

Decision Notice

Please Index As

File Number

PLANNING AND CONSERVATION

THE TOWN HALL HORNTON STREET LONDON W8 7NX

Executive Director M J FRENCH FRICS Dip TP MRTPI Cert TS

**THE ROYAL
BOROUGH OF**



**KENSINGTON
AND CHELSEA**

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27 MAR 2003

My Ref: PP/03/00311/CUSE/
Your Ref: AS/BR/7332

Please ask for: North Area Team

Dear Sir/Madam,

TOWN AND COUNTRY PLANNING ACT, 1990

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

REFUSAL OF PERMISSION TO DEVELOP (DP2)

The Borough Council in pursuance of its powers under the above-mentioned Act and Order, hereby REFUSE to permit the development referred to in the under-mentioned Schedule as shown in the plans submitted. Your attention is drawn to the enclosed Information Sheet.

SCHEDULE

<u>DEVELOPMENT:</u>	Use of second floor for office in connection with operation of mini-cab chauffeur services.
<u>SITE ADDRESS:</u>	24 Notting Hill Gate, London, W11 3JE
<u>RBK&C Drawing Nos:</u>	PP/03/00311
<u>Applicant's Drawing Nos:</u>	Unnumbered floor plan received 23rd December 2002.
<u>Application Dated:</u>	20/12/2002
<u>Application Completed:</u>	06/02/2003

REASON(S) FOR REFUSAL OF PERMISSION ATTACHED OVERLEAF



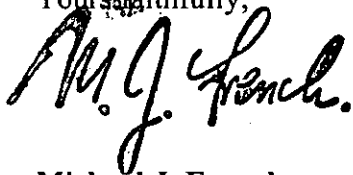
REASON(S) FOR REFUSAL:

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.**

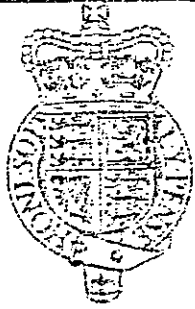
INFORMATIVE(S)

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. (151)

Yours faithfully,

A handwritten signature in black ink, appearing to read "M. J. French". The signature is written in a cursive, flowing style.

Michael J. French
Executive Director, Planning and Conservation



Appeal Decision

Hearing held on 11 February 2003

by **David Smith** BA (Hons) DMS MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
409 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PH
☎ 0117 672 6572
e-mail: enquiries@planning-
inspectorate.gov.uk

Date

- 4 MAR 2003

Appeal Ref: APP/K5600/A/02/1095074
399 Kings Road, Chelsea, SW10

- 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 Mrs Sugra Kashmiri against the decision of The Royal Borough of Kensington and Chelsea.
- The application (Ref. PP/01/02716/CUSE), dated 18 October 2001, was refused by notice dated 29 January 2002.
- The development proposed is "to use one room (measuring 4.10m x 2.30m) in the basement of grocery shop as a control room for the operation of car services."

Summary of Decision: The appeal is dismissed.

Planning Policy

1. The Royal Borough of Kensington and Chelsea Unitary Development Plan (UDP) was adopted in 2002.
2. Within it, Policy STRAT1 gives priority to the protection and enhancement of residential character and amenity. Policy CD34 resists proposals where the noise generated would cause material disturbance to occupiers of surrounding properties. The encroachment of inappropriate commercial activities into residential areas should be resisted according to Policy H4. Policy TR39 also opposes development that would result in any material increase in traffic, parking or congestion or any decrease in road safety.

Main Issues

3. I consider that the main issues are the effect of the proposed use on:
 - The living conditions of nearby residential occupiers with particular regard to noise and disturbance; and
 - Road safety, traffic, parking, congestion and the free flow of traffic in surrounding streets.

Reasons

4. The appeal premises are within a modern shopping parade along the south side of Kings Road. The ground floor is trading as a grocery. The proposal relates to a small room in the basement. The intention is to use it as a control room for what the appellant describes as "an exclusive chauffeur driven executive class car service". It would operate for 24 hours a day seven days a week. A controller would be based in the office at all times. The appellant expected to use about six drivers initially but agreed that a larger number might eventually be needed.

- 24/3
5. A key difference between the parties is whether drivers and/ or customers would visit the office if the use were operating. I consider it necessary to reach some conclusion on this point before assessing the effect of the use.
 6. The appellant believed that there would be no reason for people to go to the office as work would be allocated entirely by phone. Financial arrangements could be made so that drivers would not need to call to pay the weekly 'rent'. Furthermore, the shop closes at 2300 hours and the rear door would be locked for insurance reasons. In any event, it is not practical to access from the rear as the passage is partly obstructed by refrigeration equipment. There is also no proposal to install an intercom for customers to use. Having drivers or customers in the shop would also be inconvenient as the appellant's children are there after school.
 7. The Council disagreed primarily on the basis of its experience of a minicab office at 221 Westbourne Park Road, Kensington, W11. An appeal against an Enforcement Notice at these premises was dismissed in 2000 (Ref. T/APP/K5600/C/99/1028007). The Council thought that drivers would be likely to return to base between jobs to avoid wasting petrol. Furthermore, they would wish to have access to an area where they could have a drink, use WC facilities and have social contact with other drivers. In addition, as the business became known patrons of the nearby restaurants may request a cab directly from the office.
 8. I do not doubt the appellant's intentions to run a quiet executive car service using high quality vehicles. However, she acknowledged that this is a new venture and that she has no previous experience of running such a business. Its precise nature may therefore change over time. Furthermore, I have to determine this appeal on the basis of the use proposed since any planning permission would run with the land. Another operator could therefore carry out a car service use in a different manner. Indeed, PPG24: *Planning and Noise* warns that a subsequent intensification may result in greater intrusion.
 9. No detail was given by the appellant as to how the movement of the self-employed drivers would be controlled. In my view, the various practical difficulties of accessing the basement could be overcome as the appellant acknowledged at the hearing. I am therefore 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 activity of such uses.
 10. I shall therefore consider the effect on living conditions and road safety on the basis that the proposed use would potentially generate trips to the premises by drivers and customers.

Living conditions

11. In assessing this issue I note that the development plan gives priority to protecting residential amenity. There are flats above the ground floor units in the parade. In addition, the Cremorne Estate lies directly to the south and there is also an extensive residential area directly to the north of Kings Road. The Ward Member indicated that Kings Road is busy at most times apart from the small hours of the morning. However, during my unaccompanied early evening visit I found the nearby residential areas to be very quiet.
12. PPG24 advises that the disturbance that can be caused by traffic and associated car parking should not be underestimated. I consider that vehicles in the vicinity of the site would cause significant disruption by reason of the noise from engines running, car doors closing and radios playing. In my view, such activities would be a particular nuisance at late hours

when residents are reasonably entitled to expect to sleep without regular disturbance. Furthermore, conversations between drivers or involving customers would also seriously reduce the living conditions of those residing nearby.

13. I therefore conclude that the proposal would harm the living conditions of nearby residential occupiers and would conflict with Policies STRAT1, CD34 and H4 of the UDP.

Road safety

14. Around the appeal site a residents' permit scheme is in operation until 2200 hours. There are residents' spaces in Milmans Street to the east and in the network of streets to the north of Kings Road. Ann Lane runs immediately to the rear of the appeal premises. It is a private estate road where tenants have designated spaces. On the southern side of Kings Road a pay and display tariff operates until 1830 hours. From what I saw and heard I judge that there is severe pressure for on street parking in the area.
15. In my view, drivers wishing to call at the proposed office would try to park as close as possible to it. However, given the scarcity of spaces in the vicinity it may be that vehicles would be forced to drive around looking for somewhere to park. In so doing, traffic and congestion would be increased. The existing high demand for kerbside parking would also be liable to lead to inconsiderate or illegal parking that would reduce highway safety. Whilst parking restrictions are in force until the evening they do not continue throughout the night or over weekends. Any taxis occupying spaces at late hours would therefore materially worsen the existing situation which is at saturation level.
16. I find that the proposed use would materially increase traffic, parking and congestion. My conclusion is therefore that the proposal would harm road safety and the free flow of traffic in surrounding streets and would be contrary to Policy TR39 of the UDP.

Conditions

17. I have considered whether the conditions suggested by the Council could overcome the harm that I have identified. In so doing, I have had regard to Circular 11/95 *The Use of Conditions in Planning Permissions*.
18. The Council put forward conditions to limit the number of drivers that could operate from the premises and to ensure that no facilities for customers would be made available within the premises. In both cases I consider that these would be unenforceable and imprecise. It would not be practical to regulate the number of drivers whilst it would be difficult, in my view, to define the facilities for customers as opposed to those for shop employees.
19. I consider that it would be possible to prevent access via the door onto Ann Lane except in an emergency. However, there are pedestrian walkways through to Kings Road so that the use of Ann Lane for short-term parking would not necessarily be deterred. In any event, the effect of parking in Kings Road and the residential area to the north would not be mitigated.
20. The Council proposed a condition to prevent signage advertising the minicab business to discourage calling customers. However, Circular 11/95 indicates that conditions should not be imposed on a grant of planning permission to achieve the purposes of a separate system such as advertisement control. I see no reason to depart from this advice.

21. The appellant did not suggest any conditions to deal with the Council's concerns. I consider that the conditions discussed at the hearing would either fail to meet the tests of the relevant Government guidance or would not sufficiently reduce the harm I have found. Indeed, the absence of any conditions to effectively control the proposed use adds further weight to the potential harmful impact of intensification.

Other Matters

22. I have taken account of the petition in support of the proposal signed by people from the area. However, local support is not in itself a ground for granting planning permission. The appellant thought that the proposed use would be beneficial as there is no service of this kind in the area and there is a shortage of black cabs. I appreciate that such a service would provide benefits to the local community and employment for one extra person. However, these matters do not outweigh the significant harm that I have identified.

Conclusions

23. I find that the proposed use would be likely to generate traffic and activity at late hours. It would be inappropriately located close to residential properties and in the long run would be liable to significantly reduce living conditions and highway safety. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should fail.

Formal Decision

24. In exercise of the powers transferred to me, I dismiss the appeal.

Information

25. 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.

David D. Smith

INSPECTOR

APPEARANCES

THE APPELLANT:

Mrs S Kashmiri

399 Kings Road, Chelsea, SW10 0LR

FOR THE LOCAL PLANNING AUTHORITY:

Miss K Redfern
BA (Hons)

Planning Officer, Royal Borough of Kensington and
Chelsea

Mrs G Palmer
BSc MSc MIHT MCIT
MILT MRTPI

Consultant Transport Planner, Royal Borough of
Kensington and Chelsea

INTERESTED PERSON:

Councillor P Warrick

Ward Member (Stanley Ward), Royal Borough of
Kensington and Chelsea

DOCUMENTS

- Document 1 List of persons present at the hearing
- Document 2 Council's notification letter
- Document 3 Appeal representations
- Document 4 Appendices 1-7 of the Council's statements

PLANS

- Plan A Planning application drawings