><i>Competition between retailers and whether or not there is a need for another coffee shop is not a planning consideration. Similarly, the proposed occupier (in this case Starbucks) is not relevant to the determination of the application.</i></p> <p><i>The proposal is contrary to Policy DP12 and CPG5 guidance (see section 1 of the officer's report below).</i></p>
<p>Kentish Town Road Action (KTRA)</p>	<p>Object on the following grounds:</p> <ul style="list-style-type: none"> • Frontage is currently 62% A1 use. If this application were approved the percentage of A1 retail would drop to 54%. Contrary to Policy DP12. • Secondary Frontages in Kentish Town are failing – see Policy SW2 in the submitted Kentish Town Neighbourhood Plan. • The vitality and viability of the Core Frontage of Kentish Town Road is threatened by this application. • It is claimed that “Starbucks is a compatible use to existing shops and services in Kentish Town Road.” In reply to these specious arguments we reply that Kentish Town centre already has plenty of coffee shops. • Starbucks is certainly not “a compatible use to existing shops and services in Kentish Town”. In fact Starbucks would endanger the viability of existing independent coffee shops. • We have read the list of only 14 Appeals granted in favour of Starbucks in the whole of the UK and we noted that only one Appeal has been won in central London. <p>Officer comment</p> <p><i>See section 1 of the officer's report below.</i></p>
<p>Inkerman Area Residents Association</p>	<p>Object on the following grounds:</p> <ul style="list-style-type: none"> • Strong local opposition to any reduction of retail in the high street • Contrary to CPG5 • Sufficient coffee shops already / no requirement for more • The proposal would detract from the viability and vibrancy of the area by reducing the variety and interest that retail provides. <p>Officer comment</p> <p><i>See section 1 of the officer's report below.</i></p>
<p>Transition Kentish Town Core Group</p>	<p>Object on the following grounds:</p> <ul style="list-style-type: none"> • Detrimental impact on retail provision • Must prevent further erosion of retail provision • Contrary to CPG5 <p>Officer comment</p>

See section 1 of the officer's report below.

Kelly Street Residents Association (KSRA)

Object on the following grounds:

- Contrary to Policy DP12 and CPG5
- Reject the applicant's argument that a Starbucks coffee shop will be a "compatible use to existing shops and services in Kentish Town Road"
- Sufficient coffee shops already / no requirement for more

Officer comment

See section 1 of the officer's report below.

Site Description

The application site is No. 325 Kentish Town Road. The building is a three storey brick building on the western side of the road, with a retail unit at the ground floor level (currently vacant) and living accommodation on the upper floors.

Planning permission was granted last year to enlarge the retail unit and to erect a mansard roof extension and three storey rear extension to No. 325 Kentish Town Road, to allow the conversion of the upper floors from 1 no. 3 bed self-contained flat to create 3 no. 1 bed self-contained flats; and also for a three storey extension at the rear (10 York Mews) to provide ground floor storage space and 1 no. 3 bed maisonette.

The application site is within the designated 'Kentish Town' Town Centre and is specifically designated as a Core Frontage.

Relevant History

3125 Kentish Town Road

2015/2605/P - Rear extension to existing retail unit (Class A1), erection of mansard roof extension and three storey rear extension at 1st, 2nd and 3rd floor level of No. 325 Kentish Town Road and conversion of the 1 no. 3 bed self-contained flat to create 3 no. 1 bed self-contained flats at first, second and third floor level. Erection of three storey rear extension to infill space known as 10 York Mews to provide ground floor storage space and cycle store and 1 no. 3 bed maisonette on first and second floor. Provision of internal courtyard/terrace at first floor level with access from 10 York Mews and installation of green wall at first and second floor level of 10 York Mews (internal elevation). – Granted subject to section 106 legal agreement 17/12/2015.

2010/5366/P - Change of use of the ground floor from retail unit (Class A1) to financial and professional services (Class A2). – Refused 02/12/2010.

Reason for refusal:

1. *The proposed change of use from retail (Class A1) to financial and professional services (Class A2) would result in the loss of a retail unit which would be harmful to the overall character, function, vitality and viability of the Kentish Town Centre, contrary to policy CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) the London Borough of Camden Local Development Framework Development Policies.*

317 Kentish Town Road

2013/0684/P - Change of use from retail (Class A1) to Financial and Professional Services (Class A2) at part ground floor level, including alterations to shop front – Refused 05/04/2013. Appeal dismissed 30/10/2013
Reason for refusal:

- The proposed change of use to Class A2 financial and professional use, by reason of the loss of Class A1 retail floorspace and resulting overconcentration of non Class A1 retail uses within the designated Core Frontage, would be harmful to the character, function, vitality and viability of the core shopping frontage in which it is located and to the Kentish Town Town Centre. The proposal would thereby be contrary to Policies CS3 (Other Highly Accessible Areas), CS5 (Managing the impact of growth and development) and CS7 (Promoting Camden's centres and shops) of the Core Strategy and Policies DP10 (Helping and promoting small and independent shops) and DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) of the Development Policies of the Camden Local Development Framework.*

339 Kentish Town Road

9501212 - Change of use of ground floor and basement from A1 (retail) to A3 (restaurant) as defined by the Town and Country Planning (Use Classes) Order 1987 – Refused
Reason for refusal:

- It is considered that the introduction of a non-retail use in this location would have an adverse effect on the quality and character of the shopping parade. It would be contrary to the Council's policies as expresses in the Borough Plan and the draft Unitary Development Plan to resist the loss of retail use within the defined 'core frontage' of the District Shopping Centre.*

Relevant policies

National Planning Policy Framework (NPPF) 2012

London Plan (consolidated with alterations since 2011)

LDF Core Strategy and Development Policies

CS1 Distribution of growth
CS2 Growth areas
CS5 Managing the impact of growth and development
CS7 Promoting Camden's centres and shops
CS8 Promoting a successful and inclusive Camden economy
CS11 Promoting sustainable and efficient travel
CS14 Promoting high quality places and conserving our heritage

DP1 Location and management of Camden's growth
DP12 Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses
DP16 The transport implications of development
DP17 Walking, cycling and public transport
DP20 Movement of goods and materials
DP24 Securing high quality design
DP26 Managing the impact of development on occupiers and neighbours
DP28 Noise and vibration
DP29 Improving Access
DP30 Shopfronts

Camden Planning Guidance (CPG)

CPG1 Design (2015)
 CPG5 Town Centres, Retail & Employment (September 2013)
 CPG6 Amenity (2011)
 CPG7 Transport (2011)
 CPG8 Planning Obligations (2015)

Assessment

1. Proposal

1.1 The proposal is for a change of use of the ground floor from retail use (Class A1) to a coffee shop (mixed use Class A1 / A3). This application relates to approximately 125 square metres of floor space.

1.2 The submitted plans also illustrate changes to the external appearance of the shopfront (i.e. moving the entrance door). N.B. This alteration has already been approved pursuant to planning permission 2015/2605/P, dated 17/12/2015.

2. The principle of development

2.1 Policy DP12 notes that the Council will ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. The application site is within the 'Kentish Town' Town Centre, and forms part of a designated Core Frontage. CPG5 (paragraph 3.45) notes that Kentish Town has a good range of shops and services for its size, with many independent traders and a significant amount of food and drink uses.

2.2 CPG5 (paragraph 3.46) guides that the Council will generally resist proposals that would result in less than 75% of the premises in Core Frontages being in retail use; and paragraph 3.48 guides that the Council will generally resist proposals that would result in more than 2 consecutive premises within the Core Frontages being in non-retail use, in order to prevent concentrations of uses that would harm a centre's attractiveness to shoppers or its residential amenity.

2.3 The applicant has compiled a table of the uses within the frontage; however, the table is inaccurate insofar as it excludes No. 317 Kentish Town Road and therefore includes only 13 separate units. In actual fact, the frontage of which the application site forms a part (Nos. 317 to 347 Kentish Town Road) consists of 14 separate units at the ground floor level.

2.4 At the time of the officer's site visit (23/02/2016), the current uses were as follows:

No.	Current occupier	Use class	Comments
317	[Vacant]	A1	Planning permission 2013/0684/P (317 & 319 Kentish Town Road) for a change of use from retail (Class A1) to Financial and Professional Services (Class A2) at part ground floor level, including alterations to shop front, was refused on 05/04/2013 and dismissed at appeal on 30/10/2013. (see section above for reason for refusal) Vacant since 2008.
319	Bet Fred (bookmaker)	A2	Planning permission 2013/0684/P (317 & 319 Kentish Town Road) for a change of use from retail (Class A1) to Financial and Professional

			Services (Class A2) at part ground floor level, including alterations to shop front, was refused on 05/04/2013 and dismissed at appeal on 30/10/2013. (see section above for reason for refusal)
321	Day Lewis Pharmacy	A1	
323	Beef & Brew Restaurant	A3	Planning permission 21560 (dated 05/02/1976) gave permission for "Change of use of the ground floor from retail shop to restaurant and shop for the sale of hot food."
325	Best One (convenience store)	A1	
327	Tolli Patisserie	A1	Planning permission F11/1/G/36322R1 (dated 31/05/1983) gave permission for: "Use of the ground floor as a retail bakery with ancillary food preparation, cold food take-away and 'eat-in' facilities"
329-333	Sainsbury's Supermarket	A1	
335	Everest Food & Wine	A1	
337	Sam's Chicken (Fast food / take-away)	A3 / A5	
339	The London Bead Company (haberdashery)	A1	Planning permission 9501212 for a change of use of ground floor and basement from A1 (retail) to A3 (restaurant) was refused on 10/01/1996. (see section above for reason for refusal)
341	Pret a Manger (sandwich bar)	A1	
343	Gulshaan Indian Restaurant	A3	Planning permission 31168 (dated 10/11/1980) gave permission for a change of use of the basement and ground floor as a restaurant / wine bar.
345	William Hill (bookmaker)	A2	Planning permission 8802306 (345 & 347 Kentish Town Road) (dated 14/09/1988) gave permission for a change of use from amusement arcade to estate agents at ground floor of 345 and basement storage at 345-347.
347	Dry Cleaners	A1	Planning permission 12847 (dated 09/09/1974) gave permission for use of the ground floor shop premises as a dry-cleaning business with a reception counter and shopfront.

Use Class	Number	Percentage (%)
A1	9	64
A2	2	14
A3 / A5	3	22
Total	14	100

2.5 The Council's calculations indicate that, of the 14 units in the frontage, currently 9 of them are operating as A1, which is 64%. The frontage already fails to comply with the CPG5 requirement for at least 75% of the premises in Core Frontages to be in retail use and the proposal to change the use of No. 325 from A1 to a mixed use of A1 and A3 would result in even fewer of the units in the frontage being in A1 use (57%).

2.6 The applicant acknowledges that the proposal would fail to comply with the Council's guidance; however, they have provided a number of appeal decisions where changes of use from A1 to A3 (or to a mixed A1 / A3 use) have been allowed. The Appeal Inspectors' reasons include the following:

- The coffee shops would not have an adverse effect on the vitality or viability of the shopping centres
- The coffee shops would attract large numbers of customers / strong patronage
- The coffee shops would perform a complementary function to the town centre / facilities for breaks and refreshments are required in town centres / proposal would add to consumer choice by increasing the range of town centre activities
- Allowing the use of a vacant premises

2.7 The appeal decisions provided by the applicant relate mostly to locations outside London. Nevertheless, each case must be assessed on its own merits, and in this case it is considered that allowing the proposed change of use from A1 to a mixed A1 / A3 use would cause undue harm to the character, function, vitality and viability of the shopping frontage.

2.8 The proposal would result in even fewer of the premises in the Core Frontage being in retail use; if the change of use was allowed, only 57% of the units in the frontage would remain in A1 use. Whilst coffee shops such as Starbucks may attract large visitor numbers, in this case the coffee shop would not perform a complementary role because there are a variety of other coffee shops in the local area already. Instead, the proposal would further reduce the range of shopping services provided in this part of Kentish Town, which may deter shoppers from coming to this area for the purpose of shopping, which in turn may impact on the remaining shops in the frontage and their ability to attract shoppers / continue operating.

2.9 To conclude, the proposal would result in fewer than 75% of the units in the frontage being in retail use, contrary to CPG5 guidance. As a result, the proposal would cause undue harm to the character, function, vitality and viability of the shopping frontage. The principle of development is not considered to be acceptable and planning permission should be refused on this basis.

3. Design considerations

3.1 The submitted plans illustrate changes to the external appearance of the shopfront (i.e. moving the entrance door). This alteration has already been approved pursuant to planning permission 2015/2605/P, dated 17/12/2015. The proposal is therefore considered to be acceptable in this respect.

3.2 Restaurants and cafes often require require external flues and extraction fans etc., which may adversely affect the character and appearance of the host building and the wider area. The accompanying Planning Statement notes that the Starbucks' operation does not involve the cooking of any hot food on the premises and there is consequently no need for substantial extraction equipment or any other associated ventilation. Notwithstanding the proposed operating model, if the application was otherwise considered to be acceptable, a suitable planning condition could prevent future occupiers from installing extraction/ventilation equipment without first obtaining planning permission. This would allow the Council to assess the impact on the character and appearance of the host building and the wider area.

3.3 If the application was otherwise considered to be acceptable and new signage was required for the new tenant, this would be subject to a separate advertisement consent application.

4 Impact on the residential amenity of nearby and neighbouring residential properties

4.1 Policy DP12 notes that the Council will ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the amenity of neighbours. The nearest

residential properties will be those within the application building (on the upper floors) when the most recent planning permission is implemented (2015/2605/P); those to the rear (fronting onto York Mews); and those within the neighbouring buildings.

4.2 Given that the application site is located on a busy commercial street, it is not considered that allowing the change of use from A1 to a mixed use of A1 and A3 would cause significant harm to any nearby residential properties in terms of general comings and goings etc.

4.3 Policy DP12 notes that the Council will, in appropriate cases, use planning conditions to address problems associated with food, drink and entertainment uses. The applicant has proposed the following opening hours: 0630 hours to 2100 every day. If the application was otherwise considered to be acceptable, these opening hours could be controlled by condition.

4.4 As already noted, the Starbucks' operation does not involve the cooking of any hot food on the premises and, if the application was otherwise considered to be acceptable, a suitable planning condition could prevent future occupiers from installing extraction/ventilation equipment without first obtaining planning permission. This would allow the Council to assess the impact on nearby and neighbouring residential properties.

4.5 Overall, the proposal is considered to be acceptable in this respect.

5. Transport considerations

5.1 Policy DP12 (d) advises that the Council will consider the impact of parking, stopping and servicing and Policy DP20 expects development that would generate significant movement of goods or materials during construction and/or operation to seek opportunities to minimise disruption for local communities.

5.2 The scale of the proposal does not warrant the submission of a transport assessment and/or delivery and servicing management plan. The application has a high PTAL rating (6a) and is located within a designated Town Centre which already attracts visitors.

5.3. Overall, it is not considered that the proposed change of use from A1 to a mixed use of A1 and A3 would cause any harmful transport impacts in the wider area and the proposal is considered to be acceptable in this respect.

Recommendation: Refuse planning permission.



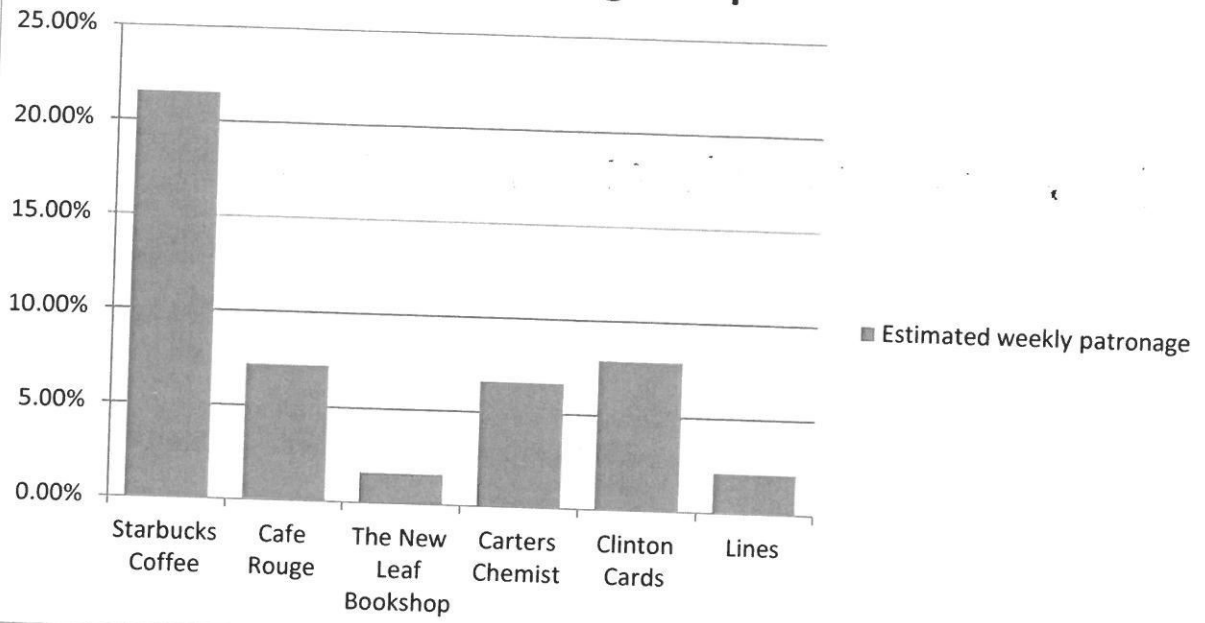
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APPENDIX 2

Pinner Summary

			Thursday		Saturday		Estimated Week (Mon-Sat)	
			Footfall	% Patronage	Footfall	% Patronage	Footfall	% Patronage
1	Starbucks Coffee 19 High Street	Total	1,462	21.2%	2,261	22.6%	9,571	21.5%
		Passing	1,152		1,749		7,509	
		Entering	310		512		2,062	
2	Cafe Rouge 13 High Street	Total	1,704	6.7%	2,743	8.8%	11,263	7.2%
		Passing	1,590		2,501		10,451	
		Entering	114		242		812	
3	The New Leaf Bookshop 1 Lion Parade, Bridge Street	Total	3,109	1.5%	3,961	2.0%	19,506	1.6%
		Passing	3,061		3,883		19,188	
		Entering	48		78		318	
4	Carters Chemist 24 Bridge Street	Total	3,323	6.9%	4,231	5.6%	20,846	6.6%
		Passing	3,094		3,993		19,463	
		Entering	229		238		1,383	
5	Lloyds TSB Bank 46 Bridge Street	Total	2,238		2,733		13,923	
6	Fonetastic Tel 61 Bridge Street	Total	2,932		3,396		18,056	
7	Clinton Cards 29-31 Bridge Street	Total	3,755	7.1%	4,172	11.6%	22,947	7.9%
		Passing	3,490		3,688		21,138	
		Entering	265		484		1,809	
8	Barclays Bank 15-17 Bridge Street	Total	3,361		4,167		20,972	
9	Cafe Cocoa 207 Marsh Lane	Total	660		969		4,269	
10	Doctors Makeover 110 Marsh Lane	Total	789		998		4,943	
11	Lines Int Decor 26 High Street	Total	1,003	1.9%	1,018	2.9%	6,033	2.1%
		Passing	984		988		5,908	
		Entering	19		30		125	
12	Roomers Nursery Gds 1 Bishops Walk	Total	1,485		2,131		9,556	

Patronage Graph





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APPENDIX 3

MARKET RESEARCH ENQUIRY

Customer Research carried
out in

Starbucks

at

Starbucks
19-23 High Street
Pinner
HA5 5PJ

Submitted by:
KJK Market Research Services
PO Box 6
Haselbury Plucknett
Crewkerne
Somerset
TA18 7NZ

Commissioned by:

Pegasus Planning Group
2-10 Kings Parade Mews
Clifton
Bristol
BS8 2RE

CONTENTS

INTRODUCTION	PAGE 1
TERMS OF REFERENCE	2
RESEARCH METHODOLOGY	3
SPECIMEN QUESTIONNAIRE	4 - 5
TOTAL SAMPLE RESULTS	6 - 7
REPLIES AT Q.2a (6)	8
REPLIES AT Q.2b	9
REPLIES AT Q.3 (4)	10
REPLIES AT Q.6b	11-12
POSTCODES OF RESPONDENTS	13
ADDITIONAL DATA	14
EXPLANATION OF VITALITY AS SHOWN TO RESPONDENTS IF REQUESTED	15

INTRODUCTION

I, Katherine Jayne Kellaway, of K.J.K. Market Research Services, PO Box 6, Haselbury Plucknett, Crewkerne, Somerset, TA18 7NZ, have had considerable experience over the last thirty two years in Market Research Enquiries. I have undertaken research for a wide range of companies, many of which are household names. I have also acted as a witness regarding Licence Applications.

I am a Full Member of the Market Research Society of 15 Northburgh Street, London, EC1V 0AH.

TERMS OF REFERENCE

K. J. K. Market Research Services were instructed by Pegasus Planning, of 2 – 10 Kings Parade Mews, Clifton. Bristol, BS8 2RE, to undertake a Customer Research within Starbucks, 19-23 High Street, Pinner, HA5 5PJ

The purpose of this report is to provide evidence in the form of a Market Research Survey to ascertain the purpose of customers' visit to Pinner, Middlesex, the mode of transport used to travel to High Street, Pinner and their usage of Starbucks. In addition to ask customers their view as to whether they felt that Starbucks added or did not add to the vitality of Pinner District Centre

Gender, ages and postcodes were recorded

RESEARCH METHODOLOGY

The survey consisted of 200 interviews.

All the interviews were conducted in Starbucks at 19-23 High Street, Pinner..

There was no quota as to age and gender, but no person was interviewed under the age of sixteen years.

A specimen questionnaire can be seen on pages 4 & 5 of this document.

The interviews were conducted on the following dates and at the following times:

Thursday, 21 st January 2010	9.15am	-	5.15pm
Saturday, 23 rd January 2010	8.45am	-	4.20pm

The interviews were conducted by Katherine Jayne Kellaway, a partner of K. J. K. Market Research Services.

Interviews were conducted with no involvement with staff. There was no selection as regards age and gender other than no respondents under 16 years was interviewed. Respondents were approached at the counter while waiting to be served or waiting for their drinks to be served, or at their tables. Respondents were not approached if in detailed conversation or whilst eating, so as to cause minimal intrusion.

All interviews were conducted under the Code of Conduct as laid down by The Market Research Society.

MARKET RESEARCH SURVEY Specimen Questionnaire

I am an independent Market Research Interviewer making enquiries with customers using Starbucks at 19-23 High Street, Pinner Would you mind assisting for a few moments?

1	Have you been interviewed before If Yes, close	1	Yes	2	No		
2a	What is the main purpose of your visit to Pinner today? Record one purpose only	1	Shopping				
		2	Leisure/Tourism				
		3	Work				
		4	To visit Starbucks				
		5	Visit doctor/dentist				
		6	Other				
2b	What else will you be doing in Pinner today? Multi answer allowed	1					
		2					
		3					
		4					
3	How have you travelled to Pinner today? Record main means of travel only	1	Car				
		2	Bus				
		3	Walk				
		4	Underground				
		5	Other				
4	Did you especially plan to visit Starbucks today or just passing?	1	Planned to visit	2	Just passing		
5a	How often do you visit Starbucks, here in High Street, Pinner?	1	Daily				
		2	5 or 6 days a week				
		3	3 or 4 days a week				
		4	1 or 2 days a week				
		5	Once fortnightly				
		6	Once monthly				
		7	Less often				
		8	First visit Ask 5b				
5b	If first visit, will you return?	1	Yes	2	No		
6a	Do you feel Starbucks adds to the vitality of Pinner District Centre?	1	Yes	2	No	3	DK
6b	If Yes, why do you think this?	1					
		2					
7	Do you visit Pinner District Centre more often, less often or the same as before since Starbucks opened here?	1	More often				
		2	Less often				
		3	The same as before				

Specimen Questionnaire

Classification:

Male	Female	18 or under	19-25	26-35	36-45	46-55	56-65	66+

May I ask for your postcode?	
------------------------------	--

<p>In order to confirm that you have been interviewed today and I have correctly recorded your responses, would you please write your name and sign this questionnaire below.</p> <p>Name.....Signature.....</p>
--

I, the undersigned, have carried out this interview in accordance with the rules and conditions of The Market Research Society. The respondent was unknown to me prior to this interview.

Date:	Signature of interviewer:
-------	---------------------------

KJK Market Research Services

MARKET RESEARCH SURVEY

Sample Results

I am an independent Market Research Interviewer making enquiries with customers using Starbucks in 19-23 High Street, Pinner. Would you mind assisting for a few moments?

1	Have you been interviewed before If Yes, close	1	Yes 0	2	No 200		
2a	What is the main purpose of your visit to Pinner today? Record one purpose only	1	Shopping		46 (23.0%)		
		2	Leisure/Tourism		28 (14.0%)		
		3	Work		29 (14.5%)		
		4	To visit Starbucks		54 (27.0%)		
		5	Visit doctor/dentist		4 (2.0%)		
		6	Other		39 (19.5%)		
2b	What else will you be doing in the Pinner today? Multi answer allowed	1					
		2					
		3					
		4					
3	How have you travelled to Pinner today? Record main means of travel only	1	Car		106 (53.0%)		
		2	Bus		27 (13.5%)		
		3	Walk		62 (31.0%)		
		4	Underground		4 (2.0%)		
		5	Other		1 (0.5%)		
4	Did you especially plan to visit Starbucks today or just passing?	1	Planned to visit 158 (79.0%)	2	42 (21.0%)		
5a	How often do you visit Starbucks, here in High Street, Pinner?	1	Daily		6 (3.0%)		
		2	5 or 6 days a week		12 (6.0%)		
		3	3 or 4 days a week		36 (18.0%)		
		4	1 or 2 days a week		74 (37.0%)		
		5	Once fortnightly		20 (10.0%)		
		6	Once monthly		18 (9.0%)		
		7	Less often		21 (10.5%)		
		8	First visit Ask 5b		13 (6.5%)		
5b	If first visit, will you return?	1	Yes 11 84.6%	2	No 0	2	DK 2 15.4%
6a	Do you feel Starbucks adds to the vitality of Pinner District Centre?	1	Yes 173 86.5%	2	No 9 4.5%	3	DK 18 (9.0%)
6b	If Yes, why do you think this?	1	See pages 11 & 12				
		2					
7	Do you visit Pinner District Centre more often, less often or the same as before since Starbucks opened here?	1	More often		90 (45.0%)		
		2	Less often		0		
		3	The same as before		110 (55.0%)		

Sample Results

Classification:

Male	Female	18 or under	19-25	26-35	36-45	46-55	56-65	66+
87 43.5%	113 56.5%	11 5.5%	10 5.0%	44 22.0%	62 31.0%	34 17.0%	21 10.5%	18 9.0%

May I ask for your postcode?	See page 13
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<p>In order to confirm that you have been interviewed today and I have correctly recorded your responses, would you please write your name and sign this questionnaire below.</p> <p style="text-align: center;">Name.....Signature.....</p>
--

I, the undersigned, have carried out this interview in accordance with the rules and conditions of The Market Research Society. The respondent was unknown to me prior to this interview.

Date:	Signature of interviewer:
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KJK Market Research Services

AT Q.2a What is the main purpose of your visit to Pinner District Centre today?

2a (6) Other

School run (11)
Visit to hair salon. (8)
Taking children to a class. (3)
House hunting. (2)
Bank. (2)
Visiting a relation. (2)
Hospital. (1)
College. (1)
Interview. (1)
Leisure. (1)
Massage. (1)
Gym. (1)
Visiting the church. (1)
Weight Watchers. (1)
Visiting a friend. (1)
Car to the garage. ((1)
Collecting for charity. (1)

Q2(b). What else will you be doing in Pinner District Centre today?
(Multi answers allowed)

Shopping. (70)
Revisit Starbucks. (26)
Go to work. (16)
Window shopping. (10)
Leisure. (10)
School run. (7)
Gym. (4)
Bank. (3)
Go to the park. (3)
Restaurant. (3)
Attending a meeting. (2)
Dropping a child off to class. (2)
Hair salon. (2)
Meet a friend. (2)
Go to baby clinic. (1)
Estate Agent. (1)
Football match. (1)
Interview. (1)
Internet Café. (1)
Visiting family. (1)
Student meeting. (1)
Meet husband. (1)
Post Office. (1)
Public house. (1)

Q.3. How have you travelled to Pinner District Centre today?
(Record the main means of travel only)

5 (Other)

Bicycle. (1)

Responses at Q.6(b). If Yes (at Q.6a., Do you feel Starbucks adds to the vitality of Pinner District Centre?). Why do you think this?

- Starbucks provides a good social meeting place and somewhere to relax for Pinner residents, which was not here before. (71)
- Nowhere else to get good coffee and food in Pinner, good for the area. (43)
- Since Starbucks has arrived, I visit and stay longer in Pinner and use the other shops in the High Street more as a result, which has helped the High Street. (42)
- Starbucks provides a good amenity and meeting place for mums and young children which is not available in Pinner before. (42)
- Starbucks is always busy and friendly so adds vitality to the High Street. (40)
- When Starbucks goes to an area it helps enhance that area, and it has helped Pinner. (37)
- Starbucks is a known brand and has good standards. (36)
- There is nowhere in the High Street to get decent coffee, this has helped and enhanced the High Street. (25)
- Starbucks has a good ambience and atmosphere and is a welcoming venue to visit. (24)
- They have friendly staff and a helpful manager and have time for their customers. (23)
- It is a good location here for Starbucks and is in keeping with Pinner. (23)
- Starbucks attracts people to Pinner. (22)
- It is a good quality venue for coffee and is good for Pinner. (19)
- Starbucks attracts a lot of different people and caters for all ages groups. (16)
- We just like Starbucks. (16)
- Pinner needs Starbucks. (14)
- Since Starbucks has closed in Northwood and Watford I now come to Pinner Starbucks, and shop in the town as well. (10)
- Starbucks has a continental feel which is good for the High Street. (7)
- Starbucks will remain here, an independent shop would be more likely to close. (7)
- Starbucks coming to the High Street has saved it from becoming another empty shop. (7)
- All aspects of Starbucks adds vitality to the area. (6)
- Starbucks must not close, I would miss it if it wasn't here. (6)
- Starbucks has added interest on a dying street. (6)
- I would not come to Pinner if Starbucks was not here. (6)
- There should be a Starbucks here for the benefit of all residents. (6)
- There are other places in Pinner, but it is more comfortable here for those with children. (5)
- The street in Northwood where Starbucks was, is now much more quiet since it closed. (5)
- Starbucks have better coffee than Neros. (5)
- Starbucks takes the place of a public house with no alcohol. It is especially needed with so many public houses closing. (4)
- Neros is not big enough and Pinner needed somewhere else, Starbucks has filled this requirement. (4)
- Starbucks have joined with the community, especially with their community notice board. (4)
- Starbucks has made Pinner a more interesting place. (3)
- Good to have an extra variety of coffee shops in Pinner. (3))

Starbucks has a good exterior décor and is appealing for the street. (1)
This Starbucks in Pinner is the nearest for residents as Starbucks have closed in Northwood and Watford Borders and have been missed. (1)
This is my first visit today, it has good décor and ambience. I will definitely come back. (1)
It does not detract from Pinner. (1)
Starbucks has created jobs. (1)
I love to visit Starbucks. I wish it was larger as it gets so busy and crowded. (1)
It is a nice meeting place, shame the bookshop went but this a good alternative and good for the street. (1)
It creates competition for Neros. (1)
Vitality from the customers point of view but I do like to see small business keeping open. (1)
It does add vitality, but Starbucks is a contentious issue, the signage is the problem, but the premises are fine. (1)
I was against Starbucks coming but I welcome them now, and stay longer in Pinner and shop here. There is a nice frontage on to the High Street and is clean and tidy. (1)
I have been a local retailer and know that Starbucks has attracted people to the High Street. (1)

At Q.6(a) Do you feel Starbucks adds to the vitality of the Pinner District Centre?

Some respondents replied No, and wished for their comments to be recorded.

Neither adds or detracts. (1)
I like Starbucks but it has not added or detracted from the area. (1)
Not added vitality as we already have coffee shops, but we need a curtain material or fabric shop selling sewing aids.. (1)
Masses of coffee shops here. (1)
Prefer independent shops, but seldom here so don't really know. (1)

At Q.6(a) Do you feel Starbucks adds to the vitality of the Pinner District Centre?

Some respondents replied Don't Know, one respondent wished for his comment to be recorded.

I was sad at Starbucks closing in Northwood. I come to Pinner now more often and as a result I shop here as well. (1)

Postcodes from where respondents came.

HA5	110
HA2	23
HA4	18
HA1	11
HA6	11
WD19	6
WD17	2
WD18	2
B1	1
GU16	1
HA3	1
HA9	1
HP3	1
HP5	1
NW2	1
RH19	1
RM10	1
SE5	1
SL9	1
W1	1
W9	1
W13	1
WD4	1
WD6	1
WD23	<u>1</u>
Total	200

Additional data

In the sample, 1 respondent withheld her name.

In the sample, 8 respondents did not know/refused their full postcode.

VITALITY (Collins English Dictionary)

- 1. Physical and mental vigour.**
- 2. The power or ability to continue in existence, live or grow.**
- 3. A less common name for vital force.**



Planning & Development Ltd

APPENDIX 4



Appeal Decisions

Inquiry held on 10, 11 & 12 June 2009

Associated site visits made on 9 & 12 June 2009

by **N P Freeman BA(Hons) Dip TP MRTPI**
DMS

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

The Planning Inspectorate
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Temple Quay House
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Decision date:
30 June 2009

Appeal A: APP/Q1445/C/08/2092192 **115 St James's Street, Brighton, BN2 1TH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Starbuck Coffee Co. (UK) Ltd against an enforcement notice issued by Brighton & Hove City Council.
- The Council's reference is BH2008/01039.
- The notice was issued on 1 December 2008.
- The breach of planning control as alleged in the notice is the "Unauthorised change of use from A1 (Retail) to A1/A3 Mixed Use following planning refusal BH2008/01039, dated 21/05/08".
- The requirements of the notice are:
 1. Remove all customer seating from the public areas;
 2. Remove all customer tables from the public areas;
 3. Completely cease the A3 operation in that there should be no sales of food and drink for consumption on the premises;
 4. Restore the use of the property back to an A1 retail use in that all sales are for consumption off the premises.
- The period for compliance with the requirements is 6 weeks after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed in the terms set out below in the Formal Decision.

Appeal B: APP/Q1445/A/08/2090672 **115 St James's Street, Brighton, BN2 1TH**

- 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 Starbuck Coffee Co. (UK) Ltd against the decision of Brighton & Hove City Council.
- The application Ref. BH2008/01039, dated 18 March 2008, was refused by notice dated 21 May 2008.
- The development proposed is the change of use from Use Class A1 (retail) to mixed A1/A3 Coffee Shop (sui generis).

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

The enforcement notice

1. There is agreement between the main parties that the wording of the allegation should be varied to read "Unauthorised change of use from A1 (retail) to the A1/A3 mixed use as a coffee shop". I consider that this simplifies the

allegation in a satisfactory fashion and the variation in this respect would cause no injustice to the parties. I will vary the wording accordingly.

2. In terms of the requirements, I will address these under ground (f) should I get to that point. However, I consider that to get the notice in order the fourth requirement should be deleted. This is at odds with the authority of *Lipson v SSE [1976] 33 P & CR 95* where it was held that a notice cannot require a former use to be revived only the unauthorised use to cease and any works carried out solely to facilitate the unauthorised development to be removed. It seems to me that the first three requirements fall into the latter categories. A variation of the notice removing the fourth requirement is therefore appropriate, irrespective of any arguments on ground (f).

The appeal premises and surroundings

3. The appeal premises comprise a 2 storey building located on the corner of St James's Street and Charles Street, within the prime frontage of the St James's District Shopping Centre and the East Cliff Conservation Area. The ground floor is in use as a coffee shop/café, with a preparation area at the rear, and the upper floor is used for ancillary purposes as staff, storage and meeting rooms. The customer entrance is on the corner and there is a separate staff/trade entrance at the end of the Charles Street frontage. Advertisement consent for the existing signs was granted on appeal on 27 October 2008. Planning permission for 4 air-conditioning condensing units, which are located at roof level, was granted on 1 May 2009, subject to conditions concerning noise emissions and acoustic screening. I observed that a screen has already been erected.
4. The use by Starbucks commenced in May 2008 (following completion of a 10 year lease at the beginning of April 2008) and has continued ever since. Until early January 2008 the unit was in use as stationers and had been for a number of years. From the totality of the evidence before me, including information on itemised sales (till receipts), I have no doubt that it is presently operating as a mixed A1/A3 use, with a combination of café and take out trade. I understand that some other local planning authorities may have interpreted Starbucks's use as being solely an A1 use or solely an A3 use. However, I am dealing with the circumstances of this case based on the facts before me. Both the Council and the appellant submit that the use is a mixed A1/A3 use and I have no reason to dispute this or come to any alternative conclusion.
5. No. 115 is located towards the centre of the shopping centre, which is linear in form, and its façade projects forward of the terrace to the west (Nos. 116-121) which makes it more prominent in the street scene than some shops when viewed from Old Steine to the west. It has one of the wider frontages (10.97m¹) onto St James's Street and the floor level is below that of pavement level, particularly at the eastern end. There are also 2 windows facing onto Charles Street. The shopping centre contains a considerable variety of retail and non-retail uses, including a number of convenience goods stores. Planning permissions for the mixed use redevelopment of Nos. 24, 25/26 and 29/30 St James's Street have been granted and the likely developer/occupier of 25/26 is Tesco. Work has not yet commenced on any of these schemes.

¹ Statement of Common Ground (SoCG) – para 7.5

6. There are only a few vacant units, some of which are being marketed. At the times my visits around midday/early afternoon the street had a vibrant air with significant numbers of pedestrians on both sides of St James's Street. Levels of pedestrian activity appeared to tail off from west to east and this is consistent with the western end being closer to the town centre and other local attractions, such as The Brighton Pavilion.

S78 appeal and Ground (a) of S174 appeal

Main issue

7. I consider that the main issue, in terms of the merits arguments, is the impact on the vitality and viability of the St James's Street (SJS) District Shopping Centre and whether the proposal would materially harm its retail function. I will consider this issue in the context of the prevailing local and national planning policies of relevance.
8. I am conscious of the weight of local objection which includes a number of petitions and individual letters. These objections make reference to the claimed harm in retail terms to the shopping centre which I will address under the main issue heading. However, objections are also raised for a number of other reasons, including the multi-national nature of the appellant (not an independent local business), competitive advantage and 'fair trading' policy. Whilst I appreciate that objectors feel strongly about these matters and have a right to express their views upon them, they do not form part of the planning policy tests before me². In this case, I am dealing with the nature of the use and not the particular user or company. The arguments, apart from those bearing on the main issue defined above, are therefore not material to my decision.

Planning policy

9. The development plan includes the Regional Spatial Strategy (RSS) for the South East - the South East Plan - adopted in May 2009. This provides general support for town centres in terms of promoting their vitality and viability and encouraging a wide range of services in a good environment, accessible to all. Brighton itself is identified as a regional hub.
10. The development plan also includes the Brighton and Hove Local Plan (LP) 2005. A number of policies from this plan have been mentioned in evidence, but it was agreed by the main parties that Policy SR5, concerning Town and District Shopping Centres, is the key policy for my consideration. This policy has been 'saved' by a direction of the Secretary of State dated 4 June 2008. The aim of this policy is to maintain and enhance the defined prime frontage of a number of shopping centres, including SJS. It goes on to set out 4 criteria to be applied when considering changes of use from Class A1 (retail) to A2 and A3 uses in the prime frontage. I will examine these below.
11. Supporting text to Policy SR5 is set out in paragraphs 6.25 and 6.26 of the LP. Paragraph 6.25 indicates that Town and District Centres serve community needs in terms of shopping and a range of non-retail uses such as cafes. A

² Paragraph 1.7 of PPS6 states "It is not the role of the planning system to restrict competition, preserve existing commercial interests or to prevent innovation"

more flexible approach is advocated, due to economic downturns and increased competition from out-of-centre retailing to help maintain and enhance vitality and viability. However, there should still be a predominance of at least 50% of retail (Class A1) units retained. I take this as applying to the centres as a whole and no other figure is given for parts of centres.

12. There is no other amplification of how to apply the policy and I understand that there is no Supplementary Planning Guidance (SPG) or Document (SPD) which provides further details or explanation of how Policy SR5 should be interpreted. I can therefore only interpret the policy on the basis of its actual wording and the supporting text.
13. I have taken account of the national policy guidance of relevance especially that contained in Planning Policy Statement (PPS) 6: Planning for Town Centres. The Government's key objective for town centres is to promote their vitality and viability³ and other objectives which flow from this are to enhance consumer choice by providing a range of shopping, leisure and local services for the entire community and to support efficient, competitive and innovative uses of this type⁴. Of particular relevance is paragraph 4.4 of PPS 6 which is headed "Measuring Vitality and Viability : Health Checks" which I shall consider below.
14. I have had regard to the consultation paper PPS 4: Planning for Prosperous Economies. This is intended to replace PPS6 but is only in draft form at present and cannot therefore outweigh the current extant advice in PPS6 at this time. Nevertheless, I do not see any specific tension between these two documents as applies to this development and the advice in PPS4 is consistent with the thrust of PPS6 in advocating the definition of primary and secondary frontages in town centres with policies making clear which uses will be permitted in such locations. Primary frontages should contain a high proportion of retail uses while secondary frontages provide a greater opportunity for flexibility and diversity of uses. In my view, Policy SR5 of the LP is generally consistent with the wording of both PPS6 and draft PPS4.

Reasons

15. The approach I shall adopt is to look firstly at Policy SR5 and the criterion applying to changes of use from A1 retail. It is common ground between the main parties that this is the development plan policy against which the development needs to be judged. It is also common ground that failure to meet any one of the 4 criteria would amount to a breach of policy and that, applying the statutory test⁵, the appeal should then be dismissed unless material considerations indicate otherwise. Having considered the policy in the light of the evidence submitted, I will then move on to look at other material considerations, including the mixed nature of the use, the health check guidelines from PPS6 and the attitude of the Council towards other mixed A1/A3 uses in the District Centre.

³ Para 1.3 of PPS6

⁴ Para 1.4 of PPS6

⁵ Section 38(6) of the Planning and Compulsory Purchase Act 2004

Policy SR5

Criterion (d)

16. I will start by dealing with criterion (d) which concerns the amenities of nearby occupiers. It is no part of the Council's case that this is contravened. Some local residents, including the occupier of 5 Charles Street who spoke at the inquiry, raised concerns about noise nuisance emanating from deliveries to the premises and the air-conditioning units. On the latter, I note that planning permission has now been given for these units subject to conditions which in my opinion provide the necessary degree of control and can be enforced. As I have already said, an acoustic screen has been erected as a baffle to noise emissions. On the former, the appellant is agreeable to a condition which restricts loading and unloading to SJS to certain times. This would preclude the use of Charles Street for deliveries which I understand has been a source of significant disturbance in the early hours of the morning. I will return to the details of any condition below but I am satisfied that a conditional planning permission would ensure that the requirements of criterion (d) are met.

Criterion (a)

17. I turn then to criterion (a) which requires a clear predominance of Class A1 uses to be maintained. There were conflicting submissions on the interpretation and scope of this test. For the Council it is argued that clear predominance should be applied to the prime frontage as a whole and also in the sense of parts of that frontage, where concentrations of non-retail use may exist. This was said to be justified on the basis of the professional approach adopted by the Council's experienced policy officers. For the appellant, the submission is that nowhere in the policy or any supporting text or any SPG is the interpretation that the test applies to parts of the centre or sections of the frontage made out. The Council draw attention to a previous appeal decision at 128 SJS to support their contention. Both main parties are in agreement that the comment in paragraph 6.25 that there should still be a predominance of at least 50% of retail units retained, applies to the District Centre as a whole.
18. Helpfully Sections 7.3 and 7.4 of the SoCG provide some agreed figures on the numbers of units in the centre as a whole and the prime frontage in retail and non-retail use. These figures have then been converted into percentages. Starting with the centre as a whole the present position, on the basis that No.115 has a present lawful use for A1 purposes, is that 58%⁶ of the units are in retail use. Should this appeal be allowed the swapping of one unit from retail to a mixed use would reduce the number of units in A1 use to 57%. Both main parties accept that this equates to a predominance of over 50% in line with the supporting text at paragraph 6.25.
19. As far as the prime frontage as whole is concerned the number of units in A1 use presently stands at 64%⁷. Should the appeal be allowed the percentage figure in retail use would drop to 63%. The planning witness for the Council said that her interpretation of 'clear predominance' would be a figure ideally of

⁶ 131 units in total in SJS District Centre of which 76 are in A1(retail) use and 55 in non-retail use (vacant units included in these figures)

⁷ 91 units in total in SJS prime frontage of which 58 are in A1 (retail) use and 33 in non-retail use (vacant units included in these figures)

over 60% or at least approaching that figure. In my view this has to be a matter of personal interpretation as there is nothing within the policy which actually sets down a numerical limit. However, the fact that the policy at criterion (a) uses the words "clear predominance" as opposed to just "predominance" suggests to me that the percentage should be more than just over 50%. In this case I consider that the figure of 63% would still show a clear predominance of A1 uses in the prime frontage as a whole – a view which is consistent with both the appellant's and the Council's submissions.

20. Turning to the final argument put forward by the Council in respect of this criterion, namely the need to examine parts of frontages, I can find no support whatsoever for this in the policy itself or the supporting text. The Council may wish to apply this test but the question that I need to answer is whether the policy provides any clear justification for such an approach. I can find none. The assertion that the Council's professional officers "drill down" in order to apply the test and in so doing exercise judgement, which they are quite used to doing, is no defence. For the policy to be applied and bite as the Council wish it would need to say so. It does not. The Council may wish that it did but it cannot simply make up tests to suit its arguments which seems to me to be what it is doing. In my opinion there is no requirement under criterion (a) to look at parts of frontages and I agree with the submission for the appellants that do so is confusing the application of criterion (b) with that of criterion (a). Consequently, I am inclined to conclude that criterion (a) would be met if planning permission were granted.
21. I have taken account of the views of the Council's Planning Policy Team in terms of consultation responses recorded in the officer's reports on both the planning application by the appellant and the pursuit of enforcement action. Response on the former indicates that criterion (a) is satisfied for the prime frontage as a whole but that there is some concern with the level of non-retail frontage in the area surrounding the appeal site. Response on the latter (by Carly Dockerill) only refers to non-compliance with criterion (b) of Policy SR5 with no mention of criterion (a). The Council submit that this is not a complete statement of her response but I have not been presented with any e-mail or formal note which contains broader comments. The purpose of both reports is to inform the decision-maker when making statutory decisions under the Act and should therefore be comprehensive in identifying harm. The policy comments in both reports do not state in terms that criterion (a) is contravened and this adds weight to my conclusion that it is met.
22. Despite this finding, I have gone on to consider what the percentage breakdown would be if the frontage between Old Steine and Madeira Place is chosen, which I find to be a totally arbitrary length of frontage to pick. The corrected figure as accepted by both main parties is that, if the appeal were allowed, there would be 10 units in retail use and 10 in non-retail use (50%) each. Whilst this would not be a clear predominance (which I have already concluded is not the policy test for parts of the prime frontage) it would still leave half the units remaining in retail use.
23. My attention was drawn to a decision of a colleague Inspector who dismissed an appeal for the expansion of the amusement centre at 126/127 SJS into No. 128. At paragraph 9 of her decision she looks at a section of SJS at the western end (Nos. 122-130) of which 4 out of the 7 units were in non-retail

use. She also comments on the length of non-retail frontage measuring 25m out of 46m. Her expressed opinion is that a predominance of A1 uses does not presently exist in this part of the prime frontage. Notwithstanding my view that there is no rationale for this approach when applying criterion (a), the situation before me is not the same as a 50/50 split remains even if the frontages chosen by the Council are considered rather than the majority being in non-retail use. Overall, I find that the Council's approach, even allowing for the appeal decision on No.128, is contrived. Bringing these points together, I conclude that criterion (a) would be met if planning permission were granted.

Criterion (b)

24. The application of criterion (b) has also led to differences of opinion as to the length of shopping frontage that should be measured. No definition of the words "shopping frontage" is given in the policy itself or the supporting text so this does not assist. The Council submit that the length of frontage should be limited to the continuous terraces or parades between streets and should not be carried over where streets intervene causing breaks. My attention was drawn to the Council's plan showing the defined prime frontages which do not include the streets in support. For the Council it is asserted that the calculations of frontage length should be carried across intervening streets but that the width of the street itself should be excluded. As I pointed out, a third alternative would be to include the street width as well but no party suggested that this approach should be followed.
25. As I have already said there is no guidance at the local level that I can apply and I do not consider it would be right to import the guidelines from other local planning authorities as was suggested for the appellant (Westminster City Council's framework). There is nothing at the national level which assists in terms of the specifics of calculation. I am inclined to favour the Council's approach bearing in mind that a street in itself causes a break in frontage continuity which would add to the overall gap between retail uses, where non-retail uses separate. On this basis, it was accepted as common ground that the combined width of the non-retail frontage would be 15.29m⁸. The road width of Charles Street at 5.27m is excluded. Criterion (b) requires the non-retail frontage to not exceed 15m. It was conceded for the appellant that if the Council's approach to calculating frontage length was accepted then this criterion was breached and this in itself amounted to conflict with Policy SR5. I agree, and find that this is the case. The fact that the breach is only of the order of 0.29m does not mean that it can be ignored but I will have regard to the quantum of this figure when looking at other material considerations.
26. I deal here with one other related point. The appellant cites an earlier appeal decision relating to 118 SJS where the Inspector referred to the 15m limit as a "useful guideline". I am conscious, however, on reading this decision as a whole that it was taken at a time when the LP was at a draft stage. The policy at that time was numbered SR6, which became Policy SR5, but when the decision was made it did not have the status of an adopted policy as now applies in terms of SR5. This has a significant bearing in that the present

⁸ No.115 (Starbucks) = 10.97m; No.114 (hot food take-away on opposite corner of Charles Street) = 4.32m; total 15.29m

policy is not just a “useful guideline” but an adopted policy with the full weight afforded by s38(6) of the Act.

Criterion (c)

27. The final criterion to consider is (c) which states that it (*the development*) would have a positive effect on the shopping environment of the area by encouraging combined trips and attracting pedestrian activity to the centre. For the appellant, I have been provided with surveys of pedestrian flows in SJS and relative patronage of 7 outlets, including Starbucks⁹. I also have details of pedestrian flows and patronage at the Hertford and Swindon branches of the company. Whilst they have some general relevance as background material, as the circumstances there are accepted as not being the same, I do not place any significant weight on the findings in these locations. I also have on behalf of the appellant results of a questionnaire survey of 200 customers conducted within the appeal premises.
28. The Council have provided no survey information of their own. For the third party objectors I have details of a questionnaire survey of 46 passers-by conducted by Cllr. Fryer at different dates and times. There is also some survey information from her and another local resident seeking to assess the breakdown between drink/eat in and take out trade. Set against this I have records of till receipts provided by the appellant for the period from June 2008 to March 2009 giving a breakdown of drink/eat in and take out sales¹⁰.
29. I start by analysing figures on pedestrian flow and patronage. The survey conducted for the appellant on 2 days in March shows that just over 2,000 people were passing the appeal premises on each of these days with an average of 13% visiting to make a purchase (patronage). In terms of footfall this figure compares favourably with results of footfall outside the other 3 A1 shops on the south side of SJS¹¹. It was argued for the Council that the footfall fell between the Sussex Beacon Charity Shop (No.130) at the western end of SJS to that outside the appeal premises but then rose again at the chemists (No.109) to the east. I do not consider that there is a marked drop and the range is limited with the pedestrian flows being from around 2,000 to 2,400 outside all 4 units surveyed on the south side of the street. On this basis alone I consider that the use by Starbucks is not acting as a material deterrent to pedestrian flow. Indeed, the footfall measured is generally consistent with what is occurring outside other shops in the street.
30. I have considered the much higher levels of footfall measured outside the 3 shops on the north side of the street¹². However, it appears that more people are using this side of the street for a number of reasons (wider pavement, pedestrian crossing point of Old Steine (from town centre) leads into north side, location of national chains/multiples, longer frontages). It is not therefore appropriate to compare these figures as they are not representative of the

⁹ Survey carried out by PMRS on Tuesday 24th and Wednesday 25 March 2009 between 09.00 and 17.00 – The survey points were outside 3 outlets on the north side of SJS (MIND charity shop, Boots chemists & The Money Exchange) and 4 on the south (Sussex Beacon charity shop, Stephen Bower chemists, a bakers and the appeal premises); the positions are spread from one end to the other of the Centre

¹⁰ SoCG – App 13

¹¹ The range of footfall is from 2,034 (Starbucks – Tues 24th) to 2,374 (Stephen Bower chemists – Wed 25th)

¹² The range of footfall (north side units) is from 10,092 (MIND charity shop – Tues 24th) to 3,574 (The Money Exchange – Wed 25th)

characteristics prevailing on the south side. It is also a reasonable conclusion based on the survey information and my own observations that there are higher flows and more pedestrian activity at the western end of SJS, closer to Brighton Town Centre and Brighton Pavilion, which are major attractors.

31. In terms of patronage, the average for Starbucks is 13% of passing footfall which is the second highest of all 7 outlets surveyed with only Sussex Beacon Charity shop showing a higher figure at 20%. I do not consider this to be surprising given the position of the latter at western edge of the Centre, closest to Old Steine. For the Council, there was some criticism of the types of shop or use chosen but I consider that the units surveyed are a reasonable mix of uses found within the Centre. I agree with the conclusion for the appellant that the results show that the appeal use is a significant attractor of pedestrian activity in SJS and that the patronage levels are relatively high compared to other uses surveyed. As a consequence, the use can only realistically be seen as one which contributes to pedestrian activity and vitality during the normal working day. Certainly, there is no evidence that the use has acted as a deterrent to pedestrian flows or that pedestrian activity has been stifled since its introduction.
32. As far as encouraging linked shopping trips is concerned, I have had regard to the customer survey carried out for Starbucks¹³. This was conducted by a market research expert and I have no reason to doubt the credibility of the methodology or the results. As I have already mentioned, the Council have produced no survey information of their own to set against these findings. The Council have commented that the survey reveals that only 6% were visiting SJS to shop. This is not correct. The 6% (or 12 people) is in answer to Qu.2a "What is the main purpose of your visit to SJS". 35% answered for work, 22.5% for leisure purposes and 18% to visit Starbucks. Qu.2b asked "What else will you be doing in SJS today". The answer to this included a variety of responses but 42 (21%) said for shopping/supermarket and a few other responses mentioned browsing/window shopping (3) and visiting a post office (2), off licence (1) or photo shop (1). So I conclude that over 20% of customers of Starbucks were also intending to visit shops in SJS and I consider that this amounts to a number of combined trips. It should also be noted that it is the vitality and viability of the Centre as a whole that I am concerned with and that combined trips were also noted in respect of other attractors in SJS (e.g. language school, dentist).
33. I have noted the high response (Qu.6a - 83.5%) of customers who consider that Starbucks adds to the vitality of the street but this has to be tempered by the fact that they are customers and presumably the vast majority are supportive of their presence and what is offered. Similarly, I am not surprised that 39% said they would visit SJS more often if they are actual customers already.
34. I have had regard to the survey of Cllr. Fryer which she says excludes those she knows signed the petition opposing the development and anyone she saw entering or leaving the premises. It is not clear to me exactly when these responses were obtained or how objectively the survey was conducted and it was not undertaken by a market research specialist. I accept from the

¹³ KJK Market Research Services conducted 200 interviews of customers on 5th and 6th May 2009

generality of the responses that the majority who live in the area (80% with BN2 postcode) were not in favour of another coffee shop of this size in SJS and wanted more shops. There were also a number of negative comments on the effects of Starbucks on the area. It is claimed by the objectors that this survey shows that the vast majority of local people do not feel that Starbucks has a positive effect on the area. I cannot except this as being the case given the limited number of people interviewed and the fact that those who might have just used or be about to use Starbucks were excluded.

35. Bringing these points together, the test under criterion (c) is whether the use has had a positive effect on the shopping environment encouraging combined trips and pedestrian activity. From the evidence before me this appears to be the case. I have no doubt there are those who would never frequent Starbucks in SJS or anywhere else for that matter for whatever reasons. However, because some feel that way should not be taken as a reason for prohibiting the choice of others. Criterion (c) does not require every person or even a majority to be attracted only for combined trips and pedestrian activity of a material amount to be generated. The evidence supports such a conclusion.
36. I have considered the argument for the Council that the use presents a dead frontage to SJS. I cannot agree. Whilst the goods for sale are not displayed in the window, the presence of people sitting and conversing inside does not present a bland or blank frontage which is typical of some non-retail uses such as an office where screens are erected behind the window to shield workers. I accept that looking down from pavement level into the café may deter some passers-by from lingering but overall the presence of people visible from the street adds to the overall vibrancy and vitality of the area. Moreover, the pedestrian flow figures before me do not suggest that people are avoiding walking past or into the premises. Hence, I do not consider that the dead frontage argument is made out.

Conclusions on Policy SR5

37. In concluding on Policy SR5, I find that the policy is satisfied in all respects save criterion (b) where the limit of 15m of non-retail frontage is exceeded by 0.29m. This means that the development is in conflict with the terms of the policy to this degree and it is necessary to examine other material considerations to see whether they outweigh the harm caused.

Other material considerations

Mixed use – retail element

38. The appellant's evidence on till receipts examined over a 9 month period is that 51% of trade is take out and 49% drink/eat in. I raised the question of whether one take out sale would be recorded as the same as a group sale to say 6 people staying in. However the figures used are monetary values and not individual transactions. On this basis it is clear that retail sales amount to about half of the total sales. Whilst this may primarily be in the form of hot coffee sales (as accepted for the appellant) it is still categorised as a retail use if the drink is taken away. I note that the proportion of take out trade appears to be considerably higher than some of the Starbuck operations or competing coffee outlets in other towns but I have no sound basis for questioning the authenticity of the figures before me, as accepted by the Council.

39. The objectors have carried out their own assessments. Cllr. Fryer's was limited to 7 people seen entering/leaving the premises of which she considers only 2 were purchasing take-out items. I cannot afford this ad hoc survey of 7 people the same weight as the detailed till receipts supplied by the appellant. Another objector (Mr Barrenechea) produced a survey carried out by 2 colleagues standing opposite the appeal premises on 30 April 2009 between 11.27 am and 12.47 pm. Of the 29 persons observed it is estimated that about 24% were taking away and 76% drinking/eating in. Again the sample number is limited and, as submitted for the appellant, confined to a particular time of day which may exclude a greater proportion of take out trade in the early morning.
40. Applying a level of rigour to the evidence presented, I consider that greater weight should be afforded to the more comprehensive survey for the appellant of actual sales. Moreover, even if I was to take the figure of 24% take out trade this is still significant and shows that the use contains a genuine element of retail use. In my view the degree of retail use shown, which is likely to be of the order of about 50%, is a material factor which weighs in favour of granting permission. This opinion accords with that of some other Inspector's whose decisions on coffee shops in other locations have been produced and where the proportion of retail trade was a lower percentage.

Health Check guidelines – PPS6

41. These are found at paragraph 4.4 (p.28) of PPS6. I have already dealt with pedestrian flows and the proportion of retail and non-retail uses. I consider that the centre shows a high diversity of uses with a good range of retail, eating/drinking, leisure and service businesses. I consider that the presence of at least 3 redevelopment sites where planning permissions have been obtained, including one for a Tesco store, demonstrates the potential capacity for growth in retail floorspace and other appropriate District Centre uses. These schemes may not have commenced but I consider that they show a level of investor confidence. Moreover, it was accepted by the Council that Tesco has now obtained a liquor licence and that the redevelopment planned at Nos. 25/26 is likely to proceed.
42. There are not a lot of major multiple retailers in the street but this is the nature of a District Centre; a concentration of such operators is not expected as they would be more likely to be represented in Brighton Town Centre. Nevertheless, the presence of Boots, Somerfield, the Co-op and the likely arrival of Tesco all goes to show that there is representation of some national retailers; there are also a number of independent convenience and comparison goods shops, including a large grocers store at the western end of the street. Vacancies are few (only 6 units out of 131 recorded with the possibility of others at Nos. 84 & 96). A number of these are being marketed (sales boards evident) and 3 of the largest in floorspace terms are subject to the permitted redevelopment schemes, which could preclude any long term letting/occupation.
43. My perception of the Centre is that it is vibrant and lively with few signs of any deterioration or decay. In saying that I am mindful from comparing the Council's 1996 and 2006 Retail Studies that economic performance in SJS has improved dramatically since the mid-1990's not least due to the investment in environmental improvements that have taken place. In 1996 the number of vacancies stood at 30 in the Centre as a whole of which 20 were in the prime

frontage; 22% of the premises were judged to be in poor condition. I also agree with the submission for the appellant that the change in fortunes is likely in some part to be due to the introduction of a more flexible and relaxed policy (as suggested in the 1996 Retail Study) in terms of permitting changes of use from retail to A3 uses.

44. In terms of rents, Cllr. Fryer said she spoke to 2 local traders who claimed that the rent quoted by the appellant (£50,000 p.a.) seemed to be high. One of these traders is said to have commented that another trader opposite the appeal premises running an off-licence was only paying £7,000 which was estimated to have about a quarter of the floor area of No.115. This is second or third hand evidence from people who were not called to give evidence at the inquiry to substantiate their claims. I have no objective analysis to show that the rent paid by Starbucks is excessive compared to others in SJS. Moreover, even using the figures given, a proportionate figure of rent for a quarter of the floorspace would be £12,000. The nature of No.115 with its broad frontage and projecting façade may provide good reason for why this unit attracts a higher proportionate rent of this order.
45. There is no evidence to show that since the introduction of Starbucks, rents have risen dramatically or that local traders have been forced out of business as a consequence. The level of vacancies (about 5-6%) is low and this suggests that interest in retail units in this location remains high. It was not suggested that there are long term problems in re-letting floorspace and, as I have already said a significant number of the vacant units are awaiting redevelopment which is under active consideration.
46. I have been presented with some anecdotal evidence regarding conversations between Cllr. Fryer and traders from 6 shops in SJS about current trading conditions. Again, as they did not appear to speak at the inquiry, I can only afford the claimed comments limited weight. 3 indicated that sales had remained the same over the past year, one that sales had dropped slightly and the other 2 that sales had gone down by about 50%. It has to be borne in mind that this is in a climate of severe recession; that 4 traders have either maintained their position more or less suggests that SJS is a relatively good trading location to be in at present. Overall, and bearing in mind that there could be many reasons for trade declining at the other 2 shops, I do not find this evidence as being indicative of harm to trading caused by the presence of Starbucks.
47. In conclusion, my findings on the application of the health checks is that they reveal that SJS has a relatively high level of vitality and viability and there is little sign of this being undermined by the presence of Starbucks over the past 12 months. The Centre appears to me to be robust and is a location where considerable investment is currently being contemplated. This is not a failing centre in any sense but one which I consider is performing remarkably well given the present national economic circumstances. These findings weigh in favour of granting planning permission.

Other mixed A1/A3 uses in SJS District Centre

48. The appellant's agent has drawn attention to the existence of 4 premises¹⁴ within the Centre which appear to contain a significant level of eat in café trade. Three of these have no planning permission for anything other than A1 use and another (No.100) had an appeal dismissed for A3 use but subsequently obtained conditional permission for a mixed A1/A3 use subject to the A3 use being confined to the rear garden. I have evidence from the appellant of the number of covers or seats provided within these premises all of which are significant and in my view go well beyond what could reasonably be argued as ancillary to A1 use.
49. I made my own observations at the premises. The Tea Cosy describes itself as a "Tea Room" and I could see a substantial number of tables and chairs through the window. It was said for the Council that 'memorabilia' is sold but I gained the impression from the described use and layout that it is functioning primarily as a café. I should add that the fact that it is independent and sells mainly tea rather than coffee is not a good reason for drawing a distinction from Starbucks in terms of the application of planning policy.
50. Options Deli had 5 tables and 5 bar stools in the front of the premises and therefore is providing considerable scope for eat in trade beyond what could reasonably be seen as *de minimis*. The Cherry Tree provides about 10 seats and 4 people were eating a meal at the time of my visit. Again this is indicative of an element of A3 use. Destination 100 appears to be operating in conflict with the imposed use condition as there are 5 tables and 10 chairs for eat-in customers in the front part of the shop, clearly visible through the window.
51. I am not considering the lawfulness of the uses taking place and it remains a matter for the Council to consider whether it is expedient to take enforcement action. Nevertheless, the circumstances I observed suggest that the Council may be acting inconsistently in its application of its retail policies in SJS. The fact that the planning authority appears to be tolerating significant levels of A3 use in other shops, including one where a previous appeal for such a use was dismissed and the conditional permission subsequently granted is not being complied with, does smack of partiality. Putting it another way, the Council does not appear to be unduly troubled by the existence of these mixed A1/A3 uses in the Centre and this adds weight to the argument in favour of a similar mixed use at the appeal premises.
52. I have taken account of the lack of marketing that took place of the appeal premises after the stationers vacated and before Starbucks moved in, having entered into a lease. I agree with the Council that this did not give any opportunity for interest in re-occupation by an A1 use to be considered. It may be that such a use would have come forward and the relative good health of the Centre suggests that this was certainly a possibility. I say this notwithstanding the general views of surveyors representing the appellant on current difficult letting conditions in Brighton as a whole¹⁵. However, there is no policy which says that No.115 must remain in retail use or that a diversity of uses cannot be beneficial to the Centre as a whole in terms of vitality and

¹⁴ The Tea Cosy - 3 George St; Options Deli - 117 SJS; The Cherry Tree Deli - 107 SJS; Destination 100 - 100 SJS

¹⁵ Letter dated 11 May 2009 from Monatgu Evans to Mr G Thomas (Estates and Construction Manager), Starbucks

viability. Paragraph 36 of C03/2005 concerning the Use Classes Order indicates that coffee shops should be considered on a case by case basis and there is no embargo on such uses in prime frontages.

53. I accept that SJS appears to be well provided with cafés, coffee shops and other eating and drinking establishments. There is no crying need for such a use but that does not mean that another is necessarily unacceptable. The appellant's agent was at pains to say why Starbucks provided a special 'offer' but it seemed to boil down to comfortable seating and leg room. I am not convinced that they offer something so unique that it cannot be found or provided in other establishments and I do not find that this in itself represents a persuasive reason for allowing the appeals. I would accept, however, that Starbucks does provide an attractive café environment (patronage bears this out) which appeals to a number of people, including local people and this adds to the overall vitality of the centre.
54. I have taken account of the number of people who have signed petitions opposing the development, which is said to number of just over 3,000, and the individual letters of objection sent at the application stage (400+). The addresses given show the vast majority living in this part of Brighton. However, it is clear to me that the nature of the appellant, being a multi-national company has generated a lot of animosity for a number of reasons and led to regular protests outside the premises since Starbucks opened. A campaign has been well orchestrated to oppose the use continuing. Notwithstanding these facts, and the potentially intimidatory presence of objectors outside, customers have still chosen to frequent the premises. It was also accepted that even 3,000 signatories is only about 10% of the adult population of the ward (Queen's Park). The remaining 90% are not registered as objectors. They may not support the development but they have not signalled their opposition. Finally, the weight of objection is not in itself a reason for dismissing the appeals. It is a question of the basis or grounds for objection in planning terms which I believe I have carefully considered above.

Overall conclusions on s78 and ground (a) appeals - conditions

55. The development fails to comply with criterion (b) of Policy SR5 of the LP and this conflict weighs against the granting of planning permission. Set against this the use taking place includes a significant element of retail use and makes a positive contribution towards pedestrian activity and the overall vitality of SJS District Centre which appears in a robust condition at present. There is no clear evidence of any material harm being caused to retailers by the presence of Starbucks trading in the Centre over the past year. In carrying out the necessary balancing exercise under s38(6) of the Act of weighing the harm flowing from the conflict with policy against other material considerations, I am mindful that the breach of policy is limited.
56. Notwithstanding the submissions for the Council, I consider that the extent of any breach should be carefully considered. In this case, the frontage length of non-retail use is only 0.29m above the limit of 15m. This is a very small excess and one which would be barely discernible to passers-by. I appreciate that another Inspector dismissing the appeal for A1/A3 use at 100 SJS¹⁶ where

¹⁶ APP/Q1445/A/06/2032138 – 100 St James's Street – Appeal dismissed 22 May 2007

the length of non-retail frontage was similar (15.3m) said the upper limit was absolute. However, he records that none of the other circumstances which had been brought to his attention outweighed the harm identified. In this case I consider that there are number of other material considerations which weigh in favour of granting permission. Based on my assessment above I find that there is no conflict with any other part of SR5 or any other local or national policy of relevance. I also have found no other demonstrable harm has arisen or would be likely to arise and that the vitality and viability of the Centre and its retail function is unlikely to be materially prejudiced should planning permission be granted and the use continues.

57. I have had regard to the statutory test in s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 that special attention should be paid to the desirability of preserving or enhancing the character or appearance of the East Cliff Conservation Area. I am satisfied that the use and the associated physical features (shopfront, signs, etc) meet this test by preserving the character and appearance of the conservation area.
58. Taking account of all these conclusions, I am satisfied that although some conflict with Policy SR5 is identified other material considerations indicate that the granting of conditional planning permission is justified and that a departure from strict adherence to this policy is warranted. I do not consider that this would set an unfortunate precedent as the policy itself remains and would still apply when considering any future proposals of a similar nature on their merits. I have had regard to all the other decisions referred to in Brighton, Hove and other towns but none of these alter my conclusions on this particular case.

Planning conditions

59. A list of agreed conditions (with the exception of unloading time restrictions) was tabled at the inquiry. I agree that it is necessary to limit the use of the building to avoid the upper floor being used for customer seating and to restrict the types of food sold to light refreshments only, to accord with the thrust of the retail policies applying. I will impose conditions to this effect. Restrictions on the hours of opening and a requirement that deliveries are confined to St James's Street (not Charles Street) between certain times are also necessary in the interests of the living conditions of nearby residents. As the loading/unloading could only take place in SJS, a busy commercial street containing uses open in the evening, and not the residential side roads, I consider that a reasonable restriction on delivery hours would be between 07.00 and 22.00. A condition is necessary to require details of refuse collection and I will expand this to include a 'backstop' of an appeal in the event that no details are agreed within a requisite period. I do not consider that conditions relating to the air-conditioning units are needed as they have already been imposed on the earlier planning permission that applies to this plant.
60. For the reasons given above I conclude that the appeals under s78 and ground (a) of s174 should succeed and conditional planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered. I will vary the wording of the notice, as described in paragraphs 1 and 2 above, before quashing it.

Formal Decisions

Appeal A: APP/Q1445/C/08/2092192

61. I direct that the enforcement notice be corrected at Section 3 by the deletion of the words under the heading "THE BREACH OF PLANNING CONTROL ALLEGED" and the substitution of the words "Unauthorised change of use from A1 (retail) to the A1/A3 mixed use as a coffee shop". I also direct that the fourth requirement at Section 5 of the notice be deleted in its entirety.
62. Subject to these corrections I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the change of use from A1 (retail) to the A1/A3 mixed use as a coffee shop on the land at 115 St James's Street, Brighton, BN2 1TH subject to the following conditions:
- 1) The first floor of the premises shall only be used for purposes ancillary to the approved A1/A3 mixed use and shall not be used for additional customer seating or floor space.
 - 2) The premises shall only be used for the sale of hot and cold drinks, sandwiches and light refreshments for consumption on or off the premises. No primary cooking of unprepared food shall be carried out on the premises.
 - 3) The premises shall only be open to the public between the hours of 07.00 to 22.00 on Mondays to Saturdays and the hours of 08.00 and 20.00 on Sundays.
 - 4) Loading and unloading of vehicles delivering goods to the premises shall only take place in St James's Street and no other side streets, including Charles Street. The loading and unloading shall only take place between the hours of 07.00 and 22.00 on any day.
 - 5) The use hereby permitted shall cease within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 1 month of the date of this decision details of refuse and recycling storage shall have been submitted for the written approval of the local planning authority;
 - ii) within 9 months of the date of this decision the details shall have been approved by the local planning authority or, if the local planning authority refuse the details, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State;
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State;
 - iv) the approved details shall have been carried out and completed within 1 month of receiving written approval and be retained thereafter so long as the use continues.

Appeal B: APP/Q1445/A/08/2090672

63. I allow the appeal, and grant planning permission for the change of use from A1 (retail) to the A1/A3 mixed use at 115 St James's Street, Brighton, BN2 1TH in accordance with the terms of the application, Ref BH2008/01039, dated 18 March 2008, and the plans submitted therewith, subject to the same conditions as set out in paragraph 62 above.

N P Freeman

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Morgan of Counsel, instructed by Pegasus Planning Group LLP, 2-10 Kings Parade, Clifton, Bristol, BS8 2RE

He called:

Mr J R Tarzey MRTPI Partner at Pegasus Planning Group LLP

FOR THE LOCAL PLANNING AUTHORITY:

Harriet Townsend of Counsel, instructed by the Head of Law, Brighton & Hove City Council

She called:

Mrs E Thomas MRTPI Senior Planning Officer (Planning Strategy & Projects team) with the Council

Mr C Smith Senior Planning & Investigation Officer with the Council

INTERESTED PERSONS:

Cllr. R Fryer City Ward Councillor (Queen's Park)

Mr J Barrenechea

Dr J Thomas

Mr Edmonds

Mr J Goodey

DOCUMENTS SUBMITTED AT THE INQUIRY

Doc 1 Council's letter of notification dated 20 May 2009 and listed of persons to whom it was sent

Doc 2 Statement of Common Ground (SoCG)

Doc 3 Opening statement on behalf of appellant

Doc 4 Vacant premises schedule (Council)

Doc 5 Letter from Head of Law at the Council (Hilary Woodward) to Pegasus Planning dated 5 June 2009 with attached planning permission re. 29 & 30 SJS dated 16 January 2008

Doc 6 Transcript (Council) re. *R oao Nero Holdings Ltd v SoS*

- Doc 7 Planning permission re. 100 SJS dated 25 February 2009
- Doc 8 Schedule of agreed application drawings
- Doc 9 E-mail from Chris Elphick (DC Planner) to Carly Dockerill (Policy Planner) dated 1 May 2008
- Doc 10 Submissions of Cllr. Fryer (statement and appendices)
- Doc 11 Submissions of Mr Barrenechea (statement, appendices and petition)
- Doc 12 Statement of Dr Thomas
- Doc 13 List of recommended planning conditions
- Doc 14 Closing submissions for the Council
- Doc 15 Closing submissions for the appellant

PLANS SUBMITTED AT THE INQUIRY

Plan A Ground floor internal layout plan - No.115 (Council)

PHOTOGRAPHS SUBMITTED AT THE INQUIRY

Photos showing the interior of No.115 (Council)



Planning & Development Ltd

APPENDIX 5



Appeal Decision

Inquiry held and site visit made on 30 November 2004

by David C Pinner BSc DipTP MRTP1

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
409 Rife Way
Winchester City Centre
2 The Square
Winchester City Centre
Winchester SO1 6AS
Tel: 0117 372 6512
e-mail: enquiries@planning
inspectorate.gsi.gov.uk

Date 18 DEC 2004

Appeal Ref: APP/L1765/C/04/1147130
107 High Street, Winchester, SO23 9AH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Caffè Nero Group PLC against an enforcement notice issued by Winchester City Council.
- The Council's reference is 03/00179.
- The notice was issued on 3 March 2004.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from use for the retail sale of goods other than hot food (falling within Class A1 of Part B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) to use for the sale of food and drink for consumption on the premises (falling within Class A3 of Part B above).
- The requirements of the notice are:
 - i) Cease the use of the land for the sale of food and drink for consumption on the premises [Class A3 of Part B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended], and
 - ii) Remove all fixtures, fittings and furnishings necessary for the preparation, presentation and consumption of food and drink on the premises.
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preamble

1. Normally in a case where ground (b) is pleaded, I would deal with that matter first because success on that ground would often lead to the enforcement notice being quashed. In this case, the ground (b) appeal is made on the basis that the alleged change of use has not taken place but that a different change of use has. This is claimed to be a mixed use comprising elements of uses that would individually fall within classes A1 and A3 described in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order). For convenience, I will refer to this as A1/A3 use, this being the convention adopted at the inquiry. The parties accepted that, if I agree that the use is A1/A3, the enforcement notice could be corrected without prejudice to either party, and that planning permission would be required for change of use to the mixed A1/A3 use. Therefore, whatever my conclusions on the ground (b) appeal, I have to consider the

planning merits of the case. I have therefore decided to deal with the appeal on ground (a) first.

Background

2. The appellant company operates nearly 200 speciality coffee shops throughout the country and is one of the three main companies involved in this business. The other two are Costa Coffee and Starbucks. Between them, they operate 900 coffee shops in all parts of the country. In 1997 Caffe Nero had only 5 establishments, Costa had about 30 and Starbucks had yet to enter the UK market.
3. The greatest part of Caffe Nero's business is selling speciality coffee both for consumption on and off the premises. This accounts for some 60% of the Company's turnover. Other hot and cold drinks account for 10% of turnover, sandwiches account for 15% and other cold food accounts for the remaining 15%. A small proportion of the food sold is reheated on the premises but none of it is cooked there. Tables and chairs are provided for those who wish to consume their purchases on the premises but there is no waiter service, cutlery is not provided and the tables are small. The average cost of a purchase is £2.80, usually including a hot drink costing around £1.80. There is a discount for customers wishing to consume their purchases elsewhere.
4. One of the main characteristics of the coffee shops operated by the appellant is that the range of products and the type of operation is basically the same in all of its establishments wherever in the country they are located. They operate primarily during the daytime to coincide with the times that other shops and businesses are open. They require a location with high pedestrian flows, thus many of their shops are in core shopping areas. The nature of the use is such that some planning authorities have accepted that it is an A1 retail use since shops selling sandwiches and hot drinks to take away are included in that Use Class. The existence of a few tables and chairs to allow customers to consume their purchases on the premises and some incidental sales of reheated food has been held not to take the use out of Class A1. In other cases, it has been held that the use is a mixed use comprising elements of Class A3 food and drink use and elements of Class A1 retail shop use – it is a matter of fact and degree, having regard to the circumstances of the particular case.
5. The rapid growth in the number of coffee shops since 1997 post-dates the Use Classes Order and the advice contained in Planning Policy Guidance Note 6 *Town Centres and Retail Developments* (PPG6). Many local plan shopping and town centre policies are based on the advice in PPG6 and so the niche market exploited by the coffee shop chains and their special requirements for prime retail locations and other places where there are high pedestrian flows have rarely been specifically addressed in local planning policies.

Main issue

6. The main issue is the effect of the coffee shop use on the viability and vitality of Winchester's Primary Shopping Area, having regard to relevant policy for the protection of its primary retail function.

Planning Policy

7. The site lies within the part of Winchester town centre which is identified as the Primary Shopping Area (PSA) in the Winchester District Local Plan. Policy W12 of the Local Plan aims to protect the retail function of the PSA and says that proposals that would result in a

net loss of retail floorspace will not normally be permitted. The use of the ground floor of a building in the PSA for a use falling within Use Class A3 will not normally be permitted unless the scheme would benefit, or at least maintain, the vitality, viability and retail attractiveness of the PSA. The explanatory text identifies factors such as pedestrian flows, customer draw and opening hours as being relevant to the assessment of the impact of a proposed use. Account will also be taken of the generally exceptional need for such a location. There is a further proviso that retail use would remain the predominant use within the immediate retail frontages. The explanatory text says that the retail frontages 25 metres either side of the site will be taken into account. Proposals that would result in more than 20% of the frontage being in non-retail use would not normally be permitted.

Reasons

8. The Council's only objection to the scheme is that they consider it to conflict with policy W12. At the inquiry, the Council's planning witness conceded that, if I were to conclude that the operation constituted a mixed A1/A3 use, it would be acceptable. It seems strange to me that the acceptability of the use as currently operating is dependant only on how I label it. Nevertheless, for the sake of argument, I have considered the use as being one to which policy W12 applies.
9. Evidence provided by the appellant demonstrates that the use attracts a significant flow of customers throughout the day. That is consistent with my own observations of the premises before and after the inquiry and during the lunchtime adjournment. Although there is no baseline figure to establish the number of customers drawn by the previous use of the premises as a fashion shop, in absolute terms there is no denying that the present use generates a lot of customer activity. I would be very surprised if any wholly A1 use occupying the same floorspace would attract so many more customers that it would be in a different league to the appealed use. Indeed, I consider it to be very likely that many A1 uses would attract significantly fewer customers. Pedestrian activity in this part of High Street may or may not be increased as a result of the presence of the coffee shop, but there is certainly no evidence to suggest that it has been reduced. I very much doubt that that would be the case. Survey evidence reveals that a significant number of customers have been attracted to the town centre by the presence of the coffee shop, so it has proved to be a draw in its own right.
10. The 25 metre either side assessment referred to in the explanation to policy W12 is not part of the policy itself. The Council's witness could not say whether this means of assessing the impact on the retail frontage has any scientific basis. I doubt that it has and I therefore regard it as being of limited value. Taken literally, it would preclude the use of any premises for non-A1 purposes if they happened to be towards the end of a run of shops. In my view, such a restriction would be difficult to justify simply as a matter of principle.
11. In this case, the Council has included the National Westminster Bank within the retail frontage. However, from its design, I would suggest that this particular building has never been part of the retail frontage and it should not, therefore, be taken into account in applying provision (a) of the policy, which relates specifically to the immediate retail frontage.
12. Without getting too bogged down in maths, only this property and the adjoining Alliance and Leicester Bank are not wholly in A1 use at ground floor level in a long run of buildings lying between the National Westminster Bank and the Abbey National Bank at

119-120 High Street. In my view, even if I were to conclude that the appeal premises no longer have a retail frontage, retail use remains the predominant use of the immediate retail frontage.

13. With regard to the reference in the explanatory text to the exceptional need for such a location (i.e. within the PSA) the Council interpreted this as meaning that there has to be an exceptional need for the use in such a location rather than that the use has an exceptional need to be in the PSA. They argue that there is no need for the use because there are already several A3 uses within the PSA, including some not at ground floor level.
14. My interpretation of the explanatory text is that it is the use that must have an exceptional need to be within the PSA. In that regard, I accept that, with a low spend per customer, a use such as this has to operate in a high turnover environment. It is not an evening or night time use and needs to be located within an area of high daytime activity, such as the PSA. It needs to be highly visible to potential customers and I think that a ground floor location is therefore essential to the success of the business.
15. Drawing these considerations together, it is my conclusion on the main issue that the current use of the appeal premises has no adverse effect on the vitality or viability of the PSA; it maintains pedestrian flows, it is a use which needs to be located at ground floor level within the PSA; it complements the retail function of the PSA and draws people into it, thereby increasing its attractiveness. The retail frontage remains predominantly retail. In all of these respects, irrespective of whether the use is categorised as A3 or a mixed A1/A3 use, I conclude that the present use of the premises accords with the provisions of Local Plan Policy W12 and is therefore acceptable.
16. In view of my conclusion on the appeal on ground (a), there is no need for me to consider the other grounds of appeal. For the record, however, I take the view that the 20% retail sales element of the use is significant in its own right and, had I considered it necessary to address the point in detail in this decision, I would have concluded that, as a matter of fact and degree, the premises are in mixed use. As the A1 element occupies the front of the premises, I would also have concluded that they retain a retail frontage. Although these matters are academic and are not part of my formal decision, they reinforce my conclusion that the appeal should succeed.

Conditions

17. In applying Policy W12, I have considered the particular circumstances of the appellant's use of the premises, irrespective of whether or not that use fits into any Use Class. The effects of the use on the retail function, vitality and viability of the PSA are likely to be unique to the current operator and for that reason I consider that the conditions suggested by the appellant are essential. In effect, these conditions restrict the use to the present use and make the permission personal to the appellant company. Thus, if they were to vacate the premises, the authorised use would revert to the previous A1 use. I have adapted suggested condition 2 to allow for cold food to be served within the premises and I have described the development as a reflection of the way the use is currently undertaken. As I have not found it necessary to reach a formal conclusion on the nature of the use, I have included a condition limiting the use to that for which I have granted planning permission.

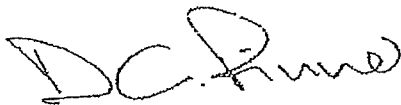
Conclusions

18. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Formal Decision

19. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of 107 High Street, Winchester as a coffee bar serving coffee, other hot and cold drinks, sandwiches and similar light refreshments for consumption on or off the premises as shown on the plan attached to the notice, subject to the following conditions:

- 1) the permission hereby granted shall enure only for the benefit of Caffè Nero PLC and its wholly owned subsidiaries;
- 2) 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;
- 3) no primary cooking of unprepared food shall be carried on within the premises. Only re-heated or cold food that has been prepared elsewhere shall be served within the premises;
- 4) the premises shall remain closed from 20:00hrs to 07:00hrs and no alcoholic drinks shall be displayed or served on the premises.



INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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He called:

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SO21 1NN

DOCUMENTS

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| Document 1 | List of persons present at the inquiry |
| Document 2 | Council's letter of notification of the inquiry and list of those notified |
| Document 3 | Annexes BP 1, 2 and 4 to Mr Price's proof of evidence |
| Document 4 | Petition in support of the appellant (Mr Price's Annex BP3) |
| Document 5 | Appendices A1 to A16 to Mr Arnold's proof of evidence |
| Document 6 | Statement of Common Ground |
| Document 7 | Planning application, correspondence and decision ref: 04/02305/FUL |
| Document 8 | Appendices 1 to d to Mr Crook's proof of evidence |
| Document 9 | Copy of planning permission W01541/54, 11/12 The Brooks, Winchester |