



# Appeal Decision *ALLOWED*

Hearing held on 14 October 2003

By **Michael Hurley** BA DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date **20 OCT 2003**

**Appeal Ref: APP/X5210/A/03/1115320/P7**

**No 15A Swains Lane, Highgate, London N6 6QX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Alexandru Dudnic against the Camden London Borough Council.
- The application (Ref. PEX0200982/R1) is dated 13 November 2002.
- The development proposed is change of use to restaurant (A3).

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

## Procedural Matters

1. At the Hearing an application for costs was made by the appellant against the Camden London borough Council. This application is the subject of a separate decision.
2. After the appeal had been lodged, the Council issued a purported decision to refuse planning permission.

## Main Issues

3. From my inspection of the site and from the representations made, I consider that the main issues in this case are:

whether the proposed development would detract from the variety, vitality or viability of the Swains Lane Neighbourhood Centre; and

whether the proposed development would have an adverse impact on residential amenity.

## Planning Policy

4. The Council rely on two policies in the Camden Unitary Development Plan 2000 (UDP). Policy SH18 lists a number of matters that are to be taken into account when considering applications for the introduction of Class A3 ("Food and Drink") uses. These include the existing number and distribution of such uses. The policy seeks to avoid harmful effects that could arise from the cumulative loss of retail outlets, and from increased traffic and parking. It also indicates that, where appropriate, planning conditions may be imposed to control such matters as the hours of operation, noise and disturbance, and the storage and disposal of refuse. Policy RE2 of the UDP provides that development should not have an adverse impact on residential amenity, on the environment, or on the safety and efficiency of transport systems.

## Reasons

5. The appeal premises form part of the Swains Lane Neighbourhood Centre, which contains some 23 shop units and a public house. The centre is situated at the edge of Hampstead Heath and lies within the Holly Lodge Estate Conservation Area. It is compact, and has a distinctive village-like character.
6. At the time of the hearing 4 of the shop units were in Class A3 use. These include the Café Mozart at No 17 Swains Lane, immediately adjacent to the appeal premises. I understand that the existing food and drink outlets are in great demand, and that it is sometimes difficult to get a table.
7. However, retail uses predominate in this centre. These currently include two small supermarkets; a butcher; a greengrocer; a newsagent; a chemist; a post office; a florist; a hardware shop; an off-licence; a video shop; a take-away sandwich bar; a charity shop; a hairdresser; and a beautician. There is also an estate agency and a solicitor's office. At the time of my visit there was one vacant unit.
8. Until recently, the appeal premises were occupied by a dry cleaners; but they are now used by the appellant as a delicatessen. There are a few tables at which customers can take coffee and cold snacks. The proposal is for a restaurant, with seating for about 48 customers. Hot meals would be prepared in a separate kitchen at the rear of the building. The application plans contain proposals for a new shopfront, a glazed shelter between the restaurant and the kitchen, and an air extraction system with a vent pipe mounted on the kitchen roof.
9. The Council are concerned that the Swains Lane Neighbourhood Centre should retain a viable core of retail outlets, a view that is shared by a number of local people. At present this centre has a good variety of shops and provides a valuable asset to the local community. If it were given over predominantly to eating places, much of this benefit would be lost. The Council argue that a line should be drawn, beyond which the introduction of further Class A3 uses should not be permitted. The point at which that line is drawn must depend upon the exercise of judgement, and may appear somewhat arbitrary. The UDP provides no quantitative guidance on this matter.
10. However, I am not satisfied that the development currently proposed would do significant harm to the variety, vitality or viability of the centre. Over 70% of the shop units would remain available for retail use. In the absence of a clear policy to the contrary, I consider this to be an acceptable proportion of retail uses in a neighbourhood centre. There is no evidence to suggest that fewer people would visit Swains Lane as a result of the proposed development. Nor is there evidence to suggest that the trade of the remaining retail outlets would be likely to suffer; or that local people would have to travel significantly further for their everyday retail needs. If there is sufficient effective demand, the vacant unit at No 11A Swains Lane could be used to expand the present range of retail outlets.
11. The evidence suggests that there is a strong demand for the proposed restaurant. In my view, the proposed use would add to the vitality of Swains Lane and stimulate competition. On balance, I consider that it would be beneficial.
12. Turning to the second issue, I have considered the effect that the proposed development would have on residential amenity. The residents most directly affected would be the



occupiers of the first and second floor accommodation above the appeal premises, who already live immediately adjacent to the Café Mozart. I understand that they do not object the proposed development. The discharge vent from the proposed kitchen extraction system would be some distance from their windows, and the noise of the extractor fan could be controlled by a planning condition. The appellant has indicated that the proposed restaurant would normally be closed by 2300 hours, last orders having been taken an hour earlier. This matter could also be the subject of a planning condition, which would effectively prevent the restaurant becoming a source of noise and disturbance late at night. Refuse from the proposed restaurant could be stored in an allotted area within the appeal premises. I see no reason why it should be a source of nuisance to people living nearby.

13. Residents living further afield complain that the proposed use would attract more traffic into the area and aggravate existing parking problems. At present there is free parking at the kerbside in extensive parts of Swains Lane, Highgate West Hill and the surrounding streets. I note that a Controlled Parking Zone is to be introduced shortly, so as to discourage parking by commuters. However, Swains Lane is not designated in the UDP as being "heavily parked".
14. I accept the appellant's argument that much of the business attracted by the proposed restaurant would be from a walk-in catchment area. Although some customers would be likely to arrive by car, I can see no reason why they should not be able to find parking space at the kerbside. It seems to me that the continued use of the appeal premises as a shop (for instance as a dry cleaners or a delicatessen) would itself be likely to generate an amount of on-street parking. I note that the Council's parking standards do not require the provision of any additional off-street parking space for a development of the size proposed.
15. The Council's objection to the proposed development on grounds of residential amenity relates solely to its impact on the quality of the neighbourhood centre, rather than to problems of smell, noise, refuse or parking. In all the circumstances I consider that the appeal should be allowed.

### Conditions

16. Most of the conditions suggested by the Council are acceptable to the appellant. The sole exception is a proposed condition that would preclude the use of the premises for a "take-away" service without the prior written approval of the local planning authority. The Council are concerned that the use of the premises in this way could have an adverse effect on the character and appearance of this Conservation Area. However, paragraph 87 of Circular 11/95 makes it clear that a condition of the type suggested should be imposed only in exceptional circumstances, where there is clear evidence that the precluded use would have a serious adverse effect on amenity or on the environment. I am not satisfied that such an effect has been demonstrated in the present case.
17. I consider that the Council's suggested condition to regulate noise from the extractor fan is unnecessarily complicated. It prescribes a specific noise limit, but then provides for the prescribed limit to be breached. In my view, the prescribed limit should not be exceeded, and I have amended the condition accordingly. Otherwise, the conditions suggested by the Council seem to me to be reasonable and necessary.

### **Other Matters**

18. I have considered the desirability of preserving or enhancing the character or appearance of the Holly Lodge Estate Conservation Area. The proposed extractor system would be largely hidden from public view at the rear of the appeal premises. I do not consider that the proposed shopfront would look out of place. In my view, the proposed development would damage neither the character nor the appearance of the Conservation Area.
19. I have taken account of all the other matters raised, including the fact that the appeal premises lie within the Highgate Ridge Area of Special Character. However, I do not find any of these factors to be sufficient to outweigh the considerations that have led me to my decision.

### **Formal Decision**

20. In exercise of the powers transferred to me, I hereby allow the appeal and grant planning permission for the use of No 15A Swains Lane, Highgate, London N6 6QX as a restaurant (A3) in accordance with the terms of the application Ref. PEX0200982/R1 dated 13 November 2002, and the plans submitted therewith, subject to the following conditions:
  - 1) The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
  - 2) Notwithstanding the details as shown on Drawing No SwL/101/P/B, details of the proposed awning over the shopfront hereby permitted shall be submitted to and approved in writing by the local planning authority prior to its installation.
  - 3) An extraction system shall be installed as shown on Drawing No ASM.FA.235-1A prior to the commencement of the use hereby permitted.
  - 4) The fan/motor unit of the extraction system shall be installed so that the noise/vibration is transmitted either through the ducting or fabric, and anti-vibration mountings and flexible connectors shall be used and thereafter permanently repaired and retained in accordance with the approved Technical Drawing ASM.FA.235-1A.
  - 5) Noise from the fan/motor of the extraction system shall not exceed 45dB<sub>LAeq</sub> at 1 metre from the fan position.
  - 6) Prior to the commencement of the use hereby permitted, a scheme shall be submitted to and approved by the local planning authority to demonstrate that all plant and machinery shall be sound attenuated and isolated from the structure of the building. Works shall be carried out in accordance with the approved scheme and thereafter permanently repaired and retained as such.
  - 7) Any music played in the premises shall not be audible either outside or in the residential flat above.
  - 8) The use hereby permitted shall not be open for business other than between 08:00 hours and 23:00 hours.
  - 9) Notwithstanding the details shown on Drawing No SwL/101/P/B, the casement windows in the shopfront hereby permitted shall be permanently fixed shut.
  - 10) Prior to the commencement of the use hereby permitted, a scheme for the ventilation of the premises shall be submitted to and approved in writing by the local planning

authority. Works shall be carried out in accordance with the approved scheme and thereafter permanently retained.

**Information**

21. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
22. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally, or if the authority fail to give notice of their decision within the prescribed period.
23. Attention is drawn to the provisions of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires consent to be obtained prior to the demolition of buildings in a conservation area.
24. Attention is drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970, as amended.



Inspector