



Appeal Decision **ALLOWED**

Hearing held on 31 October 2000

by **Martin Andrews MA BSc(Econ) DipTP(Dist) MRTPI**

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

The Planning Inspectorate
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Date

01/11/2000

Appeal Ref: APP/X5210/A/00/1047266
75 Heath Street, London NW3

E6/8/21

- 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 Greenfields Hampstead Limited against the decision of London Borough of Camden.
- The application (ref: PW9802767), dated 5 October 1998, was refused by notice dated 27 January 2000.
- The development proposed is a change of use of from Class A1 (retail) to Class A2 (estate office).

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

Procedural Matters

1. Although the lawful use of the ground floor of the appeal premises is a retail outlet, the appellant is already in occupation as an estate office. I shall therefore deal with the application as being for retrospective permission under Section 73A of the Town and Country Planning Act 1990.

Main Issue

2. I consider that the main issue in this appeal is the effect of the retention of the Class A2 use on the function and vitality of this part of Hampstead shopping centre.

Planning Policy and Other Provisions

3. The development plan is the Council's *Unitary Development Plan (UDP)* adopted in March of this year. Although the adoption came shortly after the refusal of the appeal application, at that time the Deposit UDP had effectively been through all its stages. I shall therefore give significant weight to the relevant policy, SH12. This permits a change from retail to non-retail uses in secondary shopping frontages provided the proposal would not be detrimental to the character, function, vitality and viability of the centre. In the case of this appeal, because of the small size of the premises, I consider that it is the function and vitality of the centre that are the more relevant aspects.
4. Relevant national policy guidance includes Planning Policy Guidance Note (PPG) 6: *'Town Centres and Retail Developments'*.
5. The appeal premises lie within the Hampstead Village Conservation Area designated in 1968.

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Reasons

6. The appeal premises lie within an area of secondary shopping frontage between nos. 49 to 89 Heath Street on its western side, north of the junction with Hampstead High Street. On the opposite side, north of the underground station, there is a short stretch of primary frontage between nos. 52 and 62. Thereafter, from no. 64 to the Heath Street Baptist Church, is a further area of secondary frontage with A3 uses particularly in evidence.
7. In my view it is the function and vitality of these areas close to no. 75 that are relevant to this appeal. Although there is another stretch of commercial frontage to the north, this is separated from the main shopping centre by a residential section of Heath Street. Because of this break it is unlikely that browsing shoppers and visitors to the main centre would walk to the northern area.
8. In support of its case the Council sets considerable store by a comment in a 1998 report on A3 uses by the London Planning Advisory Committee (LPAC). This is to the effect that most Boroughs seek a maximum level of 40% of A2 and A3 uses in secondary frontages. By way of comparison, the relevant area of secondary frontage in Hampstead already has 50% of its 26 premises in a non-A1 use.
9. However in my view the LPAC guideline can carry only limited weight in this appeal. UDP Policy SH12 does not rely on an assessment of the proportionate split between differing uses. Indeed it is a permissive policy that essentially requires the Council to establish that actual harm to the function and vitality of the centre would be caused if a non-retail use in a secondary frontage were to be resisted. This policy is up to date, having only been adopted for a matter of months and the general approach is supported by PPG6, which places emphasis on diversity of use within shopping centres.
10. I acknowledge that it is important that secondary frontages should retain a significant shopping element and that a reasonable overall balance between retail and non-retail uses should be maintained. However the use of the appeal premises as an estate office does attract visitors and offers a service to local people. Furthermore no. 75 has been in this use for about two years and from my visit I saw no evidence that this part of Heath Street has suffered as a result or is in decline. There are few if any empty properties in the area and further to the north on the same side as no. 75 there are several retail outlets.
11. I accept that this part of the frontage has a relatively low pedestrian flow to the north of the HMV store at nos. 57-61 and compares unfavourably with the opposite side of the road. This however has wider pavements, generally larger premises and wide range of upmarket A1 and A3 uses. In contrast, on the western side, the northward views of the premises are restricted by the bend in the road whilst the high volume of traffic deters browsing shoppers crossing from the other side. As the latter adjoins a stretch of primary frontage and is more accessible to the underground station it seems probable that it will always be more popular. My conclusion from these observations is that the use of one small unit on the western side is likely to have a much lesser effect on function and vitality than the inherent characteristics of this part of the centre.
12. The appeal premises are particularly small in size and this raises two additional considerations. Firstly the frontage length, at about only four metres, does not represent a significant deterrent to browsing shoppers continuing up the road. Secondly, because of the

modest floor area the scope for a retail use is limited, as there is very little room for either the display of goods or storage. With the use of part of the front for a conventional window display, space would be even more at a premium. Whilst allowing for the fact that the specialist shops characteristic of Hampstead can often be very small, this lack of space is a further constraint on a viable A1 use.

13. My conclusion on the main issue is that the retention of the A2 use at no. 75 would not have a materially adverse effect on the function and vitality of this part of Hampstead shopping centre. It would not therefore be in conflict with UDP Policy SH12. However the attractiveness of the unit would be improved by a window display of properties for rent or promoting the services offered. On behalf of the appellant it was stated at the Hearing that such a display would be helpful for the business and that a requirement to this effect would be acceptable. I shall impose a condition accordingly.
14. In respect of the location of the premises within the Conservation Area, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to pay special regard to the desirability of preserving or enhancing its character or appearance. However in this case no physical alterations are proposed and I have already concluded that the retention of the A2 use would not materially affect the vitality of the shopping centre. I therefore consider that by allowing the appeal, the character and appearance of the conservation area would be preserved.

Conclusion

15. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

16. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for a change of use of from Class A1 (retail) to Class A2 (estate office) at 75 Heath Street, London NW3 in accordance with the terms of the application No: PW9802767 dated 5 October 1998 subject to the condition that a window display shall be provided at all times in the window fronting Heath Street.

Information

17. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.
18. This decision does not convey any approval or consent that may be required under any enactment, byelaw, order or regulation other than section 57 of the Town and Country Planning Act 1990.



INSPECTOR