

COMMITTEE REPORT

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ROYAL BOROUGH OF KENSINGTON & CHELSEA

REPORT BY THE EXECUTIVE DIRECTOR, PLANNING & CONSERVATION

PLANNING & CONSERVATION COMMITTEE
PLANNING SERVICES COMMITTEE
DELEGATED

APP NO. PP/03/00311
AGENDA ITEM NO.

ADDRESS/SUBJECT OF REPORT:

24 Notting Hill
Gate, London, W11
3JE

APPLICATION DATED 20/12/2002

APPLICATION REVISED

APPLICATION COMPLETE 06/02/2003

APPLICANT/AGENT ADDRESS:

Shaidy & Co.
Solicitors,
102 Queensway,
London
W2 3RR

CONS. AREA 4

CAPS Yes

ARTICLE '4' No

WARD PEB

LISTED BUILDING No

HBMC DIRECTION

CONSULTED OBJ.

SUPPORT PET.

RECOMMENDED PROPOSAL:

RBK& C DRAWING NO(S):

RECOMMENDED DECISION:

CONDITIONS/REASONS FOR THE IMPOSITION OF CONDITIONS:

De
DP2

28/3/03

ROYAL BOROUGH OF KENSINGTON & CHELSEA
REPORT BY EXECUTIVE DIRECTOR, PLANNING & CONSERVATION

DELEGATED

APP NO. PP/03/00311/CUSE

This application is for a class of development to be determined under powers delegated to me by the Council on 18th July, 2001 and is not a major, controversial or sensitive application nor one which a Ward Councillor has asked to be considered by Planning Services Committee.

Class - grant of planning permission for a change from one kind of non-residential use to another non-residential use except where this would involve the loss of a shop in a Principal core shopping frontage.

RECOMMENDED DECISION: Refuse planning permission

I hereby determine and refuse this application under the powers delegated to me by the Council, subject to the condition(s) indicated below imposed for the reason(s) appearing thereunder, or for the reasons stated.

Exec. Director, Planning and Conservation *27/3* *Lowes*
Head of Development Control *27/3/03* Area Planning Officer

ADDRESS OF SITE:
24 Notting Hill Gate, London,
W11 3JE

APPLICATION DATED 20/12/2002

APPLICATION COMPLETE 06/02/2003

APPLICANT/AGENT ADDRESS:
Shaiby & Co. Solicitors,
102 Queensway,
London
W2 3RR

APPLICATION REVISED

APPLICANT: Miran Latef Ozairy,

DELEGATED
27 MAR 2003
REFUSAL

CONS AREA CAPS Yes ART '4' No WARD Pembridge
Pembridge

LISTED BUILDING **No** ENG. HERITAGE .

CONSULTED 63 OBJ. 1 SUP. 0 PET. 0

PROPOSAL: Use of second floor for office in connection with operation of mini-cab chauffeur services.

RBK&C Drawing No(s): PP/03/00311

Applicant's Drawing No(s) Unnumbered floor plan received 23rd December 2002.

REASONS FOR REFUSAL

1. **The proposed use would result in additional parking stress and have an adverse effect on residential amenity. It would be contrary to the policies contained within the Council's Unitary Development Plan, including Policies STRAT1, CD34, S16, H4, and TR39.**

INFORMATIVE(S)

1. You are advised that a number of relevant policies of the Unitary Development Plan were used in the determination of this case, in particular, Policies S1, S16, Strat 1, CD34, H4 and TR39.
(I51)

1.0 SITE

- 1.1 The site is located on the northern side of Notting Hill Gate. It is a five storey building and this application relates to the second floor of the property.
- 1.2 The property is not listed, but it is located within the Pembridge Conservation Area.

2.0 PROPOSAL

- 2.1 This application seeks permission for the use of the property as a business office for the operation of chauffeur services. The applicant has stated in the application that the drivers will be informed of the whereabouts and collection points of clients by radio controller at subject premises; the business will operate no more than 10 cars and operate 24 hours a day, 7 days a week and no external radio will be installed.

3.0 RELEVANT PLANNING HISTORY

- 3.1 There is no relevant history relating to the second floor of the property. This is now vacant.
- 3.2 The application form is for a change of use of the second floor from ancillary retail, although it should be noted that it would appear that the second floor has been used as offices for more than ten years.

4.0 PLANNING CONSIDERATIONS

- 4.1 The main considerations in this case relate to any effect upon the shopping character and function of the Principal Shopping Centre, road safety, traffic, parking and congestion in surrounding streets and the living conditions of nearby residential occupiers by means of noise and disturbance.
- 4.2 The relevant planning policies for consideration are included within the 'Shopping', 'Conservation and Design' and the 'Transportation' chapters of the Unitary Development Plan (UDP). The most relevant policies included are Policies S1 (shop units and floor space), S16 (non shop uses in Principal Shopping Centres), Strat 1 (residential character), H4 (encroachment commercial uses), CD34 (noise), and TR39 (congestion and safety).

Retail function and character

- 4.3 The property is located within the non core frontage of the Notting Hill Principal Shopping Centre. The ground floor of the property is occupied by a retail unit (Class A1) and the basement is used for storage ancillary to this retail unit. Policy S16 sets out the criteria when to permit non shop uses above ground floor level. This includes where the essential shopping character and function of the centre would not be adversely affected. The ground floor unit uses the basement as ancillary storage and this is considered to be viable. It is not considered that the proposal would adversely affect the essential shopping character and function of the centre.

Traffic generation/parking

- 4.4 The applicant has stated that the operation of the use will be radio and telephone based, initially there would only be 5 drivers during the day and 5 at night and that the drivers would visit the premises once a week in order to pay their rent. In order to assess the impact of the proposed use it is necessary to consider whether drivers and customers would visit the office if the use was operating and whether drivers would park in surrounding residential streets.
- 4.5 The applicant suggests that drivers would not wait in surrounding streets because they would not want to pay the high costs of pay and display, but are more likely to park up in quieter areas in the industrial areas where there is not such parking restrictions. Since the proposal is for a chauffeur company, the intention is that bookings would be made and the drivers informed at least an hour in advance and so there would be no need for them to wait at the office. The applicants expressed willingness to prevent drivers from waiting at the premises. Access to the second floor is from a single door onto Notting Hill Gate at ground floor level. The applicant stated that this door would be kept locked at all times so that if a driver wished to come up to the office they would need to inform the controller in advance so that they could open the door. This would be a further discouragement to drivers coming to the office.
- 4.6 However, drivers need to call at the office to pay their rent. There would also be kitchen, rest and toilet facilities at the premises which it is considered would encourage drivers to stop to have access to these facilities and have social contact with other drivers, particularly during quieter periods. They can not keep mobile at all time, wasting expensive fuel and the parking restrictions within the surrounding residential streets are not operative after 10 pm. In addition, as the business became known, customers may call directly at the premises.
- 4.7 In order to further consider how likely drivers and customers would be to visit the premises and/ or wait in the vicinity, it is helpful to consider the Council's experience of four other similar uses elsewhere in the Borough.
- 4.8 An appeal against the Council's decision to refuse permission for a minicab office at 221 Westbourne Park Road was dismissed in 2000. Observations at the site in Westbourne Park Road showed drivers parking and congregating in the local area, causing additional parking stress and adversely affecting residential amenity.
- 4.9 It is accepted that there may be instances where such the operation of such a use does not result in such harm. Planning permission was granted on 25th October 2002 for the continued use of the front basement room as a minicab office. A surveillance operation concluded that there is no evidence of undue pressure on parking from this particular business and permission for the continued use was therefore granted subject to conditions to prevent customers and drivers entering the premises and that no advertisements should be displayed at the premises. However, in a similar case where the Council granted planning permission at 85 Gloucester Road with a condition preventing drivers from calling at the premises, a complaint has been received that drivers cause parking stress and harm residential amenity as a result of them waiting and congregating in the area.
- 4.10 An appeal against the Council's decision to refuse an application for 399 Kings Road for a similar use has recently been dismissed. The Inspector commented that "I am

persuaded by the Council's argument that the proposed use would be likely in the long term to lead to visits by drivers especially at late hours when they are less busy. Customers could also call. In my experience this is the typical pattern of such uses".

4.11 Although the applicant has stated that initially there will be no more than 5 drivers at any one time and that they will not normally wait at the premises, in the future a significantly greater level of activity could result if the business were successful or the ownership to change hands. It is considered that conditions to control the level of activity associated with the use would risk failing the tests set out in Circular 11/95, in particular it would be very difficult to enforce. Any condition to prevent drivers visiting the premises at all would preclude the weekly rent visit. Conditions should not normally be used to control land outside the application site and it is considered that any condition seeking to prevent drivers parking in the surrounding residential streets would be difficult to enforce. In the recent appeal decision for 399 Kings Road, the Inspector commented on the Council's proposed conditions to restrict the number of drivers that this would be "unenforceable and imprecise" as it would not be practical to regulate the number of drivers.

4.12 The Director of Transportation and Highways objects to the proposal on the grounds that the proposed minicab office in this location "will inevitably lead to additional parking stress and an adverse effect on residential amenity, contrary to UDP Policy TR39". After controlled hours, the drivers would be able to use single yellow lines and residents' spaces. The neighbouring residential streets at Linden Gardens and Clanricarde Gardens are particularly heavily parked. It is considered that the proposal would lead to additional parking stress and an adverse impact upon residential amenity.

Impact upon living conditions of nearby residential occupiers

4.13 There is a residential flat on the third floor of the property which shares the access with the application site. There are also residential flats on the upper floors of neighbouring properties and to the rear in Linden Gardens and Clanricarde Gardens to the rear.

4.14 Policy H4 is to resist the encroachment into residential areas of commercial activities which would be inappropriate by virtue of size, scale, hours of operation, traffic generation or nature of use. Policy S16 is to permit non shop uses above ground floor level where it would not materially reduce residential character and amenity including smells and late night noise. Whilst this part of Notting Hill Gate may be busy for much of the time, there are few late night uses in the vicinity and it is considered that vehicles in the surrounding residential streets in the vicinity of the site would cause significant disruption to residential occupiers by reason of the noise from engines running, car doors closing and radios playing. Since the proposal is for a 24 hour operation, conversations between drivers entering the office and coming up and down the stairs is also likely to result in a noise nuisance to the occupiers of the flat above. It is therefore considered that the proposal would result in harm to the living conditions of the occupiers of nearby residential premises, contrary to the Council's policies which aim to protect residential amenity.

5.0 PUBLIC CONSULTATION

5.1 Sixty one letters of notification were sent to adjoining occupiers in Notting Hill Gate,

Kensington Palace Gardens and Linden Gardens.

- 5.2 One letter of objection received from an occupier of a property in Linden Gardens on the grounds that the proposal will result in noise and disturbance to residential properties at the rear, particularly as it is a 24 hour operation. The letter states that "there is a lack of information. What are 3 rooms being used for? Waiting? Do the public use the premises at night? Would the rear windows be opened in summer? Is the transmitter high powered with an internal ariel?"
- 5.3 Potential noise and disturbance to occupiers of nearby residential premises is discussed above. It is proposed to use the three rooms as a control office, a rest room and a kitchen and the possibility of customers or drivers waiting at the premises is discussed in paragraph 4.7 and 4.8 above.

M.J. FRENCH
EXECUTIVE DIRECTOR, PLANNING AND CONSERVATION

Background Papers

The contents of file PP/03/00311 save for exempt or confidential information in accordance with the Local Government (Access to Information) Act 1985.

Report Prepared By: SG
Report Approved By: JT / vms
Date Report Approved: 27/2/03