

Decision Notice

Please Index As

File Number



Appeal Decision

Site visit made on 10 October 2001

by **Shelagh C Bussey** DipTP DipEM MA PhD MRTPI

an Inspector appointed by the Secretary of State for the
Department for Transport, Local Government and the Regions

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Date **25 OCT 2001**

Appeal Ref: APP/K5600/A/01/1065623
151 Notting Hill Gate, London, W11.

- 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 Watergraphic Ltd. against The Council of The Royal Borough of Kensington & Chelsea.
- The application (Ref.PP/00/01651) is dated 7 June 2000.
- The development proposed is a change of use of a currently designated laundry to a Persian restaurant.

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. Due to unforeseen circumstances, neither the Appellant nor their agent was able to attend the site visit. With the agreement of the main parties, I carried out an unaccompanied site inspection on 10 October 2001.

Matters of Clarification

2. The appeal site is located within the Royal Borough of Kensington and Chelsea Conservation Area 6 Kensington. It is also situated within the Notting Hill Gate Principal Shopping Centre.

Main Issues

3. From what I have read and seen, I consider that there are two main issues in this case.
 - (a) The effect of the development on the function of the Notting Hill Gate Principal Shopping Centre.
 - (b) Whether the development would exacerbate demand for the limited amount of on-street car parking available in the locality.

Planning Policy

4. The Development Plan for the area is the *Royal Borough of Kensington and Chelsea Unitary Development Plan (UDP)*, adopted in 1995.
5. The UDP contains several policies, which amongst other considerations, seek the provision of local services and facilities that support the residential character of the area. These include Policy H5, which encourages the provision and, where appropriate, resists the loss of such services and facilities. Policy S6 aims to maintain and improve the vitality, viability and function of the shopping centres throughout the Borough. Policy S15 normally permits uses falling within Class A3 of the *Town and Country Planning (Use Classes) Order 1987*, unless the development would threaten the character or function of the centre, or it would fail to

comply with its criteria. These seek to retain a balance of shopping uses in the centre, to prevent a significant increase in traffic or parking and to preserve the area's residential character and amenity. Policy S19 seeks, where possible, to resist the loss of launderettes. In addition, Policy TR39 resists development that would result in any significant increase in congestion or any significant decrease in safety, on the roads or on public transport.

6. In my opinion, those policies reflect guidance contained in *Planning Policy Guidance: Town Centres and Retail Developments* (PPG6), which at paragraph 2.12, advises on the importance of providing diversity and complementary uses in shopping centres.
7. The UDP is under review and the above mentioned policies are generally carried forward in the *Royal Borough of Kensington and Chelsea Unitary Development Plan Proposed Alterations* (emerging UDP). However, Policy CD15 is amended by Policy CD15a. Although not affecting the essence of the currently adopted policy, it revises its details. Its environmental criteria seek to resist material increase in traffic or parking. Other criteria, concerning the retail character and function of the shopping centre, set out circumstances where, whether before or as a result of the proposal, the development will not normally be permitted. These include at (b), at locations where there are more than three units at ground floor level, in the same use class as that proposed.
8. The emerging UDP has reached an advanced stage in its procedure towards its adoption by the Council. Therefore, in accordance with guidance contained in paragraph 48 of *Planning Policy Guidance: General Policy and Principles* (PPG1), I afford its policies significant weight.
9. Having regard to the location of the appeal site, within a conservation area, I have also taken account of advice given in paragraph 4.14 of *Planning Policy Guidance: Planning and the Historic Environment* (PPG15), on the desirability of preserving or enhancing the character or appearance of a conservation area. In addition, section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

Reasons

The Site and Its Surroundings

10. The appeal site comprises the ground and basement floors of a four-storey building forming part of a short parade of commercial properties within a non-core frontage at the western end of the shopping centre. Contained within the parade are two restaurants, a bureau de change and estate agents. The upper storeys of the appeal property and those adjacent to it appear to be used as residential accommodation. The surrounding areas to the north and south of Notting Hill Gate are mainly residential in character and contain purpose built blocks of flats and terraced houses, many of which have been subdivided into flats and bed-sits.
11. A parking restriction scheme operates within the residential area and parking is also controlled along the main road, in the vicinity of the appeal premises. There is a tube station nearby and there are several bus routes that operate in the area.

The Effect on the Function of the Shopping Centre

12. I saw that the laundrette, which also provides dry cleaning, alterations and shirt services, appears to be well used and there are no outward signs that the business is not viable. No information has been provided by the Appellant to indicate that this may not be the case. There is another dry cleaning business opposite the site, but the only other laundrette in the

area is situated at the eastern end of the shopping centre, at 12 Notting Hill Gate. In view of the high density of residential development in the area, much of which may not have its own laundry facilities, it is my opinion that the current use of the premises provides a valuable facility for local residents, which adds to the diverse function of this part of the shopping centre. In the absence of any clear justification of why the launderette use should not be retained, I consider that the proposal would conflict with Policies H5 and S19 of the UDP.

13. In contrast, I saw numerous hot food outlets in the vicinity, including at the premises adjoining the appeal site to the east and also opposite. From data obtained from its survey of the shopping centre, conducted in 2000, the Council calculates that within the non-core part, 64% of the units were occupied as Class A1 shops. The proposed change of the existing sui generis use of the appeal site would not further reduce the proportion of A1 units, below the UDP target of 65%, which is specified in criterion (b) of Policy S15. But, I consider that the development would, nevertheless, conflict with that Policy because it would threaten the function of the principal shopping centre, of providing a diverse range of goods and services for residents of the Borough. Similarly, it is my opinion that it would be contrary to the thrust of Policy 15a of the emerging UDP.
14. I conclude that the development would detract from the diverse function of the Notting Hill Gate Principal Shopping Centre. Consequently, I also conclude that it would conflict with Policies H5, S6, S15 and S19 of the UDP, with the corresponding policies of the emerging UDP and also with national planning policy guidance contained in PPG6.

The Effect on Demand for On-Street Parking

15. The Council calculates that the restaurant visitors and the estimated 20% of take-away customers, would generate a theoretical requirement for around 12 additional kerbside parking spaces, at a time that it considers, would most likely coincide with the evening peak demand for such parking spaces, by local residents. However, in my experience, most of the available spaces would be filled by resident's vehicles from the early evening onwards and in practice there would be very few spaces available for evening customers of the appeal premises.
16. In my opinion, the site is well served by public transport and it is within convenient walking distance of a large number of potential customers. I consider that people living in and visiting the area would be aware of the very restricted provision for roadside parking in the locality and that, as a result, most would choose to visit the premises using alternative means of transport. Consequently, I consider that it is unlikely that resident's parking would be displaced by the proposed use, or that the area would become congested by vehicle drivers looking for available parking space, close to the site.
17. I conclude that the development would not significantly exacerbate demand for the limited amount of on-street car parking that is available in the locality. I also conclude that it would not conflict with Policy TR39 of the UDP, or with the equivalent policy of the emerging UDP. However, I further conclude that my favourable conclusions on this matter are greatly outweighed by the detriment, to the function of the shopping centre, that would be caused by the development.

Other Matters

18. The Council is also concerned that the development would give rise to a dead frontage, during the early morning, which would detract from the vibrancy of the shopping centre. Whilst this may be the case of some A3 uses, it is my opinion that the development has the

potential to create a livelier shop front than does the current use, especially in the evening when the launderette is closed. In my opinion, the development would not detract from the vibrant character of the area and I see no reason why it would not preserve the character and appearance of the Conservation Area. However, I do not consider that those considerations provide sufficient justification to allow a development that would harm the function of the shopping centre.

19. In addition, local residents object that the proposal could give rise to cooking smells that would be detrimental to their residential amenity. However, there are numerous other A3 use properties in the locality, which have residential accommodation above. I have no reason to think that cooking smells arising from the proposed use would detract significantly from the living conditions of neighbouring residents, provided that a suitable extract ventilation system that is adequately soundproofed, was installed. This is a matter that could be conditioned. Therefore, I do not attach great weight to that argument.
20. I have considered all of the other matters raised in the representations, but none are sufficient to outweigh the considerations that have led to my adverse conclusions on the first main issue.

Conclusion

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

Formal Decision

22. In exercise of the powers transferred to me, I dismiss the appeal and refuse planning permission for a change of use of a currently designated laundry to a Persian restaurant.

Information

23. 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 within 6 weeks from the date of this decision.

S. C. Russey

INSPECTOR

PLANNING AND CONSERVATION

**THE ROYAL
BOROUGH OF**

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2 JAN 2004



**KENSINGTON
AND CHELSEA**

My Ref: PP/03/01462/CUSE/
Your Ref: 9681

Please ask for: North Area Team

Dear Sir/Madam,

TOWN AND COUNTRY PLANNING ACT 1990

**TOWN AND COUNTRY PLANNING GENERAL PERMITTED DEVELOPMENT
ORDER 1995**

Permission for Development (Conditional) (DPI)

The Borough Council hereby permit the development referred to in the under-mentioned schedule subject to the conditions set out therein and in accordance with the plans submitted, save in so far as may otherwise be required by those plans or by the said conditions. Your attention is drawn to the enclosed information sheet.

SCHEDULE

DEVELOPMENT: Continued use of ground floor as a tanning shop within Use Class A1.

SITE ADDRESS: 12 Notting Hill Gate, London, W11 3JE

RBK&C Drawing Nos: PP/03/01462

Applicant's Drawing Nos: 418/01Y

Application Dated: 30/06/2003

Application Completed: 14/07/2003

**FULL CONDITION(S), REASON(S) FOR THEIR IMPOSITION AND INFORMATIVE(S)
ATTACHED OVERLEAF**



CONDITION(S) AND REASON(S) FOR THEIR IMPOSITION

- 1.** No process shall be carried out, or machinery installed, pursuant to this permission so as to cause detriment to the amenity of adjacent property, or of the immediate area, by reason of noise, vibration, smell, smoke, soot, ash, grit, or electrical interference. (C047)
Reason - To safeguard the amenity of neighbouring property and the immediate area. (R047)
- 2.** No music shall be played within the premises the subject of this permission so as to be audible outside the premises. (C048)
Reason - To safeguard the amenity of neighbouring property. (R048)
- 3.** The development hereby permitted shall be carried out exactly and only in accordance with the drawings and other particulars forming part of the permission and there shall be no variation therefrom without the prior written approval of the Local Planning Authority. (C068)
Reason - The details are considered to be material to the acceptability of the proposals, and for safeguarding the amenity of the area. (R068)
- 4.** Following the commencement of the use hereby permitted, the window glass of the shopfront shall not at any time be painted, screened, or otherwise obscured. (C097)
Reason - To maintain the character and vitality of the shopping frontage. (R097)

INFORMATIVE(S)

PLANNING APPLICATIONS

Continued use of ground floor as a tanning shop within Use Class A1.

Summary of Reasons for Decision

You are advised that this application was determined by the Local Planning Authority with regard to the policies in the Council's Unitary Development, and was considered to comply with these policies. In particular, the following policies were considered:

- H05 (Resist loss of local services and facilities)
- S06 (Shopping centres)
- S12 (Where possible resist loss of laundrettes)
- STRAT (Enhance viability and vitality of shopping centres)
38
- STRAT (Easily accessible shops and services)
43

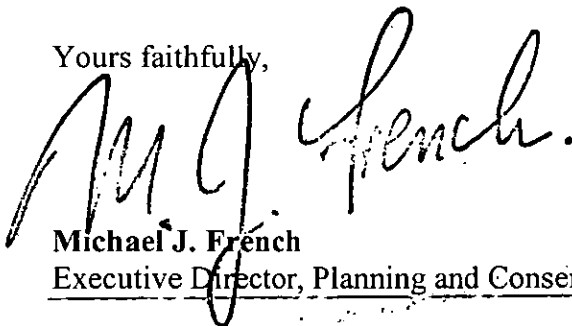
The material circumstances of the case, including site history, location, and impact on amenities were considered.

In addition, consideration was given to the results of public consultation.

It was concluded that there was no significant impact upon the amenities of adjoining occupiers that could justify a refusal in this case.

The full report is available for public inspection at the Planning Information Office, Room 325, Town Hall, Hornton Street, London, W8 7NX.

Yours faithfully,



Michael J. French
Executive Director, Planning and Conservation