

GROUNDS OF APPEAL

1. The Council's professional advisors considered the application proposals carefully and recommended that the condition should be removed (see Appendix 1).
2. In reaching this conclusion the officers took into account the advice of the Council's Director of Environmental Services. The Director was asked to provide advice in respect of "amenity" issues and noted as follows:

"The premises currently has a condition that allows loading and unloading for the basement market: " Loading and unloading in respect of the ground floor and basement market shall only be carried out between the hours of 8:00 and 18:00 on Mondays to Fridays and 06:00 and 09:00 on Saturdays and shall not be carried out at any time on Sundays and Public Holidays." Having scrutinised our database of complaints there are no complaints of noise from deliveries or any other activities. On this basis we consider that extending the days of use would be unlikely to impact on amenity."

3. No objection was raised by any other statutory consultee.
4. In making comments on the application, the Council's Director of Environmental Health took into account that there is both a condition in respect of the planning permission which limits the hours for loading and unloading, and that there are loading and unloading restrictions which apply to Portobello Road. The Director makes clear that there have been no complaints of noise from deliveries or any other activities. Given the reason for the imposition of the condition ("to safeguard the amenities of neighbouring properties"), it is not considered necessary for any restrictions on trading days to continue to apply to the basement.
5. The ground floor of the building is unaffected by any limitations on trading. Its use for trading on any day and at any time is possible albeit that special arrangements would be required to prevent access to the basement, where the ancillary café is situated. The type of retail trading is not restricted. The use of the ground floor would be more likely to have an impact on the residents above and nearby than any further use of the basement. The building is modern and provisions to deal with the transmission of sound appear to work effectively, hence no complaints have been received from residents and others by the Council.
6. The condition is not required as the amenities of the neighbouring properties are adequately protected by controls over loading and unloading. Both the ground floor retail and street trading occurs at present and is a feature throughout the length of Portobello Road and in the vicinity of the appeal site.
7. The condition prevents the efficient and effective use of the building for its permitted use and serves no reasonable planning purpose. PPS4 Planning for Sustainable Economic Growth notes that LPAs should promote efficient use of retail resources, should seek to enhance shopping areas and to ensure that they remain viable.

8. Circular 11/95 makes clear that conditions should only be imposed where they are necessary, reasonable, enforceable, precise and relevant to planning. The appeal condition is not necessary, in that trading on additional days would not affect amenity (and no evidence has been provided to the contrary) and it is not reasonable given the acceptance of trading on at least 2 days, its impact on the full and effective use of the premises, and that trading occurs in other premises closer to residential properties at ground floor and on street in Portobello Road seven days a week throughout the year. There is clearly no objection to the use of the basement for retail trading and, given the permission for unrestricted trading on the ground floor, it would be impossible for the Council to conclude which area of trading was causing any impact on amenity, albeit that what is meant by "amenity" is not defined in the reason for the condition.
9. With the adoption of the Council's new Core Strategy, Portobello Road has now been designated a Special District Centre, which the Council considers is a main shopping area in the Borough offering both comparison and day to day convenience shopping for residents and for those visiting the Borough or working within it. Portobello Road has changed greatly since 1995, and now trades everyday of the week with shops open 7 days a week and antiques stalls now trading outside of the traditional Fridays and Saturdays of the past. The ground floor of the premises can operate any day of the week without restriction and given the changing nature of Portobello Road, particularly now that it is open to trade on Sundays, it is considered that the basement should similarly be free to trade on any given day of the week.
10. Policy CP7 of the Core Strategy indicates that the Council will ensure the long term success of Portobello Road and its vision recognises the antiques trade and the diversity of the retail offer. It is considered that allowing the basement market to trade without restrictions would help the market traders extend their appeal to a wider customer base and contribute towards the long term success of Portobello Road, in line with the stated aims of the policy.
11. Unless full and effective use of the building for an antiques market is able to occur, there is a risk that it would be necessary for other retail activities to take place from the premises which would detract from the special retail character of the Road.
12. There is no evidence to suggest that either the existing unrestricted use of the ground floor and use of the basement for market trading has caused any harm to residential amenity nor has any evidence been produced to suggest that the removal of Condition no.2 to allow trading in the basement on a daily basis would impact negatively upon the levels of amenity currently experienced by those local residents.
13. Without prejudice, should the Inspector consider that, notwithstanding the above, some impact on amenity may occur, consideration should be given to whether the condition could allow trading from the basement on further days subject only to a restriction on hours of use, for example from 10 am until 6 pm on any of the additional days. Section 73 of the Act allows for such consideration to be given and is not a matter to which the Council has given any attention.