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# Appeal Decision

Site visit made on 8 November 2010

**by Chris Frost BSc(Hons) DipLD FLI CBIol MBS MRTPI**

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

**Decision date: 23 November 2010**

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**Appeal Ref: APP/Q5300/A/10/2129548**

**49-53 Chase Side, Southgate, London N14 5BU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Wilton's against the decision of the Council of the London Borough of Enfield.
  - The application Ref TP/07/1526/VAR1, dated 8 October 2009, was refused by notice dated 4 December 2009.
  - The application sought planning permission for a single storey extension to the rear and the installation of a new shop front in connection with patisserie use without complying with a condition attached to planning permission Ref: TP/07/1526, dated 25 September 2007.
  - The condition in dispute is No: 6 which states that: 'The maximum number of seats for customers within the shop premises shall not exceed 6, as shown on Drawing P02.'
  - The reasons given for the condition are: 'In order to ensure the use of premises remains as retail within Class A1 of the aforementioned order and thus safeguards the retail character. Additionally to protect the retail character as well as the vitality and viability of the Core Retail Frontage of Southgate Town Centre.'
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## Decision

1. I allow the appeal and grant planning permission for a single storey extension to the rear and the installation of a new shop front in connection with patisserie use at 49-53 Chase Side, Southgate, London N14 5BU in accordance with the application Ref: TP/07/1526/VAR1, dated 8 October 2009, without compliance with condition number 6 previously imposed on planning permission Ref: TP/07/1526 dated 25 September 2007, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following new condition:
  - 1) The maximum number of seats for customers within the shop premises shall not exceed 24 as indicated on drawing No. FKExp/0906A/01 dated September 2009.

## Procedural Matter

2. On 16 April 2010 the Council granted permission (Ref: TP/07/1526/VAR2) to permit the seating of 15 customers at the appeal premises. Accordingly, while the Council's representations relate to an increase from 6 to 24 seats, the change proposed is now from 15 to 24 seats.

### **Main Issue**

3. The main issue is whether the proposed amended condition to allow seating for 24 customers would harm the retail character and vitality and viability of the Core Retail Frontage of Southgate Town Centre.

### **Reasons**

4. No physical changes to the approved frontage are now sought and the internal layout of display cases for patisserie products would remain. What is proposed is an increase in the number of seats accommodated within an area that is currently set aside for customers to consume products such as pastries and beverages that are served on the premises.
5. The Council has concerns relating to the number of seats that are provided and its estimate that a high proportion of sales would be for consumption on the premises. This proportion is estimated by the Council as approaching 50% although this is disputed, particularly as it would appear to be based on the provision of 34 seats. Nevertheless, the Council consider that the change proposed would equate to a material change of use from Class A1 to A3 and that such a change would be unacceptable in terms of its impact of the vitality and viability of the core retail frontage.
6. In terms of a change of use occurring, Circular 05/2005 makes it clear that it is the main purpose of the use that is to be considered. Here, a minority of floorspace would be given over to seating and existing displays would be retained. There is no conclusive evidence to show that providing seats for 24 customers would necessarily result in more than half of trade being devoted to eat-in customers. On this basis there is a substantial amount of doubt as to whether a material change of use from Class A1 would follow from the proposed change in the amount of seating provided.
7. Coupled with the retention of display cabinets and the unchanged shop frontage, which is well lit and largely glass and correspondingly vibrant, there appears to be no firm basis to substantiate the claim that what is proposed would dent or harm the retail vitality and viability of this core retail frontage or its primary retail character. Accordingly, there is no reason to conclude that relevant policies that seek to protect the vitality and viability of shopping areas would be harmed. This suggests that planning permission should be granted and there are no compelling reasons to override that conclusion.

*Chris Frost*

**Inspector**