



Appeal Decision

Inquiry held on 22 October 2002

Accompanied site visit made on 22 October 2002

by A J J Street MA(Oxon) DipTP MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
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Date 02 DEC 2002

Appeal Ref: APP/F5540/C/02/1087789

Land at 192 Chiswick High Road, Chiswick, London

- 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 against an enforcement notice issued by the London Borough of Hounslow Council.
- The Council's reference is HF/P11.3453.
- The notice was issued on 18 February 2002.
- The breach of planning control as alleged in the notice is the material change of use of the premises to a café (A3) use.
- The requirements of the notice are cease the use of the premises as a café (A3) use.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the deemed application for planning permission does not fall to be considered.

Summary of Decision: The appeal is allowed and the notice is quashed.

PROCEDURAL MATTERS

1. After my accompanied site inspection I made an unaccompanied visit to the Costa Brothers premises at 181 Camden High Street, NW1, at the request of the Appellant Company.

APPEAL SITE AND SURROUNDINGS

2. No 192 Chiswick High Road lies within the busy Chiswick High Road shopping centre. It occupies a corner site at the junction with Elliot Road, a mainly residential street of terrace houses. The appeal site comprises the basement and ground floor of No 192. Above the appeal premises are three floors of self-contained flats.

CAFFÈ NERO

3. The Appellant Company told the inquiry that Caffè Nero (which means black coffee in Italian) trade specifically to meet the demand for speciality coffee in town centre locations. They say that they have 100 units spread across the country and that each operates on a similar basis. They describe their units as coffee bars or coffee shops and say that typically each one has a majority of sales in speciality coffee (in hot liquid form), no primary cooking activity, no table service and daytime opening hours.

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THE LAYOUT AND USE OF THE APPEAL PREMISES

4. There is little dispute between the parties as to the basic geography and statistics of the Appellant's use at the appeal site, which I summarise briefly below. The premises have a total floor area of about 100 square metres, split about equally between the two floors. Basement and ground floors both have a rectangular shape.
5. The ground floor is laid out as follows. The entrance door is on the south west corner. Display cabinets and the serving area occupy part of the long east wall. There is a queuing and circulation area in front of that and a staircase to the basement and a staff/customer toilet at the north end of the room. The rest of the ground floor is devoted to small tables and seating, with 24 seats in all. The approximate breakdown of the floorspace is as follows: display/serving area 18 %; queuing/circulation 26 %; seating 36 %; staircase 10%; and toilet 10 %. Outside on the pavement are tables and about 17 chairs, available for use in clement weather.
6. The basement is entirely taken up by small tables and seating, with benches, sofas and chairs, about 29 seats in all.
7. From the Company's records (two weeks in September 2002) the premises are patronised by about 450 customers a day, spending about £2.75 per purchase. A percentage breakdown of the sales is as follows: speciality coffees 59 %; other hot drinks 4 %; cold drinks 7 %; sandwiches (some toasted) and salads 14%; cakes, biscuits and pastries 14 %; re-heated food 1%.
8. The Appellant and the Council undertook a joint survey on Monday 16 September 2002 during the opening hours 07.00- 18.00 hrs. A total of 399 customers were recorded of whom 226 were eat-in customers (56.6%) and 173 were take away customers. The busiest three hours were 08.00 - 10.00 hrs with the numbers reducing progressively thereafter to 18.00 hrs. Take-away customers were in the majority up till 09.00 hrs but thereafter were in a minority.
9. The Council undertook their own survey in the week beginning 12 August 2002, taking counts at four periods on most days. The figures produced are broadly in line with those shown by the joint survey. One additional set of data were produced, concerning the number of customers seated in the premises at the start of each of the observation periods. A total of 296 seated customers were observed at the 20 observation times.

THE APPEAL AGAINST THE NOTICE ON GROUNDS (b) AND (c)

Background

10. I deal with these grounds of appeal together as the representations from the parties on them are closely inter-related.
11. For the appeal on ground (b) to succeed the Appellant has to show, as a matter of fact, that the matters stated in the notice, that is the material change of use of the premises to a café (A3) use, has not occurred. For the appeal on ground (c) to succeed the Appellant Company has to show that the matters stated in the notice do not constitute a breach of planning control. The onus is on the Appellant to prove its case.

12. There is no dispute between the parties that the lawful use of the premises is a use for purposes falling within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (the UCO). The long established use of the premises has been as a hairdressers shop (Class A1.(e)).
13. There is also no dispute that the whole of the premises; ground floor and basement, forms the appropriate planning unit for the consideration of matters relating to changes of use.
14. The relevant parts of the UCO and of Circular 13/87, which gives Government advice on that UCO, are as follows. "Class A1. Shops" refers to use for all or any of 9 different purposes, including: "(a) for the retail sale of goods other than hot food" ... and "(d) for the sale of sandwiches or other cold food for consumption off the premises". In respect of each of the 9 categories Class A1 says that the use is one where "the sale, display or service is to visiting members of the public". "Class A3. Food and drink" says "use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises".
15. Paragraph 3 of Circular 13/87 explains that the aim of the UCO is twofold: to reduce the number of classes while retaining effective control over changes of use that, because of environmental consequences or relationships with other uses need to be subject to specific planning applications; and to ensure that the scope of each class is wide enough to take in changes that generally do not need to be the subject of specific planning control.
16. The Circular reminds readers that in considering whether a material change of use has occurred it is necessary to consider first the existing primary use and that "it is the main purpose of the use that has to be considered". In connection with this point and referring to Class A1 the Circular notes, at paragraph 17, that "a sandwich bar does not cease to be in the shops class merely because it also sells hot drinks or if a few customers eat on the premises". Paragraph 19 refers to the (then) new food and drink class and indicates that it brings together establishments previously treated as sui generis like hot food shops, restaurants, cafes, snack bars, wine bars and public houses. It says that the new class reflects the breaking down of the traditional boundaries between different types of premises and will enable the catering trade to adapt to changing trends and demands with greater speed and certainty in premises where the potential environmental nuisances such as smell, traffic and parking have already been accepted. It also refers to the need to consider the option of granting planning permission subject to conditions in cases where serious environmental problems are envisaged.

The Cases

17. Very briefly the main points of the cases advanced by the main parties in regard to the appeals on grounds (b) and (c) are as follows.

The Appellant

18. The Appellant says that the company's purpose is the retail sale of coffee and whether it is served on or off their premises is of no concern in the context of the UCO. On a correct reading of the UCO the serving or drinking of coffee could fall within Class A1 or Class A3. The UCO does not adopt a "priority" approach. The Council's "legalistic" emphasis on the bare words of Class A3 is incorrect. The proper way to determine which use class, if

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any, the use at No 192 falls into is to decide, having looked at a range of factors, into which use class it fits most comfortably.

19. In this regard a number of planning appeal decisions have been examined. This analysis has revealed a number of factors that have led Planning Inspectors to conclude that an establishment operates within Class A3. These include: the provision of a range of hot foods, food cooked on the premises, waiter/waitress service, external consequences such as smell or parking problems, the impression created that the purpose is to serve food and drink. The Caffè Nero operation has none of these characteristics and this is powerful evidence that the use does not fall within Class A3.
20. A number of factors have led Inspectors to conclude that an establishment operates within Class A1, shops. These include: cases where the sale of speciality coffees for consumption on or off the premises is the predominant use of the premises; where no external harm is caused; where the character of the use could be distinguished from the normal expectation of a café or restaurant. The use at the appeal site has all of these characteristics and this is further powerful evidence that it falls within Class A1.
21. Reliance is placed upon two appeal decisions in particular as supporting the Appellant's case. These are, first the appeal by Costa Brothers Coffee Company relating to 181 Camden High Street, NW1 (the Costa case) and second, the appeal by Cornerstones Coffee Company relating to 178 Fulham Road, SW10 (the Cornerstones case). These establishments and their uses are very similar to the appeal operation. In each of the two cases the predominant use was found to be speciality coffee sales, whether on or off the site, and the presence of numbers of chairs and tables on the premises and the occurrence of significant on-site consumption was not found to be critical.
22. The appeal decisions submitted by the Council do not undermine the Appellant's case.
23. Overall it is concluded that the use of the appeal site falls squarely within Class A1. It is a coffee shop not a café. The appeals on grounds (b) and (c) should succeed.
24. If it is concluded that the use is not A1 then it must be a mixed use - 43 % of customers buying refreshments for consumption off the premises is far too big to be an ancillary use. If it is found that the use is a mixed use then the appeal on ground (b) would succeed but it is agreed that, if the notice were corrected to refer to a mixed use, then the appeal on ground (c) would fail. It would cause injustice to the Appellant if the notice were to be corrected and if the notice were then upheld. The Appellant's case has been based on the fact that the breach alleged is a material change to an A3 use. Had the allegation been of a mixed use the Appellant would have appealed on ground (a) and the outcome of the appeal might well have been different. Accordingly in the mixed use situation the notice should be quashed.

The Council

25. The Council say that the determination as to the use class, if any, into which the establishment falls must start with the bare words of Classes A1 and A3 of the UCO. The primary use of the appeal premises is plainly a use for the sale of food or drink for consumption on the premises - the survey shows that well over half of the customers consume food or drink on the premises. A look at the UCO puts the use squarely within Class A3. Class A1 does not provide for the sale of food or drink on the premises. The sale of coffee is the sale of drink. It matters not that the predominant use may be the sale of

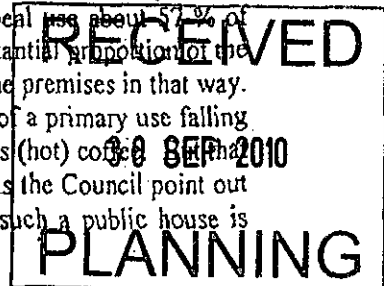
drink and that little food is sold. Wine bars and public houses that do not serve food are selling drink only and no one would deny that they fall within Class A3. A use can be within Class A3 even if it is materially different from a restaurant or public house – if it falls within the orbit of Class A3. It matters not that there is no primary cooking – the UCO says nothing of cooking.

26. In a situation where a use might be a restaurant or might be a sandwich bar where some customers eat on the premises it is relevant to consider, inter alia, whether the use has the tell-tale signs of a restaurant, such as primary cooking, fumes, waiters, laid tables and so on. But these are not necessary features of an A3 use. A use can be for the consumption of food on the premises without any of these elements. Likewise a use does not have to create environmental or amenity problems to fall within A3.
27. The question that must be considered is whether the predominant use is for the consumption of food or drink on the premises. In assessing that the best test is the activity the use generates. It is customer movement that has the impact on the environment. The joint survey shows clearly that a good majority of customers consume their purchases on the premises. That is a powerful if not compelling indicator that the use is A3.
28. The layout of the premises, the large number of seats and the survey evidence of considerable use of those seats again is a strong indicator of A3 use, albeit not decisive on its own.
29. The appeal decisions relied upon by the Appellant do not support the appeal. For example, in both the Costa case and the Cornerstones case the Inspector's views as to what constitutes the primary purpose and the primary use of those premises cannot be right – as the Inspectors do not consider the vital question as to whether the use for the sale of coffee is a use for consumption on or off the premises. Those decisions as a whole may not be wrong but the reasoning within them as to the primary use must be incorrect.
30. Overall, the use of the premises is as a café, falling within Class A3, and the appeals on (b) and (c) should fail. If the Inspector does not agree that the predominant use is A3 he must consider whether or not the use is mixed – it cannot be A1. If he concludes it is a mixed use then the Council accept that the allegation in the notice cannot be corrected without causing injustice to the Appellant. In those circumstances the Inspector should make clear that the appeal on ground (c) would have failed.

Reasons

The Use Classes Order

31. I first give some consideration to the terms of the UCO in relation to this case. Class A3 requires that uses falling within it involve the consumption of food or drink on the premises concerned or of hot food off the premises. In the case of the appeal use about 57% of customers consumed their purchases on the premises. That is a substantial proportion of the total of customers and it represents a large number of people using the premises in that way. In my view this situation points strongly to the presence on the site of a primary use falling within Class A3. The Appellant emphasises that the main purchase is (hot) coffee. The Council point out many public houses do not serve food and the sale of drink by such a public house is usually regarded as a use falling within Class A3.



32. I accept that the wording of Class A1, "Shops", does not say specifically, under the heading Class A1.(a), that the retail sale of goods other than hot food is of goods for consumption off the premises only. But the goods sold by most conventional shops, including food shops, is obviously intended for consumption or use off the premises only. Moreover where Class A1 does refer to the sale of food items, that is under Class A1.(d), it does specify that the sale is for consumption off the premises. Furthermore it seems to me that if the authors of the UCO had intended that serving or drinking coffee could fall within either Class A1 or Class A3, regardless of whether the drink was being consumed on or off the premises, they would not have drafted Class A3 in the way that they have done, since they would have realised that they were creating a conflicting provision. Had it been intended that coffee should be regarded as a "special case" in the context of "drink" I would have expected the UCO to say so.
33. These considerations lead me to take the view that the intention of the UCO is that primary uses for the sale of food or drink for consumption on the premises are to be regarded as falling within Class A3 and not Class A1. I find nothing in the advice in Circular 13/87, including paragraph 17, to suggest otherwise.

The Appearance and Layout of the Premises

34. Turning to the question of the appearance and layout of the appeal premises I saw at my inspection that substantial and prominent parts of the ground floor are occupied by tables and chairs and that the whole of the basement, apart from the small store and cleaners rooms, is devoted to tables and chairs. The standard of furnishing and décor is good and the place has a comfortable and relaxing atmosphere. The whole establishment gave me the feeling of a place where refreshments are taken. As I have indicated above appreciably more than half of the customers consume their purchases on the premises and the spot surveys indicate that sizeable numbers of people are to be found sitting there throughout the day. In this establishment of modest size I consider that the numbers involved will be very apparent in the rooms. By contrast the amount of floorspace devoted to the display of goods for sale is quite limited. The premises have little of the appearance of a shop. Even the two sizeable boards on the walls of the ground floor, advertising the drinks and foods for sale, gave me the feeling of a place where refreshments are taken rather than of a shop. In all these circumstances I am strongly of the view that the man or woman in the street walking around the premises would conclude that he or she was in some form of café rather than in a shop.

The Nature of the Refreshments and Service Provided

35. In support of the case that the appeal premises are in A1, use the Appellant drew my attention to matters like the limited range of food on offer, particularly hot food, to the fact that there is very little food preparation or handling, to the absence of waiting staff and laid tables and to the early closing time.
36. Certainly these factors strongly support the view that the premises are not a restaurant. But they do not rule out the view that the enterprise is some other form of A3 use and they do nothing to show that a shop use exists.
37. Basically what the premises offer the customers is a wide range of quality coffees and a limited range of snacks. Moreover the snacks on offer include items like hot soup and pannini and although the service is cafeteria-style customers who choose to take

refreshment on the premises can drink and eat in some comfort. Although the shortness of the menu and perhaps the smallness of the tables does not encourage people to stay eating and drinking for long periods the establishment offers a comfortable spot for a coffee break or a mealtime during a working or shopping day. I find that in terms of the range of refreshments and the service offered to customers on the premises the use can reasonably be described as a "café". Although distinguished to a degree from earlier forms of café by the quality and range of the coffees provided I take the view that the premises have much of the character of a traditional high street café, tea room or coffee bar, uses of the kind that are normally found within use Class A3.

The Impact of the Use on the Surroundings

38. The Appellant Company said that the appeal use does not have any damaging effects on its surroundings or on local amenity, unlike most uses falling within Class A3.
39. As there is no appeal on ground (a) in this case matters relating to the environmental and amenity impact, if any, of the establishment were not considered in depth at the inquiry. I offer no formal comments on those matters at all here, as I would not wish to prejudice any future consideration of planning merits.
40. However a number of points relating to the impact of the use need to be made here. It is the case that no fume extraction equipment is needed or used and so no problems of fumes or fan noise arise. The premises do not stay open late at night and so the problems associated with some late night uses do not arise either. However in my opinion all such considerations as these are of limited relevance in the determination of the appeals on grounds (b) and (c) or in the determination of the use class into which this branch of Caffè Nero falls. No doubt many uses falling within Class A3 do create problems for their neighbours. But uses do not have to generate environmental or amenity problems to fall within Class A3. The UCO and the advice in Circular 13/87 makes no such stipulation and I am in no doubt that many traditional tea rooms and cafés in town centres up and down the country, that would be regarded as A3 uses because they sell food and drink for consumption on the premises, cause no serious amenity or other problems.
41. With regard to the general question of environmental harm the Appellant has drawn my attention to one point about the recent appeal relating to a fast food outlet at 271 High Street, Orpington. This point concerns a view expressed by the Inspector in that case. The Inspector says that for him one implication of what is said in paragraph 19 of Circular 13/87 is that Class A1.(d) of the UCO refers to food outlets that possess little potential for environmental harm of the kind attributed to A3 uses. I note that remark but it has very little relevance to the present case. Class A1.(d) covers, in terms, uses for the sale of sandwiches or other cold food for consumption off the premises. The use at the appeal site is quite clearly radically different from such a use and so any implication about Class A1.(d) that the Inspector detected have no bearing on the case before me.

Other Appeal Decisions

42. Considerable weight was attached by both main parties to a sizeable number of appeal decisions that they put to me for consideration. The view of each side was that the case that the side was putting to me contained strong pointers as to how I should determine the current appeal. Attention at the inquiry focussed on two particular cases put in by the Appellant company, the Costa and Cornerstones cases, but I have considered all of the

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representations made about all of the cases. It is of course my duty to consider the present case on its own particular merits and this I have done. But the other appeal decisions are a material consideration.

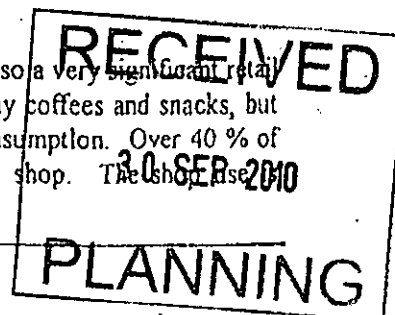
43. I recognise that the representations made about all of these cases were of general assistance to the inquiry, in that for example they indicated the sorts of considerations that have been found by other parties in other cases to be relevant -- or not relevant -- to the determination of ground (b) and (c) appeals relating to Class A1 and A3 and other uses. They also illustrated the great range of different sorts and conditions of food and drink and related establishments that now exist up and down the country. But, for a number of reasons, I found all of these cases to be of very limited direct assistance.
44. With regard to the other cases all that has been put to me is the appeal decision letters and the respective representations made about them by the main parties in the present appeal. I make no complaint about this but inevitably the letters contain much less information about the appeals concerned than I have available to me in connection with the current appeal. Inevitably too the parties in the present appeal can only speak second hand, usually, about the other cases. To be more specific, the Costa case decision has very little information about the percentages of sales consumed on site and off site, information that is of considerable relevance in the present case. Again in respect of the Costa case the decision letter deals very briefly with the reasoning behind the Inspector's view that the primary purpose of the premises was the sale of cold food and hot and cold drinks for consumption on and off the premises together with dry goods and so on. The letter refers to paragraph 17 of Circular 13/87 but that is of limited assistance. The letter says nothing about the significance, if any, of where food items purchased are consumed, in the context of the wording of use Classes A1 and A3, a matter that featured extensively in the representations made to me about the present case. The letter also gives no specific reasons to back up the view that the presence of tables and chairs in some numbers did not constitute a café use. The significance of seating facilities was another matter of considerable debate in the case before me. The parties who received that decision in 1998 evidently found it satisfactory. But without their background knowledge, and four year later, I am left uncertain about very important matters. In the circumstances I can attach little weight, in determining the present appeal, to the Inspector's findings, even though I have the benefit, in that particular case, of an unaccompanied visit. I have similar problems in considering the other cases put to me by both sides.
45. There is a further substantial problem: assessing the extent to which the circumstances of the other cases put to me match those of the case before me for decision and therefore the extent to which conclusions reached in the other cases may be applicable to the case before me. The Cornerstones case illustrates this problem. It appears from the decision letter that a significant majority of the customers at that establishment were take-away customers. That is substantially different from the situation in the case before me. At Cornerstones there was seating for 20; at the appeal site the figure is nearly 70. It is very difficult to judge the significance of these differences in the context of the present appeal. I have found similar difficulties in considering the other decisions put to me, including the case submitted by the Council, relating to 146 Gloucester Road, SW 7, where there is also a High Court judgement. These considerations make it difficult for me, when making my decision, to attach much weight to the other appeal decisions.

Other matters

46. The Appellant put to the inquiry that the majority of the 650 or so outlets operated by Starbucks, Costa Brothers, Coffee Republic and Caffè Nero throughout the country trade as Class A1 uses and that that situation has been accepted by local planning authorities. It was said that these outlets were all very similar. The Appellant said that it was very undesirable for the same uses to be treated differently by different Councils. It was also put that in the case of Caffè Nero the Class A1 status of the outlets had been accepted by Councils all over the country and that on the few occasions when local planning authorities had queried the A1 use they had subsequently accepted it.
47. I appreciate the Appellant's general point. However I have almost no information about the mass of sites brought into the debate or about the extent to which the use class status of them has been a sensitive issue meriting attention by local planning authorities. I note too the Appellant's evidence that the company's offer remains essentially the same in all locations but that the size and character of individual towns or business centres determines the proportion of sales consumed on or off the premises. This raises the possibility that there could be material differences in the character of the use of different Caffè Nero outlets. In all these circumstances I attach little weight to these representations in support of the (b) and (c) appeals.
48. It was put for the Appellant that the Caffè Nero concept had not been invented in 1987 but that if it had been modern coffee shops would have been recognised as a Class A1 use because they had no harmful amenity or environmental effects. That speculation may or may not be right but it is not relevant to the present appeal. The UCO remains unchanged as far as food and drink establishments are concerned.

Overall Findings

49. Finally I turn to the main matter, that is the overall planning use of the premises at the date of the notice. Here I weigh all of the matters set out separately above.
50. The Appellant submits that the main purpose of this Caffè Nero outlet is the sale of coffee and its drinking, whether on the premises or off. I note that but it does not take things far enough.
51. I have no doubt that one main purpose of the use of the premises can be identified. Coffee and snacks are consumed on the premises on such a scale and in such a manner as to constitute, as a matter of fact and degree, a primary use of the land, not ancillary to any other activity. Well over half of the customers of the enterprise consume drink and food there. More than 60 % of the floorspace is devoted to seating accommodation. A range of drinks and snacks are available to be consumed on site. The layout and furnishings of the place have the character and appearance of some sort of café use. When put together these considerations point to the existence of a primary A3 use at the premises, a use for the sale of food or drink for consumption on the premises.
52. However that is not the only activity at the appeal site. There is also a very significant retail sales activity. This is largely in the form of the sale of take-away coffees and snacks, but there is also a limited sale of "dry goods" not for immediate consumption. Over 40 % of the customers of the unit use it in this way as a conventional shop. The shop is used as a conventional shop.



manifested on the ground floor of the premises by the display cabinets showing food and drink items that may be purchased for consumption on or off the premises and by the small display of "dry" goods such as packs of ground coffee for sale.

53. The A3 café - style use and the retail activity are clearly distinct in planning terms. The A3 use has customers on the premises, and some of them in good weather on the pavement outside as well, using almost all of the floorspace, for significant periods. Because of these characteristics the use has the potential to impact on local amenity and the local environment. By contrast the customers who use the premises as a shop use only a small part of the premises and are in and out much more rapidly.
54. The café use and the shop activity are also interlinked to some extent - they both use some parts of the ground floor, the coffee making and food handling serves both eat-in and take-away customers and most of the menu can be enjoyed by both.
55. I have given careful consideration to the question whether the shop activity represents a separate primary use of the land, and thus is part of a mixed use, or is an ancillary or incidental to the primary A3 use. I consider the shopping activity, involving over 40 % of the total customers, to be too substantial to be a mere incidental to the café use. I accept the principle that an ancillary activity can be quite large yet still subservient to, or parasitic on, a single main purpose. I also accept the principle that where there is mixed use with two primary uses the two uses can be of substantially different sizes. It seems to me that in this case the premises are used by one occupier who carries on two distinct activities and that it is really impossible to say whether the shop use is ancillary to the café use or not. In the circumstances I find, as a matter of fact and degree, that the current use of the site is a mixed use for the sale of food and drink for consumption on the premises, a use falling within Class A3 of the UCO, and for the retail sale of goods, a use within Class A1 of the UCO.
56. Regarding the appeal on ground (c) I find, as a matter of fact and degree, that the change of use of the premises from a hairdressers shop to the mixed use that I have just described, has involved a material change of use of the premises, for which express planning permission is required and has not been obtained. The ground (c) appeal would fail for that reason. With regard to the appeal on ground (b) I find as a fact that the change of use alleged in the notice has not occurred. In that circumstance it is open to me to consider correcting the notice to allege a material change of use to the mixed use that I have found to exist. However it is considered by both the Appellant and the Council that the notice cannot be corrected in that way by me because it would cause injustice to the Appellant. I accept that point, for the reasons the Appellant gives. As I cannot correct the allegation in the notice the appeal against the notice as a whole must succeed and I shall quash it.

Conclusions

57. For the reasons given above and having regard to all other matters raised, I consider that the appeal should succeed. Accordingly the enforcement notice will be quashed.

THE APPEAL AGAINST THE NOTICE ON GROUND (f)

58. As the notice is to be quashed the appeal on ground (f) does not fall to be considered.

FORMAL DECISION

59. In exercise of the powers transferred to me, I allow the appeal and direct that the enforcement notice be quashed.

INFORMATION

60. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

INSPECTOR

APPEARANCES

For the Appellant

Mr James Findlay - Of Counsel, instructed by Caffè Nero plc

He called:

Mr B Price MICA - Financial Director, Caffè Nero plc

Mr P Ellis DipTP MRTPI - Consultant Chartered Town Planner

For the Council

Mr Richard Langham - Of Counsel, instructed by the Borough Solicitor

He called:

Mr A Beamish BA DipTP MRTPI - Principal Enforcement Officer

Interested Person

Mr P Eversden - 40 Abinger Road London W4 1EX
Chiswick Protection Group

DOCUMENTS

Document 1 - List of persons present at the inquiry

Document 2 - Notice of inquiry and circulation list

Document 3 - Note of closing submissions for the Appellant

Document 4 - Note of closing submissions for the Council

Document 5 - Proof of evidence and Appendices - Mr Price

Document 6 - Proof of evidence and Appendices - Mr Ellis

Document 7 - Proof of evidence and Appendices - Mr Beamish

Document 8 - Copy of letter to the Appellant, put in for the Council

PLAN

Plan A - Enforcement notice plan