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Part 16

Part 17

Part 18

GA

The Planning Inspectorate

3/23 Hawk Wing
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http://www.planning-inspectorate.gov.uk

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GTN 1371-8753

Ms R Gill (Dept Of Planning & Conservation)
Kensington And Chelsea R B C
3rd Floor
The Town Hall
Hornton Street
London
W8 7NX

Your Ref: PP/01/01227

Our Ref: APP/K5600/A/01/1079287

Date: 18 March 2002

Dear Madam

TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY DRUCE LAMY LTD
SITE AT 110 KENSINGTON CHURCH STREET, LONDON, W8 4BH

NOTIFICATION OF INSPECTOR

I am writing to inform you that the Inspector appointed to hold the hearing into the above appeal will now be:

Mr Terry Phillimore MA MCD MRTPI.

You have already been given notice of the arrangements for this hearing.

Yours faithfully

Miss Despina Ageroti

NB: All further correspondence should be addressed to the case officer mentioned in the initial letter.

206C

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

Mr. S Macrae

Switchboard: 020 7937 5464
Extension: 2944
Direct Line: 020 7361-2944
Facsimile: 020 7361 3463
Web: www.rbkc.gov.uk

18 September 2001

My reference: KJ/MJF Your reference: Please ask for: Mr. French

TO: FAX NO: 0208 600 4181

01/1227 – File

Dear Mr Macrae,

Re: Report – 110 Kensington Church Street, London W8 4BH

Please see the attached Report concerning the above.

Yours sincerely

p.p. M. J. French,
Executive Director, Planning and Conservation.

Attachment:

TO: SEE DISTRIBUTION LIST

FROM: EXECUTIVE DIRECTOR OF PLANNING & CONSERVATION

MY REF(S): RAG/PP/01/01227

YOUR REF: SEE DISTRIBUTION LIST

ROOM NO: 324

EXTN: 2081

DATE: ...**16 May 2002**...

TOWN AND COUNTRY PLANNING ACT, 1990

APPEAL .....**110 Kensington Church Street, W8**

I attach for your information a copy of the decision for the appeal on the above-mentioned premises.

EXECUTIVE DIRECTOR OF PLANNING AND CONSERVATION

DISTRIBUTION LIST:

COUNCILLOR B. PHELPS, CO-CHAIRMAN, PLANNING SERVICES COMMITTEE
COUNCILLOR T. AHERN, CO-CHAIRMAN, PLANNING SERVICES COMMITTEE
COUNCILLOR R. HORTON
COUNCILLOR I. DONALDSON
TOWN CLERK & CHIEF EXECUTIVE ..... C.CAMPBELL RM: 253
DIRECTOR OF LAW AND ADMINISTRATION...L. PARKER RM: 315
LEGAL ASSISTANT (ENFORCEMENT ONLY).. H. VIECHWEG RM: 315
LAND CHARGES..... M. IRELAND RM: 306
COUNCIL TAX ACCOUNTS MANAGER..... T. RAWLINSON RM: G29
TRANSPORTATION.....B.MOUNT RM: 230
EXECUTIVE DIRECTOR OF PLANNING & CONSERVATION
HEAD OF DEVELOPMENT CONTROL
APPEALS OFFICER
NORTH
CENTRAL
SOUTH-EAST
SOUTH-WEST
INFORMATION OFFICE
FORWARD PLANNING..... G. FOSTER
DESIGN..... D. MCDONALD
STATUTORY REGISTER
FILE(S)
SYSTEMS..... C.STAPLETON

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Ms R Gill (Dept Of Planning & Conservation)
Kensington And Chelsea R B C
3rd Floor
The Town Hall
Hornton Street
London
W8 7NX

Your Ref: PP/01/01227

Our Ref: APP/K5600/A/01/1079287

Date: 15 May 2002

Dear Madam

TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY DRUCE LAMY LTD
SITE AT 110 KENSINGTON CHURCH STREET, LONDON, W8 4BH

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: Complaints@pins.gsi.gov.uk

Yours faithfully

Mr Dave Shorland

COVERDL1

Appeal Decision

Hearing held on 30 April 2002

by Terry G Phillimore MA MCD MRTPI

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

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date

15 MAY 2002

Appeal Ref: APP/K5600/A/01/1079287
110 Kensington Church Street, London W8

- 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 Druce Lamy Ltd against the decision of the Council of the Royal Borough of Kensington & Chelsea.
- The application (Ref. PP/01/01227), dated 16 May 2001, was refused by notice dated 20 September 2001.
- The development proposed is 'conversion of existing ground floor shop and basement unit to estate agency (A1 usage to A2)'.

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

Procedural Matters

1. The application form indicates that outline planning permission is sought, but no matters are identified as reserved for later approval. It was confirmed at the hearing that the proposal relates only to a change of use, which has already taken place. I shall therefore deal with the appeal on the basis that it seeks full permission for continued use as an estate agency.

Main Issues

2. I consider the main issues in this case to be the effect the proposal would have on:

   a) the retail character and function of the shopping street;

   b) the character and appearance of the Kensington Palace Conservation Area.

Planning Policy

3. At the hearing I was informed that Alterations to the Royal Borough of Kensington and Chelsea Unitary Development Plan were adopted on 17 April 2002, and now comprise the development plan for the area. I was provided with a copy of the Proposed Modifications to the Alterations dated February 2002, and advised that the adopted policies relevant to this appeal are as contained in this version.

4. Strategic policy STRAT 29 seeks to enhance the vitality and viability of principal and local shopping centres in the Royal Borough. Policy S6 is similarly worded. Strategic policy STRAT 29c seeks to improve the attractiveness and competitiveness of the Borough's shopping centres by improving the townscape and streetscape environment. Policy S15a indicates that proposals for uses within classes A2 and A3 in the non-core frontage of a

principal shopping centre will be permitted subject to a number of specified criteria being met.

5. Strategic policy STRAT 6 aims to preserve and enhance the character or appearance of conservation areas, amongst other designations. Policy CD48 reflects the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, which I am required to exercise in determining this appeal. Policy CD49 aims to improve the environment of conservation areas. Policy CD52 is to ensure that any development in a conservation area preserves and enhances its character or appearance.

6. I have also been referred to the Council's Kensington Palace Conservation Area Proposals Statement. This sets out proposals for the preservation and enhancement of the Area, and was subject to public consultation prior to formal adoption by the Council in 1996. It carries significant weight as a material consideration.

Reasons

Retail

7. The appeal premises are a retail unit located within the non-core frontage of the Notting Hill Gate Principal Shopping Centre as defined in the UDP. Such frontages are identified as being able to accommodate an element of the non-shop uses that cannot locate in the core frontages, but which can contribute to a centre's vitality and diversity without threatening its shopping character. According to policy S15a the appeal proposal is acceptable subject to the criteria in the policy being met.

8. There is no evidence that leads me to conclude that use of the premises as an estate agency gives rise to any material breach of the policy's environmental criteria relating to traffic, parking and residential character and amenity.

9. With respect to the retail character and function criteria set out in the policy, the appellant and Council agree that, with the proposal, some 6 out of 26 ground floor units in the relevant street frontage are in non-shop use. This is well within the maximum of a third specified in the policy. In addition, the proposal meets the other criteria in that it would not result in more than three adjoining ground floor units in the same use class or a break in the retail frontage of more than three times the average width of units in the non-core frontage of the centre. There is therefore agreement between the appellant and the Council that the quantitative criteria in the policy are complied with.

10. The methodology used by the main parties in reaching this conclusion is disputed by some objectors. In particular, it is argued that, rather than the street frontage of 106 to 172 Kensington Church Street, the calculations should be based on shorter or longer sections of frontage. According to paragraph 8.4.13a of the UDP (Proposed Modifications to the Alterations version), the quantitative tests should be applied to any one street frontage between successive intersecting vehicular highways. The shared methodology is consistent with this, the frontage being located between the junctions of Kensington Mall and Berkeley Gardens with Kensington Church Street. Based on what I saw, I do not consider that the vehicular entrance to 146 Kensington High Street constitutes an intersecting highway, as contended at the hearing. I recognise that other discontinuities in the frontage

exist, such as changes in the age or architectural style of buildings and the presence of residential uses. I also acknowledge that with calculations based on other sections of frontage as suggested, such 106 to 124, 106 to 144, or 106 to 206, it may be that there are differing proportions of non-shop uses. However, in my opinion these arguments do not warrant departing from the methodology set out in the UDP, which I consider to be sufficiently sensitive in this case to variations in the mix of uses over differing lengths of frontage in assessing the overall balance of retail to non-retail uses.

11. I note the concerns that have been expressed regarding the number of estate agencies both in this part of Kensington Church Street and elsewhere in the vicinity. Matters relating to the methods of operation of estate agents and competition between them are not relevant to the planning merits of the proposal. In addition, I do not regard estate agencies as out of place in a retail street, and the contribution that non-retail uses can make to a centre's vitality and diversity is recognised in the UDP.

12. I therefore find the proposal not to detract from the retail character and function of the shopping street, and that it does not contravene the development plan in this respect.

Conservation Area

13. A detailed appraisal of the character and appearance of the Kensington Palace Conservation Area is set out in the Council's Proposals Statement. This identifies its main features as comprising the Palace itself and the varied architectural and historic elements reflected in its buildings and spaces. These include a range of ages and styles of residential properties, and commercial buildings in Kensington High Street and Kensington Church Street. The latter, together with its side roads, is identified as having a distinctive character. In particular the shopfronts are referred to as making a significant contribution to the Area. The dominant presence from the Carmelite Church northwards of antique dealers, fine arts establishments and others retailing items of aesthetic interest is identified as a striking feature. My observations of the Conservation Area confirmed that its character and appearance are shaped by these various elements as identified in the Statement.

14. The appeal premises were previously occupied as a clothes shop for some three years. I understand that prior to this they were used as an antiques shop. There are conflicting assertions on the current potential market demand for these premises and other vacant units in the vicinity by antiques and fine arts type businesses. Nevertheless, I was told by the local Antique Dealers Association that, while there have been some changes in recent years in the specific nature of dealers present, the representation of such businesses in the street as a whole is relatively level. I appreciate that there are sound business reasons for local traders wishing to maximise the number of such enterprises in the street. However, I do not consider that the appeal proposal would have any significant effect on the contribution that this trade makes to the character and appearance of the Conservation Area, particularly taking into account the immediately preceding use of the premises. The existing dominant presence of specialist antiques and fine arts dealers would remain unchanged, with some 16 out of the 26 units in the frontage in this type of use.

15. I have already concluded that the proposal would maintain the retail character and function of the street. In my opinion, subject to the continued provision of a window display that utilises the shopfront of the premises, I consider that it is in keeping with the presence of commercial uses within the street that contribute to the character and appearance of the Conservation Area. I therefore find the proposal to preserve that character and appearance.

16. I note that the newly adopted UDP contains policies that require proposals to enhance as well as preserve conservation areas in these respects. The Proposals Statement for this Area identifies no specific enhancements that are sought relating to use of the appeal premises, but indicates that historic shopfronts should be retained and restored. The appellant's assertion that, since occupying the premises, refurbishment work to the shopfront has improved its appearance is not disputed by the Council. I understand that separate applications have been submitted to the Council for alterations to the shopfront and new signage. While these are not before me, I do not see the appeal proposal as incompatible with the proposed enhancement of shopfronts in the Area given that the use is one that, in my view, is appropriate to premises with a shopfront. Taking into account that the appeal proposal relates only to the use of the premises, I consider that in this respect it adequately meets the requirements of policies STRAT 6 and CD52. This is particularly so having regard to advice in Planning Policy Guidance 15 against tightening development controls over changes of use as a specific instrument of planning policy in conservation areas.

17. I therefore conclude that the proposal is in keeping with the character and appearance of the Conservation Area, and complies with both the statutory and development plan requirements in this respect.

Other matters

18. I note the strength of local concern that the change of use has already occurred, and can appreciate the reasons for this. However, it does not affect my decision which is based on the planning issues raised by the proposal.

19. I have taken into account the various other decisions cited in support of the main parties' cases, but I have considered the proposal on its own merits

Conditions

20. I have already referred to the necessity for a window display to be maintained in the interests of the retail character and visual amenity of the street.

21. A suggestion was made at the hearing that any permission be granted on a personal basis. I do not consider the circumstances in favour of the proposal to be unique to the appellant, and in the light of advice in Circular 11/95 such a restriction is not justified.

Conclusion

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

Formal Decision

23. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for continued use of existing ground floor shop and basement unit as an estate agency (Class A2) at 110 Kensington Church Street, London W8 in accordance with the terms of the application Ref. PP/01/01227 dated 16 May 2001, and the plans submitted therewith, subject to the following condition:

    A window display shall be provided at all times in the window fronting Kensington Church Street.

Information

24. 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.

25. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

26. Attention is drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970, as amended.

T. G.

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nick de Lotbiniere BSc MPhil (Env Planning) MRICS	GVA Grimley, 10 Stratton Street, London W1X 6JR

FOR THE LOCAL PLANNING AUTHORITY:

George Allpress	Planning Officer, Royal Borough of Kensington and Chelsea

INTERESTED PERSONS:

Patrick Sandberg	150-152 Kensington Church Street, London W8 4BN (Chairman, Kensington Church Street Antique Dealers Association)
John Scott	233-5 Westbourne Grove, London W11 2SE (Notting Hill Gate Improvements Group)
Willoughby Wynne	39 Brunswick Gardens, London W8 4AW (Chairman, Cherry Trees Residents Association)
Paul O'Neill	Knight Frank, 20 Hanover Square, London W1S 1HZ
Jane Holdsworh	Garry Atkins, 107 Kensington Church Street London W8 7LN
Simon Agace	Winkworth, 118 Kensington Church Street, London W8
Jorge Welsh	116 Kensington Church Street, London W8 4BH
David Marshall	Marsh and Parsons, 9 Kensington Church Street, London W8
Jason Larkin BA (Hons) DipTP MRTPI	Bell Cornwell Partnership, Oakview House, Station Road, Hook, Hampshire RG27 9TP

DOCUMENTS

Document	1	List of persons present at the Hearing
Document	2	Council's letter notifying interested parties of the appeal
Document	3	Folder of correspondence received in response to notification letter
Document	4	Proposed Modifications to the Alterations to the Royal Borough of Kensington and Chelsea Unitary Development Plan dated February 2002, submitted by Mr Allpress
Document	5	Letter from Notting Hill Gate Improvements Group dated 4 February 2002, submitted by Mr Scott
Document	6	Brochure and postcards relating to Notting Hill Improvements Group, submitted by Mr Scott

PLANS

Plan	A	Application drawing, no. (PA)001

The Planning Inspectorate

CHRONICALLY SICK AND DISABLED PERSONS ACT 1970

CHRONICALLY SICK AND DISABLED PERSONS (AMENDMENT) ACT 1976

THE BUILDING REGULATIONS 2000 (SI 2000 No 2531) - Amended by: THE BUILDING (AMENDMENT) REGULATIONS 2001 (SI 2001 No 3335)

1. The Chronically Sick and Disabled Persons Act 1970 was amended by the Chronically Sick and Disabled Persons (Amendment) Act 1976. The amended Act requires persons undertaking the provision of any building or premises to which the public is to be admitted to make provision for the needs of disabled people. The provisions of the 1970 Act apply to existing and to new buildings: the 1976 amendment included newly provided places of employment. The terms "building" and "premises" are not defined in the amended Act but would be construed by a court according to their ordinary meaning. Section 4 of the Act relates to the provision of means of access, parking facilities and sanitary conveniences. Section 7 relates to the provision of appropriate notices and signs. Section 8 relates to access to, and facilities at, educational buildings and section 8A relates to the provision of means of access, parking facilities and sanitary conveniences for newly provided office, shops and railway premises and factories. The Building Regulations were made under the Building Act 1984. They regulate the control of building work. "Building work" has the meaning given in regulation 3(1) of the *2000 Regulations, as amended by the 2001 Amendment Regulations,* and includes the erection, extension or material alteration of a building or controlled service.

2. Approved Document M - Access and Facilities for Disabled People: 1999 edition, is of relevance. Approved Documents are not part of the *2000* Regulations but have a special status which is explained in sections 6 and 7 of the Building Act 1984.

3. For the purposes of Part M of the Building Regulations, "disabled people" means people who have:

   a. an impairment which limits their ability to walk which requires them to use a wheelchair for mobility, or

   b. impaired sight or hearing.

4. Regulation 4(1) *of SI 2000 No 2531* provides that building work shall be carried out so that it complies with the relevant requirements contained in Schedule 1 and in complying with any such requirement that there is no failure to comply with any other such requirement. Part M of Schedule 1 relates to requirements for access and facilities for disabled people.

The requirements of Part M do not apply to:

   a. an extension which does not include a ground storey;

   b. a material alteration;

c. any part of the building which is used solely to enable the building or any service or fitting in the building to be inspected, maintained or repaired.

Note: Since October 1999 Part M of the building regulations now applies to dwellings in addition to those building previously covered.

5. Regulation 4(2) *of SI 2000 No 2531* provides that in respect of building work to which the provision applies there must be compliance with the relevant requirements of Schedule 1 or, when there is not compliance with any such requirement, the building or any controlled service or fitting is no more unsatisfactory in relation to that requirement than before the work was carried out.

6. There is a definition of building in paragraph *0.10* of the Approved Document M. This definition is more specific than the definition of "building" in Regulation 2(1) of the 1991 Regulations. The definition "building" in Approved Document M reads as follows:

> "Building, in this Approved Document, means a building or a part of a building which may comprise individual premises: a shop, an office, a factory, a warehouse, a school or other educational establishment, including student residential accommodation, an institution, or any premises to which the public is admitted whether on immediate payment, fee, subscription, or otherwise."

7. [In addition to the above mentioned matters, your attention is drawn to BS5810:1979 "Code of practice for access for the disabled to buildings" and to Design Note 18 "Access for Disabled People to Educational Buildings" published in 1984 by the Secretary of State for Education and Science and the Secretary of State for Wales.]

For paragraph 7, please substitute:
7. In addition to the above mentioned matters, your attention is drawn to BS 8300:2001: Design of buildings and their approaches to meet the needs of disabled people: Code of practice. (Design Note 18: "Access for Disabled People to Educational Buildings", published in 1984 by the Secretary of State for Education and Science and the Secretary of State for Wales, is no longer current).

406 (Jan 2002)

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The Planning Inspectorate

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GTN 1371-8930

Ms R Gill (Dept Of Planning & Conservation)
Kensington And Chelsea R B C
3rd Floor
The Town Hall
Hornton Street
London
W8 7NX

Your Ref: PP/01/01227

Our Ref: APP/K5600/A/01/1079287

Date: 14 February 2002

Dear Madam

TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY DRUCE LAMY LTD
SITE AT 110 KENSINGTON CHURCH STREET, LONDON, W8 4BH

I enclose for your information a copy of the appellant's final comments on the above appeal. Normally, no further comments, from any party, will now be taken into consideration.

Yours faithfully

D Shorland

Mr Dave Shorland

217L(BPR)

EX DIR	HDC	TP	CAC	AD	CLU	AO AK
R.B. K.C.	15 FEB 2002				PLANNING	
N	C	SW	SE	A/P	IO	REC
			ARB	FPLN	DES	FEES

George Ring Mon afternoon

Patrick Sandberg
Phone: 72290373
Kens Church
St Antique
Dealers Assoc
Briefing on
what want done.

APPEALS TIMETABLE

ADMINISTRATION	Initials	Time Hours	Cost LAWJ
(1) Notification of appeal to third parties			
(2) Pre Statement Inquiry/hearing			
(3) Preparation of Statement and Documentation			
(4) Notification of appeal decision			

CASE OFFICER

(1) Preparation
(2) Meeting

Legal
Counsel
Transportation
Design
Policy
BEHO
Other Parties

(3) Statement
(4) Public Inquiry/Local Hearing

Policy

Preparation
Meetings
Statement if applicable

Design

Preparation
Meetings
Statement if applicable

Transportation

Preparation
Meetings
Statement if applicable

PRINCIPAL SHOPPING CENTRES SURVEY 1998

Notting Hill Gate PSC (UDP) JULY 1998

*: core v: vacant r: refurbishment d: re/development

( ) = geographical marker [ ] = unit which may be integrated into the shopping centre in the future

Core	Number	Street	Status	Description	UCO	Shop Name
	(202	Kensington Church Street		Office Entrance)		
	200	Kensington Church Street		Betting Office	A2	WILLIAM HILL
	190	Kensington Church Street		Post Office	A1	POST OFFICE
	188	Kensington Church Street	v	Office	B1	NETTECH PLC
	186	Kensington Church Street		Office	B1	WORLD WEDDING SERVICES
	184/182	Kensington Church Street		Health Clinic	D1	THE GROVE
	180	Kensington Church Street		Antiques	A1	TOUBIAN ANTIQUES LTD
	178	Kensington Church Street		Antiques	A1	NASSIRZADEH
	176	Kensington Church Street		Antiques	A1	A & P GALLERY
	174	Kensington Church Street		Pink Accessories	A1	THE PINK ROOM
	174a	Kensington Church Street		Antiques	A1	DYALA SALAM
		KENSINGTON MALL				
	[2	Kensington Mall		Picture Framers	A1	SEBASTIAN D'ORSAI]
	7	Kensington Mall		Flower Shop	A1	FLOWERS BY NOVELTY
	10	Kensignton Mall			C3	CARLYLE MANSIONS
	(5	Kensington Mall		Residential)		
	3	Kensington Mall		Puppets & Masks	A1	PUPPETS & MASKS
	1	Kensington Mall	v	Sandwich Bar	A3	CHUNKYS
		PALACE GARDENS TER				
	71	Palace Gardens Terrace		Public house	A3	MALL TAVERN
	[120/124	Palace Gardens Terrace		Restaurant	A3	NOVELLI]
	[132	Palace Gardens Terrace		Bookshop	A1	NOTTING HILL BOOKS]
		KENSINGTON CHURCH				
E	172	Kensington Church Street		Estate Agents	A2	BERKELEY INTERNATIONAL
A	170	Kensington Church Street		Antiques	A1	PETER KEMP
A	168/166	Kensington Church Street		Chandelier Shop	A1	MRS.M.E.CRICK
	(164	Kensignton Church Street		residential access		
E	162	Kensington Church Street		Estate Agents	A2	JOHN D. WOOD
A	160	Kensington Church Street		Art Deco Shop	A1	JOHN JESSE LTD
	(158	Kensington Church Street		Residential Access)		
A	156	Kensington Church Street		Antiques	A1	DENTON
A	154	Kensington Church Street		Antiques	A1	C.H.MAJOR
A	152	Kensington Church Street	v	Antiques	A1	PATRICK SANDBERG
	148/146	Kensington Church Street		Timber Dealer Office	A1	JOSEPH YATES
A	144	Kensington Church Street		Pottery	A1	RICHARD DENNIS
A	140/142	Kensington Church Street		Antiques	A1	PATRICK SANDBERG ANTIQUES
	138	Kensington Church Street	v	Office	B1	INCORP.ASSN.PREP.SCHOOLS
	136	Kensington Church Street		Accountants Office	B1	ROBERTS & CO.
A	134	Kensington Church Street		Art/Antiques	A1	J.A.N. FINE ART
A	132	Kensington Church Street		Art/Antiques	A1	GREG BAKER
	128/126	Kensington Church Street		Publishers Office	B1	STACEY INTERNATIONAL
	122/124	Kensington Church Street		Restaurant	A3	CLARKE'S
A	120	Kensington Church Street		Antiques	A1	S.MARCHANT & SON
E	118	Kensington Church Street		Estate Agents	A2	WINKWORTH

PRINCIPAL SHOPPING CENTRES SURVEY 1998

Notting Hill Gate PSC (UDP) JULY 1998

*: core v: vacant r: refurbishment d: re/development

( ) = geographical marker [ ] = unit which may be integrated into the shopping centre in the future

Core	Number	Street	Status	Description	UCO	Shop Name
A	116	Kensington Church Street		Antiques	A1	JORGE WELSH
A	114	Kensington Church Street		Antiques	A1	STOCKSPRING ANTIQUES
	112	Kensington Church Street		Grocers	A1	K.S.R. FOODS
*	110	Kensington Church Street		Clothes	A1	COCOON COATS
A	108	Kensington Church Street		Antiques	A1	PAMELA TEIGNMOUTH & SON
A	106	Kensington Church Street		Antiques	A1	EDDY BARDAWIL
		BERKLEY GARDENS				
	[104	Kensington Church Street		Flower Shop	A1	PONT]
	[104b	Kensington Church Street		Hairdresser	A1	MOSTAFA]
	[104a	Kensington Church Street		Antiques	A1	BRIAN ROLLESTON]
	[97a,b	Kensington Church Street		Antiques	A1	LEV ANTIQUES]
	[97c	Kensington Church Street		Antiques	A1	ELLA GRAHAM]
	[99	Kensington Church Street		Bridal Wear	A1	HOUSE OF SUZUYA]
	[101	Kensington Church Street		Oriental Art	A1	BERWALD]
	[101b	Kensington Church Street		Antiques	A1	COHEN & COHEN]
		BEDFORD GARDENS				
	2a	Bedford Gardens		Charter Surveyors	A1	RICHARD BIRCHILL ASSOCIATES
		KENSINGTON CHURCH				
E	103	Kensington Church Street		Estate Agents	A2	AYLESFORD & CO.
A	105	Kensington Church Street		Antiques	A1	HASLAM & WHITEWAY
A	107	Kensington Church Street		Antiques	A1	GARY ATKINS
A	109	Kensington Church Street		Antiques	A1	SIMON SPERO
A	111	Kensington Church Street		Antiques	A1	H & W DEUTSCH
A	113	Kensington Church Street		Antiques	A1	DAVID BROWER
A	115	Kensington Church Street		Picture Framing	A1	THE ROWLEY GALLERY
A	117	Kensington Church Street		Antiques	A1	GREEN'S ANTIQUE GALLERIES
	119	Kensington Church Street		Public House	A3	THE CHURCHILL ARMS
		CAMPDEN STREET				
	1	Campden Street		Antiques	A1	A.V. & M.R. SANTOS
	2	Campden Street		Antiques	A1	VALARIE HOWARD
	3/4	Campden Street		Antiques	A1	J.SEWELL
	5	Campden Street		Finance Office	A2	SIMMONS FINANCE GROUP
	6	Campden Street		Travel Agent	A1	EUROPE STUDENT TRAVEL
		KENSINGTON CHURCH				
	121	Kensington Church Street		Antiques	A1	LINE ART
	121a	Kensington Church Street		Antiques	A1	MARY COOKE
	123	Kensington Church Street		Antique Paintings	A1	LUCY B. CAMPBELL
	125	Kensington Church Street		Antiques	A1	DECOR
	127/129	Kensington Church Street	r	Café	A3	CAFÉ FLO
		PEEL STREET				
	131a	Kensington Church Street		Antiques	A1	HOPE & GLORY
	131d	Kensington Church Street		Antiques	A1	LIBRA ANTIQUES
	131e	Kensington Church Street		Antiques	A1	HAMPSON & LEWIS
	131	Kensington Church Street		Antiques	A1	ROBERT HALES

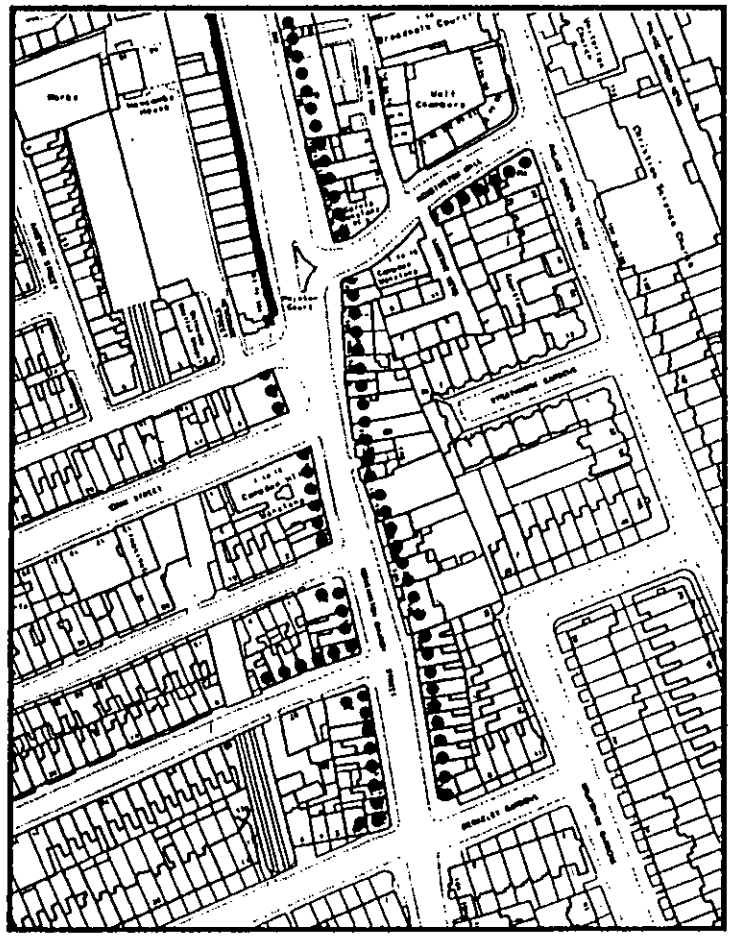
PRINCIPAL SHOPPING CENTRES SURVEY 1998

Notting Hill Gate PSC (UDP) JULY 1998

*: core v: vacant r: refurbishment d: re/development

( ) = geographical marker [ ] = unit which may be integrated into the shopping centre in the future

Core	Number	Street	Status	Description	UCO	Shop Name
	133	Kensington Church Street		Antiques	A1	SUKMANO
	135	Kensington Church Street		Restaurant	A3	BOYDS
	137	Kensington Church Street		Antiques	A1	THROUGH THE LOOKING GLASS
	139	Kensington Church Street		Health Food	A1	HOLLAND & BARRETT
	141	Kensington Church Street		Antiques	A1	MAHS ANTIQUES
		EDGE STREET				
	145	Kensington Church Street		Estate Agents & Architects	A2	SAVILLS
		(Kensington Church Street		Residential - Royston Court)		
		KENSINGTON PLACE				
*	203/207	Kensington Church Street		Restaurant	A3	KENSINGTON PLACE
*	209	Kensington Church Street		Antiques	A1	SINAI ANTIQUES
*	211	Kensington Church Street		Off Licence	A1	LEA & SANDEMAN
*	213	Kensington Church Street		Electrical Goods	A1	OLYMPIC ELECTRONICS
*	215-217	Kensington Church Street		Restaurant	A3	LA BARRACA
*	219	Kensington Church Street		Antiques	A1	ADRIAN ALAN
*	221	Kensington Church Street		Antiques	A1	SINAI ANTIQUES
*	223	Kensington Church Street		Soft Furnishings Shop	A1	DE WINTER
*	225	Kensington Church Street		Baker	A1	THREE COOKS
*	227	Kensington Church Street		Dry Cleaner (On premises)	A1	JOHNSON'S
*	229	Kensington Church Street		Hair Centre	A1	TRENDCO ALTERNATIVE HAIR CENTER
*	237/235	Kensington Church Street		Bookshop	A1	WATERSTONES



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North

Principal Shopping Centre No 2

NOTTING HILL GATE

KEY

Core Shopping Frontage

●●●●●● Non Core Shopping Frontage

North

Scale 1:2500

Core Frontage

26-144 (even) Notting Hill Gate
47-101 (odd) Notting Hill Gate
203-237 (odd) Kensington Church Street
2-34 (even) Pembridge Road

Non Core Frontage

8-24b (even) Notting Hill Gate
103-155 (odd) Notting Hill Gate
152-164 (even) Notting Hill Gate
1-7 (inclusive) Wellington Terrace (Notting Hill Gate)
186-196 (even) Campden Hill Road
1-3 (odd) Hillgate Street
11-59 (odd) Pembridge Road
1-7 (odd) Ladbroke Road
7-15 (odd) Portobello Road
2-6 (even) Kensington Park Road
103-145 (odd) Kensington Church Street
106-206 (even) Kensington Church Street
71 Palace Gardens Terrace
1-7 (odd) Kensington Mall
2a Bedford Gardens
1-6 (inclusive) Campden Street

PRINCIPAL SHOPPING CENTRES SURVEY 2000

Notting Hill Gate PSC (UDP) JULY 2000

*: core v: vacant r: refurbishment d: re/development

( ) = geographical marker [ ] = unit which may be integrated into the shopping centre in the future

Core	Number	Street	Status	Description	UCO	Shop Name
	206	Kensington Church Street		Public House	A3	THE RAT & PARROT
	(202	Kensington Church Street		Office Entrance)		
	200	Kensington Church Street		Betting Office	A2	WILLIAM HILL
	190	Kensington Church Street		Post Office	A1	POST OFFICE
	188	Kensington Church Street	v	Office	B1	NETTECH PLC
	186	Kensington Church Street		Office	B1	PRESSNET
	184/182	Kensington Church Street		Health Clinic	D1	THE GROVE
	180	Kensington Church Street	v	Antiques	A1	TOUBIAN ANTIQUES LTD
	178	Kensington Church Street		Antiques	A1	NASSIRZADEH
	176	Kensington Church Street	v	Antiques	A1	A & P GALLERY
	174	Kensington Church Street		Pink Accessories	A1	THE PINK ROOM
	174a	Kensington Church Street		Antiques	A1	DYALA SALAM
		KENSINGTON MALL				
	[2	Kensington Mall		Picture Framers	A1	SEBASTIAN D'ORSAI]
	7	Kensington Mall		Hat Shop	A1	HAT HOUSE
	10	Kensington Mall		Residential	C3	CARLYLE MANSIONS
	(5	Kensington Mall		Residential)		
	3	Kensington Mall		Puppets & Masks	A1	PUPPETS & MASKS
	1	Kensington Mall		Interior Designers	A1	GATCH
		PALACE GARDENS TER				
	71	Palace Gardens Terrace		Public house	A3	MALL TAVERN
	[120/124	Palace Gardens Terrace		Restaurant	A3	ARK]
	[132	Palace Gardens Terrace		Bookshop	A1	NOTTING HILL BOOKS]
		KENSINGTON CHURCH				
E	172	Kensington Church Street		Estate Agents	A2	BERKELEY INTERNATIONAL
A	170	Kensington Church Street		Antiques	A1	PETER KEMP
A	168/166	Kensington Church Street		Chandelier Shop	A1	MRS.M.E.CRICK
	(164	Kensignton Church Street		residential access		
E	162	Kensington Church Street		Estate Agents	A2	JOHN D. WOOD
A	160	Kensington Church Street		Art Deco Shop	A1	JOHN JESSE LTD
	(158	Kensington Church Street		Residential Access)		
A	156	Kensington Church Street		Antiques	A1	DENTON
A	154	Kensington Church Street		Antiques	A1	C.H.MAJOR
A	152	Kensington Church Street		Antiques	A1	PATRICK SANDBERG
	148/146	Kensington Church Street		Timber Dealer Office	A1	JOSEPH YATES
A	144	Kensington Church Street		Pottery	A1	RICHARD DENNIS
A	140/142	Kensington Church Street		Antiques	A1	G FREDRICKS AND SON
was office A	138	Kensington Church Street		Antiques	A1	YANG GUIFEI
	136	Kensington Church Street		Accountants Office	B1	ROBERTS & CO.
A	134	Kensington Church Street		Art/Antiques	A1	J.A.N. FINE ART
A	132	Kensington Church Street		Art/Antiques	A1	GREG BAKER
	128/126	Kensington Church Street		Publishers Office	B1	STACEY INTERNATIONAL
	122/124	Kensington Church Street		Restaurant	A3	CLARKE'S
A	120	Kensington Church Street		Antiques	A1	S.MARCHANT & SON

PRINCIPAL SHOPPING CENTRES SURVEY 2000

Notting Hill Gate PSC (UDP) JULY 2000

*: core v: vacant r: refurbishment d: re/development

( ) = geographical marker [ ] = unit which may be integrated into the shopping centre in the future

Core	Number	Street	Status	Description	UCO	Shop Name
E	118	Kensington Church Street		Estate Agents	A2	WINKWORTH
A	116	Kensington Church Street		Antiques	A1	JORGE WELSH
A	114	Kensington Church Street		Antiques	A1	STOCKSPRING ANTIQUES
	112	Kensington Church Street		Grocers	A1	K.S.R. FOODS
*	110	Kensington Church Street		Clothes	A1	COCOON COATS
A	108	Kensington Church Street		Antiques	A1	PAMELA TEIGNMOUTH & SON
A	106	Kensington Church Street		Antiques	A1	EDDY BARDAWIL
		BERKLEY GARDENS				
	[104	Kensington Church Street		Flower Shop	A1	PONT]
	[104b	Kensington Church Street		Hairdresser	A1	MOSTAFA]
	[104a	Kensington Church Street		Antiques	A1	BRIAN ROLLESTON]
	[97a,b	Kensington Church Street		Antiques	A1	LEV ANTIQUES]
	[97c	Kensington Church Street		Antiques	A1	ELLA GRAHAM]
	[99	Kensington Church Street		Tile Shop	A1	EUROPEAN HERITAGE]
	[101	Kensington Church Street		Oriental Art	A1	BERWALD]
	[101b	Kensington Church Street		Antiques	A1	COHEN & COHEN]
		BEDFORD GARDENS				
	2a	Bedford Gardens	r	Chartered Surveyors	A2	RICHARD BIRCHILL ASSOCIATES
		KENSINGTON CHURCH				
E	103	Kensington Church Street		Estate Agents	A2	AYLESFORD & CO.
A	105	Kensington Church Street		Antiques	A1	HASLAM & WHITEWAY
A	107	Kensington Church Street		Antiques	A1	GARY ATKINS
A	109	Kensington Church Street		Antiques	A1	SIMON SPERO
A	111	Kensington Church Street		Antiques	A1	H & W DEUTSCH
A	113	Kensington Church Street		Antiques	A1	DAVID BROWER
A	115	Kensington Church Street		Picture Framing	A1	THE ROWLEY GALLERY
A	117	Kensington Church Street		Antiques	A1	GREEN'S ANTIQUE GALLERIES
	119	Kensington Church Street		Public House	A3	THE CHURCHILL ARMS
		CAMPDEN STREET				
	1	Campden Street	r	Antiques	A1	A.V. & M.R. SANTOS
	2	Campden Street		Antiques	A1	VALARIE HOWARD
	3/4	Campden Street		Antiques	A1	RODERICK JELLICOE
	5	Campden Street		Finance Office	A2	SIMMONS FINANCE GROUP
	6	Campden Street		Travel Agent	A1	EUROPE STUDENT TRAVEL
		KENSINGTON CHURCH				
	121	Kensington Church Street	r	Antiques	A1	NO NAME
	121a	Kensington Church Street	r	Antiques	A1	MARY COOKE
	123	Kensington Church Street		Antique Paintings	A1	LUCY B. CAMPBELL
	125	Kensington Church Street		Antiques	A1	DECOR
	127/129	Kensington Church Street		Café	A3	CAFÉ FLO
		PEEL STREET				
	131a	Kensington Church Street		Antiques	A1	HOPE & GLORY
	131d	Kensington Church Street		Antiques	A1	LIBRA ANTIQUES
	131e	Kensington Church Street		Flower Shop	A1	CANADA FRENCH

PRINCIPAL SHOPPING CENTRES SURVEY 2000

Notting Hill Gate PSC (UDP) JULY 2000

*: core v: vacant r: refurbishment d: re/development

( ) = geographical marker [ ] = unit which may be integrated into the shopping centre in the future

Core	Number	Street	Status	Description	UCO	Shop Name
	131	Kensington Church Street		Antiques	A1	ROBERT HALES
	133	Kensington Church Street		Antiques	A1	SUKMANO
	135	Kensington Church Street		Restaurant	A3	LA CANDELA
	137	Kensington Church Street		Antiques	A1	THROUGH THE LOOKING GLASS
	139	Kensington Church Street		Health Food	A1	HOLLAND & BARRETT
	141	Kensington Church Street		Antiques	A1	MAHS ANTIQUES
		EDGE STREET				
	145	Kensington Church Street		Estate Agents & Architects	A2	SAVILLS
		(Kensington Church Street		Residential - Royston Court)		
		KENSINGTON PLACE				
*	203/209	Kensington Church Street		Restaurant	A3	KENSINGTON PLACE
*	211	Kensington Church Street		Off Licence	A1	LEA & SANDEMAN
*	213	Kensington Church Street		Electrical Goods	A1	OLYMPIC ELECTRONICS
*	215-217	Kensington Church Street	r	Restaurant	A3	LA BARRACA
*	219	Kensington Church Street		Antiques	A1	SINAI ANTIQUES
*	221	Kensington Church Street		Antiques	A1	SINAI ANTIQUES
*	223	Kensington Church Street		Soft Furnishings Shop	A1	DE WINTER
*	225	Kensington Church Street		Baker	A1	THREE COOKS
*	227	Kensington Church Street		Dry Cleaner (On premises)	A1	JOHNSON'S
*	229	Kensington Church Street		Hair Centre	A1	TRENDCO ALTERNATIVE HAIR CENTER
*	237/235	Kensington Church Street		Bookshop	A1	WATERSTONES

Principal Shopping Centre No. 2

NOTTING HILL GATE

KEY

▬ Core Frontage

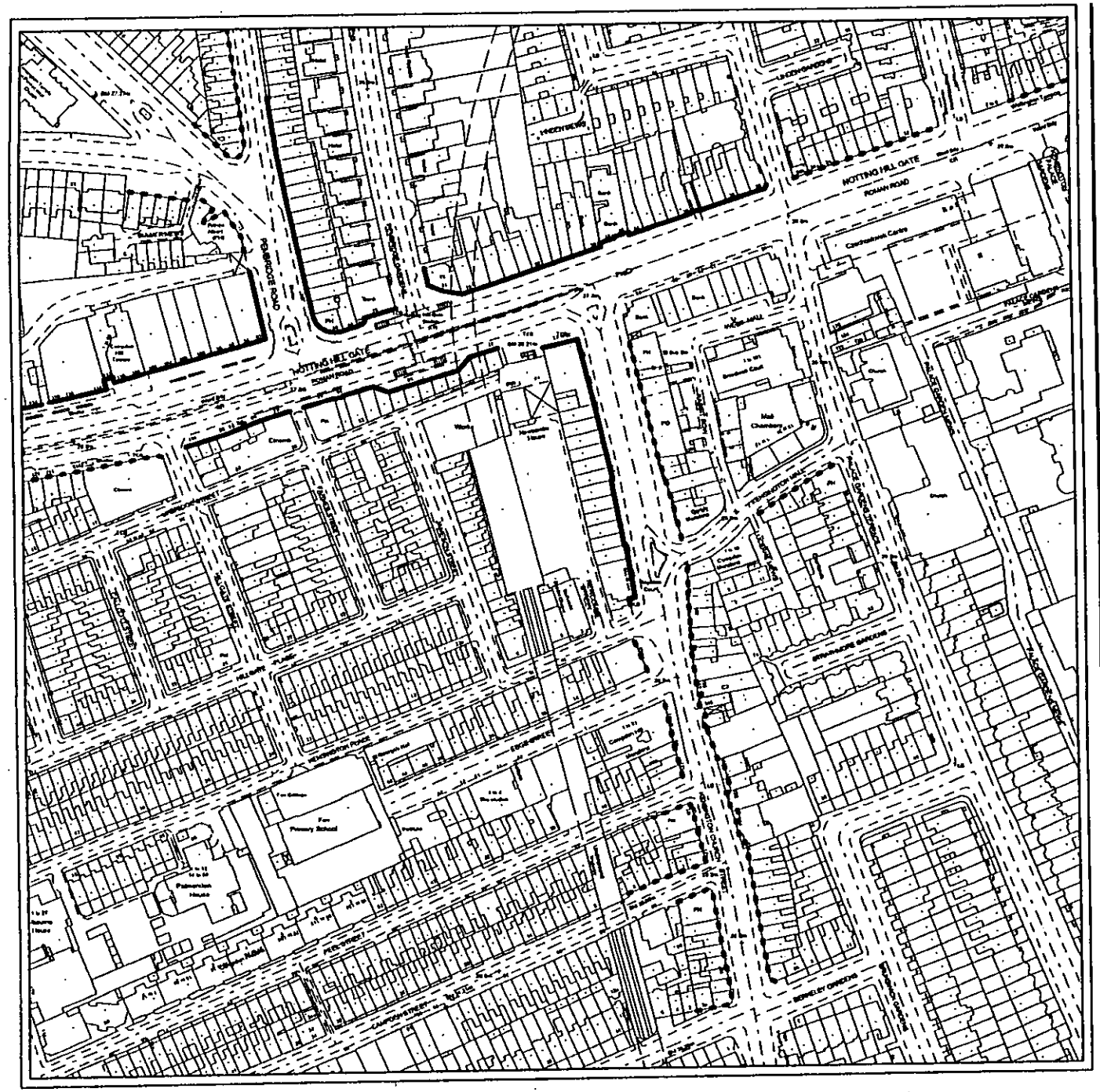
■ ■ ■ Non Core Frontage

Core Frontage

26-144 (even) Notting Hill Gate
47-101 (odd) Notting Hill Gate
203-237 (odd) Kensington Church Street
2-34 (even) Pembridge Road

Non Core Frontage

8-24b (even) Notting Hill Gate
103-155 (odd) Notting Hill Gate
146-164 (even) Notting Hill Gate
1-7 (inclusive) Wellington Terrace (Notting Hill Gate)
186-196 (even) Campden Hill Road
1-3 (odd) Hillgate Street
11-59 (odd) Pembridge Road
1-7 (odd) Ladbroke Road
7-15 (odd) Portobello Road
2-6 (even) Kensington Park Road
103-145 (odd) Kensington Church Street
106-206 (even) Kensington Church Street
71 Palace Gardens Terrace
1-7 (odd) Kensington Mall
2a Bedford Gardens
1-6 (inclusive) Campden Street



North ↑ Scale 1:2500

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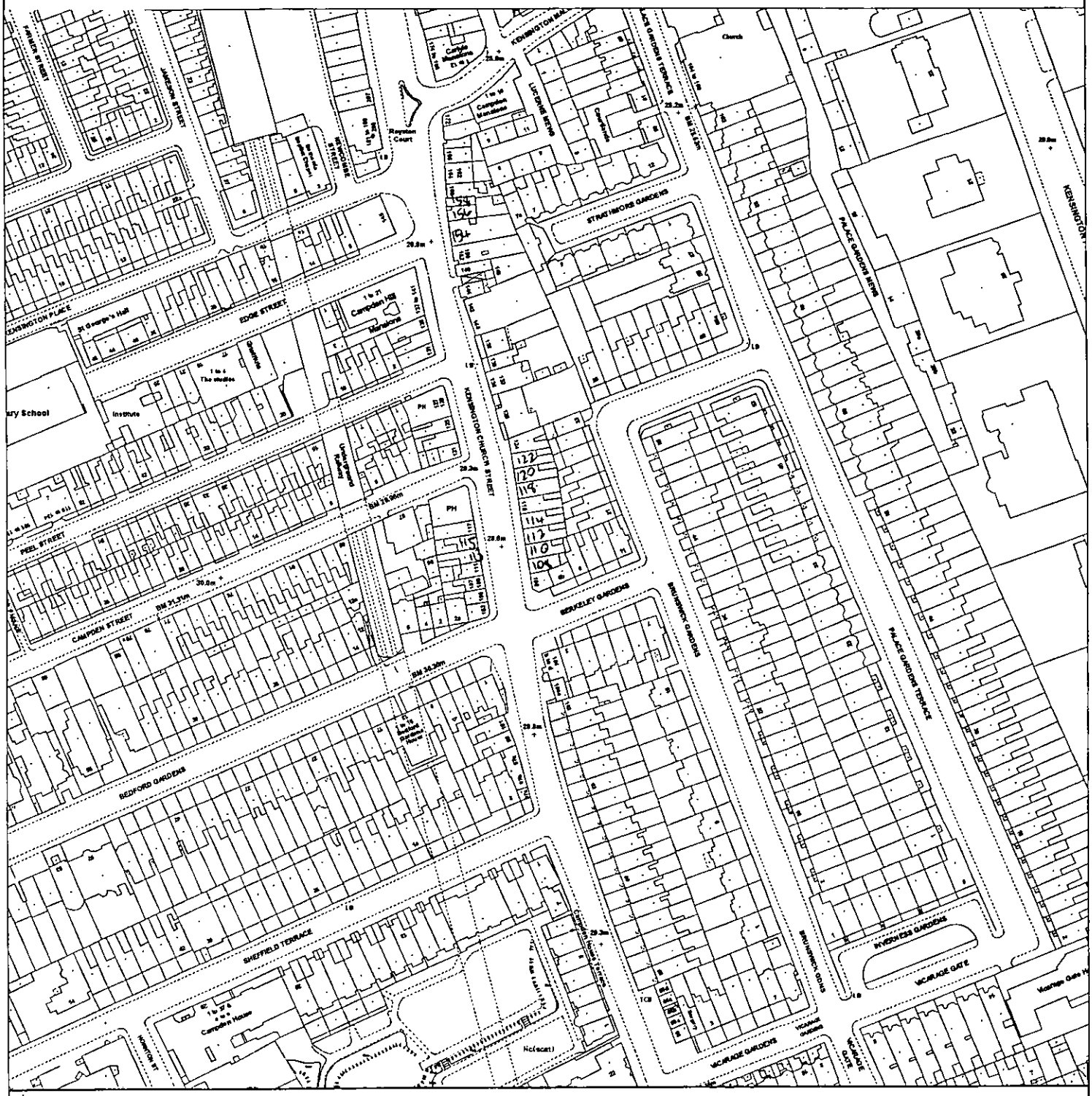
RBKC - Planning and Conservation - Card Index - Site Map



Ordnance Survey Map Extract - Crown Copyright Reserved - RBKC Internal Use Only

QuickMap(10/09/2001) Map width : 390.00m Scale 1 : 2000

Old

talking about

- Sp. whole core or non-core hostage
- individual parcels is indicative only.

new Core or non-core.

- Sp. the individual parcels.
- whole ~~[illegible]~~ non-c. is strategic.

GVA Grimley

International Property Advisers

[redacted]

APPEAL IN RESPECT OF THE CHANGE OF USE OF PREMISES AT 110 KENSINGTON CHURCH STREET, LONDON, W8, FROM CLASS A1 (SHOP) TO CLASS A3 (ESTATE AGENT)

ON BEHALF OF DRUCE LAMY LTD

Date: January 2002

Appeal Reference: APP/K5600/A/01/1079287
Our Reference: 02A154598/NdL/CJG

GVA Grimley

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2 Committee Report
3 Council's Notice of Refusal
4 Goad Plan updated to 2002 of the Notting Hill Gate Shopping Area
5 Extract from the Royal Borough of Kensington & Chelsea's Shopping Survey 1999
6 Tables of analysis of the uses within the Notting Hill Gate Principal Shopping Area and the non-core frontage in the vicinity of the appeal premises
7 Letter from the Director of Planning & Conservation following a meeting regarding the application for change of use
8 Appeal decision – Keats Langley v Guildford Borough Council (1994)
9 Appeal decision – Montgomeryshire District Council, Welshpool (1995)
10 Appeal decision – Brookside Properties v Macclesfield Borough Council (1998)
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12 Royal Borough of Kensington & Chelsea Kensington Palace Conservation Area CAPS – Section 3
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1.0 INTRODUCTION

1.1 This statement sets out the appellant's (Druce Lamy Ltd) case against the decision of the Royal Borough of Kensington & Chelsea to refuse planning permission for the change of use of the premises at 110 Kensington Church Street, London.

1.2 The planning application for the proposed change of use was submitted to the Local Planning Authority on 16 May 2001 and was made valid by the Council on 4 June 2001 (LPA reference PP/01/01227/CUSE). The proposal was considered by the Council's Planning Services Committee on 17 September 2001, and was subsequently refused (decision notice dated 20 September 2001).

a) The Proposal

1.3 The proposal involves the change of use of the ground floor shop and the basement of the premises at 110 Kensington Church Street from Class A1 (shop) to Class A2 (estate agents) use. The extent of the premises is illustrated on the Ordnance Survey extract attached at **appendix 1.**

b) Reasons for the Refusal of Planning Permission

1.4 This appeal is lodged against the Council's decision to refuse the application for the change of use of the premises. The proposal was refused in accordance with the planning officer's recommendation (see committee report attached at **appendix 2**). The decision notice (attached at **appendix 3**) dated 20 September 2001 states the following reason for refusal:

"REASON(S) FOR REFUSAL:

The proposal involves the loss of a shop unit which would be used for antique shop or fine art purposes, which would adversely affect the special character of this part of the conservation area and would therefore be contrary to policies in the Unitary Development Plan in particular Policies CD48 and CD52."

1.5 In addition to this reason for the refusal of the proposal, the Council attached an informative to their decision, which states:

"INFORMATIVE(S):

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 STRAT6, STRAT29, STRAT29c, S6, S15 and S15a, CD48, CD49 and CD52. (I51)."

2.0 BACKGROUND

a) The Site and Surroundings

2.1 The appeal property is located on the eastern side of Kensington Church Street, to the north of the junction with Berkeley Gardens and falls within the Kensington Palace Conservation Area and the non-core frontage of the Notting Hill Gate Principal Shopping Centre. Kensington Church Street itself is predominantly retail in character. However, the streets leading off Kensington Church Street contain residential terraced development. No. 110 Kensington Church Street backs onto the residential properties on Brunswick Gardens.

2.2 No. 110 Kensington Church Street is located towards the southern end of a three-storey terrace. The terrace comprises mostly Class A1 uses on the lower floors with residential accommodation located above. A GOAD plan illustrating the current uses of premises within the locality is attached at **appendix 4**. The subject unit, which was previously occupied by a clothes retailer, and is situated in between a food and wine shop and an antique shop.

b) Planning History

2.3 Planning permission was granted in 1979 for an extension to the first and second floor levels at the rear with alterations made to the shop front. This was permitted with conditions. The unit appears to have been a shop up until 2001 when the application to change the existing ground floor shop and basement into an estate agency was refused.

2.4 The following section of this statement sets out the relevant planning policies in the context of this proposal.

3.0 PLANNING POLICY

3.1 This section considers the relevant national, strategic and local planning policies against which the appeal falls to be considered. The implications of these policies and other material considerations are considered in section 4 of this statement, which presents our planning case. The relevant policy documents are as follows:

National Policy

- Section 54A of the Town & Country Planning Act (1990) (as amended)
- Planning Policy Guidance Note (PPG) 1 – General Policy and Principles (1997)
- Planning Policy Guidance Note (PPG) 6 – Town Centres and Retail Development (1996)
- Planning Policy Guidance Note (PPG) 15 – Planning and the Historic Environment (1994)

Local Policy

- Royal Borough of Kensington & Chelsea, Unitary Development Plan (August 1995)
- Royal Borough of Kensington & Chelsea, Unitary Development Plan, Proposed Alterations (Public Inquiry Version) (April 2001)
- Royal Borough of Kensington & Chelsea, UDP Inspector's Report (July 2001)
- Royal Borough of Kensington & Chelsea, Kensington Palace Conservation Area Proposals Statement (April 1996)

a) National Policy

i) Section 54A of the Town & Country Planning Act 1990 (as amended)

3.2 Section 54A requires that, when making a determination under the Planning Acts, the determination shall be made in accordance with the Development Plan, unless material considerations indicate otherwise.

3.3 Paragraph 40 states,

"Those deciding such applications or appeals should always take account of whether the proposed development would cause demonstrable harm to interests of acknowledged importance."

3.4 Therefore, in making a judgement on the weight to be attached to a policy, it is necessary to assess whether actual harm would be caused and, if so, the degree of harm. Even if harm is proved, then it is necessary to weigh up the "other material considerations" including planning benefits, to decide whether the harm if outweighed by these benefits.

ii) Planning Policy Guidance Note (PPG) 1 (1997)

3.5 Planning Policy Guidance Note 1 (PPG1), "Planning and Principles", was published in February 1997. It reaffirms the plan-led approach to development control as established by Section 54A of the 1990 Act, and clarifies how the different procedures and mechanisms of the system should be utilised.

3.6 The revised guidance in PPG1 advocates a strong move towards the principles of sustainable development as set out in "Sustainable Development: The UK Strategy" (1994), and emphasises the contribution of the planning system to achieving this goal. In particular, paragraph 7 of PPG1 states,

"Urban regeneration and re-use of previously-developed land are important supporting objectives for creating a more sustainable pattern of development. The Government is committed to:

... preferring the development of land within urban areas, particularly on previously-developed sites, provided that this creates or maintains a good living environment, before considering the development of green-field sites."

3.7 With regard to the diversity and mix of uses within town centres, paragraph 8 states,

"Within town centres, but also elsewhere, mixed-use development can help create vitality and diversity and reduce the need to travel. It can be more sustainable than development consisting of a single use. Local planning authorities should include policies in their development plans to promote and retain mixed uses, particularly in town centres, in other areas highly accessible by means of transport other than the private car and in areas of major new development."

3.8 With particular reference to the mix of uses in town centres, paragraph 26 goes on to state,

"Town centres, a term which includes city centres, town centres and suburban centres, are important to the quality of life in our towns and cities and play a key role in delivering sustainable development. The Government's objectives, therefore, are:

- ***to sustain and enhance the vitality and viability of town centres;***
- ***to maintain an efficient, competitive and innovative retail sector;***
- ***to focus development, especially retail development, in locations where the proximity of businesses facilitates competition from which all consumers are able to benefit and maximises the opportunity to use means of transport other than the car; and***
- ***to ensure the availability of a wide range of shops, employment, services and facilities to which people have easy access by a choice of means of transport."***

iii) Planning Policy Guidance Note (PPG) 6 (1996)

3.9 Planning Policy Guidance Note 6 (PPG6) sets out guidance relating to town centres and retail developments. As part of its remit this guidance seeks to promote mixed-use development alongside the retention of key town centre uses, in an attempt to enhance vitality and viability.

3.10 Paragraph 2.2 of PPG6 states,

"The vitality and viability of town and district centres depend on:

- ***retaining and developing a wide range of attractions and amenities;***
- ***creating and maintaining an attractive environment;***

- ***ensuring good accessibility to and within the centre; and***
- ***attracting continuing investment in development or refurbishment of existing buildings."***

3.11 With regard to the variety and activity in town centres, paragraph 2.6 states,

"Diversification of uses may be the best way forward. Vitality and viability may be found in a wider mix of uses that fits better with the surrounding community and changing retail patterns. Local authorities should consider these in consultation with retailers and others when drawing up their strategies."

3.12 In addition, and more specifically relating to the diversity of uses, paragraph 2.12 states,

"The local planning authority should therefore encourage diversification of uses in the town centre as a whole. Whilst recognising and supporting the shopping function of the primary shopping area, and of distinct quarters in larger city centres, policies should reflect the differences between the type and size of centre. Different but complementary uses, during the day and in the evening, can reinforce each other, making town centres more attractive to local residents, shoppers and visitors. Leisure and entertainment facilities, museums and libraries, hotels and conference centres, street markets, restaurants, pubs, bars and cafés, universities and colleges all add variety."

3.13 And paragraph 2.18 states,

"Town centres contain, and should retain, a wide range of uses that need to be accessible to a large number of people, including employment, shopping, offices of local and central government, leisure and entertainment, hospitals and higher education. Thus, although retailing should, continue to underpin such centres, it is only part of what ensures the health of town centres."

iv) Planning Policy Guidance Note 15 (1994)

3.14 The subject property falls within the Kensington Palace Conservation Area. PPG15 sets out guidance relating to the use of properties within Conservation Areas.

3.15 Paragraph 2.17 of PPG15 considers changes of use of properties. It states:

"New uses may often be the key to a building's or area's preservation, and controls over land use, density, plot ratio, daylighting and other planning maters should be exercised sympathetically... The Secretary of State is not generally in favour of tightening development controls over changes of use as a specific instrument of conservation policy. He considers that, in general, the same provisions on change of use should apply to historic buildings as to all others. Patterns of economic activity inevitably change over time, and it would be unrealistic to seek to prevent such change by the use of planning controls."

3.16 Paragraph 4.2 makes particular reference to Conservation Areas and states:

It is the quality and interest of areas, rather than that of individual buildings, which should be the prime consideration in identifying conservation areas. There has been increasing recognition in recent years that our experience of a historic area depends on much more than the quality of individual buildings...

Conservation area designation should be seen as the means of recognising the importance of all these factors and ensuring that conservation policy addresses the quality of the townscape in its broadest sense as well as the protection of individual buildings."

b) Local Policy

3.17 The Council's decision takes account of the policies contained within both the emerging and adopted Royal Borough of Kensington and Chelsea Unitary Development Plan. In particular consideration is given to the following policies in the context of this appeal.

i) Policies of the Adopted Kensington & Chelsea Unitary Development Plan (1995)

3.18 Strategic policy 6 relating to the Conservation Area states:

"STRAT 6

To protect listed buildings and to preserve or enhance the character or appearance of conservation areas, areas of metropolitan importance, areas of local character, and other buildings or places of interest."

3.19 Strategic policy 29 which considers the issue of vitality and viability of shopping areas states:

STRAT 29

"To seek to enhance the vitality and viability of principal and local shopping centres and to ensure that they remain the focus of the provision of shopping facilities in the Royal Borough."

3.20 The following Part II policies are relevant to the proposals in the context of their location in the Kensington Palace Conservation Area:

"CD48 To pay special attention to the desirability of preserving or enhancing the character or appearance of each conservation area.

CD49 To encourage and contribute to the improvement of the environment of conservation areas.

CD52 To ensure that any development in a conservation area preserves or enhances the character or appearance of the area."

3.21 In addition, the following retail policies have also been taken into consideration:

"S6 To seek to maintain and improve the vitality, viability and function of the shopping centres throughout the Borough."

"S15 Normally to permit uses falling within use classes A2 and A3 in a principal shopping centre unless the proposal would threaten the character or function of the centre or would result in:

(a) Less than 75% of the total core ground floor units being in shop (A1) use; or

(b) Less than 65% of the total non-core ground floor units being in shop (a1) use; or
(c) Three or more non-shop uses in adjacent units at ground floor level; or
(d) Significant increase in traffic or parking; or
(e) Any significant reduction in an area's residential character and amenity including by smells or late night noise."

ii) Policies of the emerging Royal Borough of Kensington & Chelsea Unitary Development Plan (2000)

3.22 In addition to the adopted UDP policies, consideration has also been given to the emerging UDP policies. These policies were considered by the Inspector at the UDP Inquiry in January and February 2001 and the Council received the Inspector's Report in July 2001. The Inspector's comments have also been taken into account in the context of this appeal.[1]

3.23 Strategic policy 6 relating to the Conservation Area states:

"STRAT 6

To protect listed buildings and to preserve or enhance the character or appearance of conservation areas, areas of metropolitan importance, areas of local character, and other buildings or places of interest."

3.24 Strategic policies 29 and 29c which consider the issue of vitality and viability of shopping areas states:

"STRAT 29

To seek to enhance the vitality and viability of principal and local shopping centres and to ensure that they [remain] <u>are</u> the focus for <u>new retail development</u> [or the provision of] <u>and continue to provide</u> shopping facilities in the Royal Borough."

"STRAT 29c

To improve the attractiveness and competitiveness of the Borough's shopping centres by improving the townscape and streetscape environment."

3.25 The following Part II policies are relevant to the proposals in the context of their location in the Kensington Palace Conservation Area:

"CD48 To pay special attention to the desirability of preserving or enhancing the character or appearance of each conservation area.

CD49 To encourage and contribute to the improvement of the environment of conservation areas.

CD52 To ensure that any development in a conservation area preserves or enhances the character or appearance of the area."

3.26 In addition, the following retail policies have also been taken into consideration:

[1] Explanatory Note: Proposed Alterations First Deposit – New text is underlined; [Deleted text is bracketed]. Proposed Alterations Second Deposit Revisions – New text is highlighted; ~~Deleted text is scored through~~.

"S6 To seek to maintain and improve the vitality, viability and function of the shopping centres throughout the Borough."

3.27 Policy S15a states:

"Normally to permit uses falling within use classess A2 and A3 in the non-core frontage of a Principal Shopping centre, subject to the following:

ENVIRONMENTAL CRITERIA

Proposals will be resisted where they are likely to cause:

a) Any material increase in traffic or parking; or

b) Any material reduction in residential character or amenity including by smells or late night noise.

RETAIL CHARACTER AND FUNCTION CRITERIA

Proposals will be resisted in circumstances where whether before or as a result of the proposal, the following apply:

a) More than one third of the ground floor units in the relevant street frontage are occupied by non-shop uses; or

b) ~~The premises are adjacent to~~ There are more than three ~~or more~~ adjoining units at ground floor level in the same use class as proposed; or

c) There is a break in the relevant ground floor retail frontage of more than three times the average width of units in the non-core frontage of the centre."

3.28 Further clarification is sought by the UDP Inspector with regard to the explanatory text at paragraph 8.4.13 which relates to policies S15 and S15a. He recommends that:

"That the explanatory text be modified by the following additions to paragraph 8.4.13a –

a) 'In any one street frontage on either side of the street...'
b) 'If the relevant street frontage has three or less ground floor units then the proportion of non-shop uses in this frontage and the two adjacent frontages will be considered when applying Policy S15. When this is the case, units on either side of a road intersection will constitute adjoining units within the context of criterion b of Policy S15. This approach will not be appropriate within non-core frontages because policy S15a criteria are less restrictive.'
c) 'Delete "normally" from Policies S15, S15a and S16.'
d) 'Substitute "refused" for "resisted" in criterion b in Policy S15.'
e) 'Otherwise modify in accordance with Proposed Revisions."

3.29 In addition to the policies of the adopted and emerging UDP's, consideration has been given to the Council's "Kensington Palace Conservation Area Proposals

Statement". This document replicates the relevant conservation area policies set out in the adopted UDP.

3.30 The following section of this statement sets out the appellants case for the proposed change of use in the context of the above policies and guidance.

4.0 PLANNING CASE

4.1 Based upon the policies in the statutory development plan and planning guidance in PPG6 and PPG15, and the Council's reasons for refusal, we consider the following issues require consideration:

a) Whether the proposal conflicts with UDP policies which seek to protect the character, function and vitality and viability of the Borough's principal shopping centres;

b) Whether the scheme would cause any harm to the Council's UDP policies which seek to preserve and enhance the character and appearance of the Kensington Palace Conservation Area.

4.2 Each of these issues is considered in the following sub-sections.

A) ISSUES RELATING TO THE PRINCIPAL SHOPPING CENTRE

4.3 In considering the application for the proposed change of use at 110 Kensington Church Street, the Council took into account the requirements of Policy S15 in both the adopted and emerging UDP's. Particular consideration was given to the implications of the loss of a Class A1 retail unit on the character or function of the centre, and also the balance between Class A1 and Class A2 uses, which would exist if the proposal were to be granted planning permission. Each of these matters is considered below.

i) Impact on the Character or Function of the Principal Shopping Centre

4.4 The appeal premises falls within a non-core frontage within the Notting Hill Gate Principal Shopping Area, as defined within the adopted and emerging UDPs. The extent of the non-core retail frontage (both adopted and emerging) in the vicinity of the appeal site is shown on the plans attached at **appendix 4**.

4.5 The assessment of the non-core frontage in the vicinity of the appeal site demonstrates that this is characterised by small Class A1 units, including a significant number of fine art and antiques dealers, together with a number of non-A1 uses including pubs, bars, restaurants, estate agents and accountants,. Further towards Notting Hill Gate, the retail character changes, and comprises a wider range of different Class A1 retailers, including a selection of the major national retailers such as Waterstones, WH Smith, Boots, Burger King, and Ryman. The non-core shopping areas on Notting Hill Gate and Pembridge Road are characterised by a mix of Class A1, A2 and A3 occupiers, almost all of which are smaller independent traders, and no single particular type of occupier is dominant. An extract from the Borough Council's Shopping Survey (1999) detailing the retailers located within the Notting Hill Gate Principal Shopping Area is attached at **appendix 5**.

4.6 Planning Policy Guidance Note (PPG) 6 (1996) sets out Government Guidance relating to town centres and retail developments. Of particular relevance to this case is the issue of the vitality and viability of the shopping area. Maintaining the vitality and viability of a shopping centre, and in turn ensuring its health and continued success depends on the following:

- ***"Retaining and developing a wide range of attractions and amenities;***

- ***Creating and maintaining an attractive environment;***
- ***Ensuring good accessibility to and within the centre; and***
- ***Attracting continuing investment in development or refurbishment of existing buildings."*** [PPG6, 1996]

4.7 PPG6 considers that maintaining vitality and viability can be achieved by ensuring a diversity of different uses, both between and within use classes within a shopping area. The diversity of uses within a shopping centre can also be used as a measurement of the character and function of the centre.

4.8 A breakdown of the range of uses within the Notting Hill Gate Principal Shopping Area and also the non-core area on Kensington Church Street is set out in the tables at **appendix 6**

4.9 A GOAD plan illustrating the broad range of uses within the Notting Hill Gate Principal Shopping Area is attached at **appendix 4**. The character of the centre is determined not only by a diversity of uses, but also the nature of the physical environment. Overall it is considered that the area benefits from a strong retail environment with few vacancies.

4.10 Taking account of the broad mix of retailers located within the Notting Hill Gate Principal Shopping Centre as a whole, it is considered that no one overall type of use predominates. Furthermore, it is considered that the change of use of the appeal premises from Class A1 shop to Class A2 estate agents, would not have a detrimental impact on the retail character or function of the Notting Hill Gate Principal Shopping Area.

4.11 In assessing the impact on the shopping centre in which the appeal proposals fall, it is important to stress that the Use Classes Order makes no distinction between different types of Class A1 retailers. The essence of the Council's case seeks to impute such a difference, which in our view goes beyond what is intended in planning legislation or policy.

ii) Compliance with Policy S15 (adopted) and S15a (emerging)

4.12 Unitary development plan policies S15 (adopted) and S15a (emerging) set out the criteria against which the change of use of a premises within the non-core frontage of a principal shopping centre, falls to be considered. Criterion (a) is not relevant in this instance. Each of the criteria are assessed below.

1) Balance Between Class A1 and Other Class A Units

4.13 Whilst not specifically comprising a reason for refusal of the proposal, the Council gave consideration to the balance between Class A1 and other Class A units within the non-core retail frontage of the Notting Hill Gate Principal Shopping Centre.

4.14 It should be noted that the method for assessing the levels of A1 and A2 units has changed as a result of the review of the UDP, and therefore, each of the calculations according to the adopted and emerging UDP have been set out below.

a) Adopted UDP (1995)

4.15 The basis for assessing the balance of Class A1 to Class A2 units within a non-core frontage within a principal shopping area is set out within Policy S15 of the adopted

UDP. It seeks to protect the character and function of the centre and also to ensure that no less than 65% of the total non-core ground floor units are in Class A1 (shop) use. The officer's report to the planning committee makes specific reference to this policy and states that:

"It has been calculated that with the inclusion of this proposal, 64% of the total non-core ground floor units are in Class A1 use. Therefore the proposal does not meet the criteria of the adopted UDP."

4.16 However, the officer's report fails to set out how this figure was calculated and the full extent of the frontage being assessed.

4.17 In respect of this appeal a calculation has therefore been undertaken to assess the proportion of Class A1 units within the non-core retail frontage. It is noted that the non-core frontage has been slightly extended as part of the review of the UDP, and therefore two separate calculations have been undertaken based on the adopted and emerging positions. It is assumed that the non-core ground floor frontage comprises the area shown on the map attached at **appendix 4**. The calculations are as follows:

	Preceding proposed change of use	**Proceeding proposed change of use**
No. of units in total	73	73
No. of units in non-A1 use	22 (30%)	23 (31.5%)
No. of units in A1 use	51 (70%)*	50 (68.5%)*

* This figure includes units that were previously used as Class A1 but are currently vacant

Table 1: Assessment of Units in the Non-Core Frontage (Adopted UDP)

	Preceding proposed change of use	**Proceeding proposed change of use**
No. of units in total	90	90
No. of units in non-A1 use	28 (31%)	29 (32%)
No. of units in A1 use	62 (69%)*	61 (68%)*

* This figure includes units that were previously used as Class A1 but are currently vacant

Table 2: Assessment of Units in the Non-Core Frontage (Emerging UDP)

4.18 It is therefore apparent that, even if the subject premises were in a Class A2 use, the proportion of units in Class A1 use would not be less than 65%. The proposal therefore accords with the Council's policies contained within the adopted UDP.

4.19 However, it should be noted that it is possible that one or more of the existing non-Class A1 units within the defined area are unlawful. This point was discussed with the Council at a meeting held on 19 September 2001. The Executive Director of Planning & Conservation subsequently wrote to the appellant and confirmed that this may be the position. A copy of the correspondence is attached at **appendix 7**.

b) Emerging UDP Pre-Inquiry Alterations (April 2000) and Inspector's Report (July 2001)

4.20 In the context of the emerging UDP the basis for assessing the balance of Class A1 to other non-Class A1 units is set out in Policy S15a which adopts a slightly different approach to that of adopted Policy S15. (Policy S15 has been amended at this stage to consider the core frontage of a principal shopping centre). In addition to environmental criteria, which were not considered to be of issue in this instance, the

policy contains a number of criteria against which the "Retail Character and Function" are assessed. In this instance, criterion (a) is of relevance, namely, whether more than one third of the ground floor units in the relevant street frontage are occupied by non-shop (i.e. non-Class A1) uses.

4.21 The officer's report does not identify the "relevant street frontage". However, at paragraph 4.9 it states:

"There are twenty-six units within this frontage, of which five are currently in non-shop use, which equates to less than one third"

4.22 It is considered that there has been no substantial change in the situation since the officers report and therefore this position still stands, and the proposals would comply with the presiding planning policy.

2) A2 Uses

4.23 In judging the impact of the proposal it is necessary to consider the contribution A2 uses, particularly an estate agency, can make to shopping areas. In this regard we would refer to a number of other appeal cases.

a) Keats Langley v Guildford Borough Council (1994)

4.24 An appeal was lodged against the Borough Council's enforcement action in respect of the unlawful use of a Class A1 premises as a Class A2 estate agents (see **appendix 8**). The premises also comprised a listed building within a conservation area and was located outside the defined prime shopping area. With regard to the impact of the change of use on the vitality and viability of this part of the shopping centre, the Inspector concluded:

"It is generally recognised that Estate Agents maintain an attractive window display which is not out of place in a shopping frontage. I accept that as with a specialist retailer, an estate agent only attracts customers of a specialised nature, however, their window displays may be of a more general interest to passers by. In my assessment, unlike some other A2 uses, the use of the appeal premises as an estate agency does not detract from the visual character of the area or render it of less interest to passers by. I am not convinced that the [pedestrian] flows would be radically altered by an increased number of Class A1 uses..."

b) Montgomeryshire District Council (1995) .

4.25 An appeal was lodged against Montgomeryshire District Council's refusal of planning permission for a change of use from a retail shop to an estate agent, in Welshpool (see **appendix 9**). As with the Guildford case, the premises also fell within a conservation area. In this instance, the Inspector commented that:

"In my experience estate agent business can be quite successfully incorporated in shopping centres..."

He goes on to comment that:

"it would reintroduce vitality into what in my opinion is one of the less attractive frontages of the shopping area. In consequence I consider that the

proposed change of use would be likely to enhance both the character and appearance of the shopping area and of the conservation area as a whole."

c) Brookside Properties v Macclesfield Borough Council (1998)

4.26 The appeal was lodged against the Council's refusal of planning permission for the change of use of a Class A1 unit to Class A2 is also of relevance (see **appendix 10**). The Inspector considered the effects of the proposal on the vitality and viability of the town centre to be of particular relevance. He comments:

"In my view use as an estate agency, or any Class A1 use, would be acceptable with regard to its cumulative effect on the vitality and viability of the town centre. This is because, perhaps even more than in a travel agency which falls within Class A1, an estate agency relies on a changing and attractive window display to generate business....

Furthermore, in this instance since the shop frontage is only some 5 metres, it would occupy relatively little of the vacant retail shop front space in this part of Princess Street; would contribute a narrow, quite vivid slot of interest in a vacant part of the street; and in my view would act as an attractor to encourage pedestrian flow..." ? ? THIS BASIS IS THEREFORE FOUNDED ON A FALSE PREMIS SEE NOTES

4.27 On this basis therefore, if the change of use of the appeal premises from Class A1 to Class A2 were permitted, the number of units in non-shop use would not be above one third and would therefore be in accordance with Policy S15a.

3) The Run of Units in the Retail Frontage

4.28 Policies S15 (adopted) and S15a (emerging) require consideration to be given to the run of non-Class A1 units in adjacent units within a retail frontage. In this instance, if the change of use of no. 110 were to be permitted, this would not result in a run of three or more non-shop uses in adjacent premises at ground floor level. The proposals therefore comply with the appropriate criteria in policies S15 and S15a.

4) The Width of the Break Between Class A2 Units

4.29 The average width of units in this non-core frontage of the Notting Hill Gate Principal Shopping Centre is 5.97m (69 units with a total frontage length of 412m). A gap of three times the average width of units is therefore 17.91m. The proposal will result in a gap in the frontage of 5m. This gap falls below the Council's threshold as set out in criterion (c) of policy S15a.

5) Other Criteria

4.30 With regard to criteria (d) and (e) of adopted policy S15 and criteria (a) and (b) of the environmental criteria of policy S15a (emerging) relating to material increases in traffic and noise, and the impact on residential amenity, it is considered that the proposal will not have any detrimental impacts in respect of these matters, and therefore comply with these criteria.

iii) Other Issues

4.31 The Government has recently published draft proposals for the revision of the 1987 Use Classes Order. A copy of the first draft revisions are attached at **appendix 11**. It is proposed that Class A1 (Shops), Class A2 (financial and professional services)

Last shop was Cocoon Coat – specialist retail shop, not an ordinary clothes shop.

and some Class A3 (food and drink) premises (subject to a size threshold) will be combined into a single use class Aa, "Mixed Retail" uses. Changes within Aa from one use to another will constitute permitted development. Whilst these revisions are at a very early stage, in terms of this case it is considered these revisions suggest that there is little difference between the impact of A1 and A2 uses.

THIS IS NOT THE VIEW OF THE INSPECTOR THAT YOU HAVE QUOTED.

B) CONSERVATION AREA ISSUES

4.32 A number of issues relating to the Kensington Palace Conservation Area require consideration in the context of this appeal. Each of these is addressed in turn below.

i) The Special Character of the Conservation Area

4.33 The Council's reasons for refusal of the change of use of the premises from Class A1 (shop) to Class A2 (estate agents) makes specific reference to the "Special Character" and states:

"The proposal involves the loss of a shop unit which would be used for antique shop or fine art purposes, which would adversely affect the special character of this part of the conservation area..." [Our emphasis]

4.34 By virtue of the above, it is evident that the Council's case is based on two inter-related propositions, namely

YET WE ARE WRONG ON THIS

1) That if this appeal is dismissed the premises "would" be used as a certainty for an antiques shop or for a fine art premises;

?

2) That the absence of use by an antiques shop or for fine art purposes would adversely affect the special character of the Conservation Area.

?

4.35 To set these matters in context, and remembering that the previous use of the premises was in fact last used as a clothes shop, and not an antique shop, we analyse below the special character of the Conservation Area, with particular reference to policies CD48, CD49 and CD52. The special character is taken to comprise the following factors – physical character, land uses, pedestrian and traffic levels and retail uses.

1) Physical Character

4.36 As a starting point when seeking to define the physical character of a conservation area, consideration should be given to paragraph 4.2 of PPG15 (1994). This states:

It is the quality and interest of areas, rather than that of individual buildings, which should be the prime consideration in identifying conservation areas. There has been increasing recognition in recent years that our experience of a historic area depends on much more than the quality of individual buildings... Conservation area designation should be seen as the means of recognising the importance of all these factors and ensuring that conservation policy addresses the quality of the townscape in its broadest sense as well as the protection of individual buildings."

4.37 The Council's Kensington Palace Conservation Area Proposals Statement provides a useful guide to the character of the Conservation Area. It has three purposes, one of which is:

"To identify the particular characteristics of the Area which justify its designation as a conservation area which should be preserved or enhanced."

4.38 Section 3 of the CAPS reviews the character and appearance of the Conservation Area (see extract at **appendix 12**). The appeal site falls within the "Northern Boundary" area a review of which is set out on page 22 of the CAPS. Particular reference is made to the terrace within which the appeal property is located as follows:

"... Nos. 106-122, despite considerable variety in surface treatment, work well as a relatively consistent terrace. Recent renovation work at nos. 118-120 has ensured the retention of the cornice along the whole length of the terrace. No. 124 provides an architectural; bookend attractive in views down Campden Street; beyond this all the buildings show great variety..."

4.39 A review of the Council's CAPS, and in particular the assessment for the Northern part of the Conservation Area clearly demonstrates that its character and appearance primarily comprises the variety of architectural and historical features contained within its buildings and open spaces.

4.40 Section 6 of the Council's CAPS provides more specific guidance in respect of the design and conservation of shopfronts and advertising in the Kensington Palace Conservation Area. The relevant extracts from section 6 are attached at **appendix 13**. Of particular relevance, this document states:

"Kensington Church Street, together with small groups of shops on side roads closely associated with it, has a distinctive character which deserves some individual analysis. In the Council's opinion, shopfronts make a significant contribution to the character or appearance of the.... Kensington Palace Conservation Area.

4.41 It is accepted that this area has a distinctive or "special" character. However, what makes up this distinctive character is at issue. This is explained in detail in the CAPS which states:

"The strong personality of this shopping centre derives from developments of very different periods. Some buildings survive from the first half of the 18th century, and a range of 20th century styles are represented as well as examples of intervening periods. A striking feature is the dominant presence from the Carmelite Church northwards of antique dealers, fine arts establishments and others retailing items of aesthetic interest.

The street generally displays the benefits of shop surrounds, which remain consistent with terraces or groups, creating coherent shopping parades to the mutual benefit of all traders....

Detailed characteristics which can be observed are:

- ***The use of dark colours in the shopfront designs, most striking when seen below light coloured stucco;***
- ***The celebration of the skills of signwriters;***
- ***The scarcity of internally illuminated signs of any sort;***
- ***The relatively few projecting signs to be found."***

4.42 No. 110 Kensington Church Street was until recently a vacant shop unit, which was in a generally poor decorative state. A photograph of the vacant premises is attached below.

4.43 More recently however, the applicant has undertaken works to renovate the exterior of the premises in line with its proposed use as an estate agent, and to improve its external appearance (see photograph below).

4.44 The subject premises is defined as a Category A shopfront, being located within a historic terrace dating from the 19th century. When renovating the shopfront and the

external appearance of the upper floors, the appellant has sought to respect the historic character of the building and also the conservation area.

4.45 Access to the upper floors is retained to the right-hand side of the shopfront and the exterior of the upper floors of the building have been cleaned and re-painted white. The projecting cornice which delineates the ground floor from the upper floors has been retained and painted in a contrasting colour to the upper floors to visually cap the shopfront. The fascia sign has been handpainted in neutral coloured lettering on the dark red fascia

4.46 No structural alterations have been made to the existing shopfront since the previous occupier (Cocoon Coats). The appellant has only sought to improve the appearance by repainting the exterior. The retained ornaments and robust pillasters on either side of the shopfront have been retained and painted to match the rest of the shopfront.

4.47 Unfortunately the stallriser has already been removed from the premises and the existing shopfront does not incorporate a recessed entry. However, the door is located slightly off centre within the shopfront. Whilst the shopfront comprises substantial areas of fenestration, the remaining construction is of wood.

4.48 In addition to the general improvements already undertaken, the appellants have made an application to the Council for the provision and display of new signage to the ground floor street frontage. This application is being held in abeyance pending the outcome of this appeal. The existence of this application will allow the Council to exert an element of control over the appearance of the premises and also its overall contribution to the appearance and character of the conservation area. The appellant's application in association with its use as an estate agent is not subject to consideration as part of this appeal. However, it is considered that overall, the appellant's decorative improvements and proposals for new signage will make a positive contribution to the character and appearance of this part of the conservation area. Furthermore, they will accord with the requirements of policies CD48, CD49 and CD52 and paragraph 4.2 of PPG15.

4.49 It is accepted that the presence of antique dealers and fine arts establishments make a material contribution to the area, however, it is considered that these only make up part of the overall contribution to the Conservation Area. The area's special character is a result of the architectural character of the buildings and open spaces, rather than their specific uses.

2) Land Uses

4.50 The appeal premises are located along the western boundary of the Kensington Palace Conservation Area. The properties on the opposite side of Kensington Church Street Fall within the Kensington Conservation Area. The part of the Kensington Palace Conservation Area in the vicinity of Kensington Church Street comprises a mix of land uses. Immediately fronting Kensington Church Street itself, properties are predominantly in retail uses, although some scattered residential dwellings break up the retail frontage.

4.51 The properties between Kensington Church Street and Palace Gardens Terrace are predominantly in residential use, comprising a mixture of individual large terraced houses. Along the south-western boundary, fronting Kensington High Street are a selection of retail premises. The south-western corner of the Conservation Area comprises a mix of apartment blocks of a variety of ages, including Old Court Palace, York House, Hamilton House and Vicarage Court, as well as mixed use buildings

such as Olaf Court and the recently renovated office premises at 30 Kensington Church Street.

4.52 The Conservation Area itself is centred upon Kensington Palace Gardens, which runs from north to south and bisects the Conservation Area. The northern part of Kensington Palace Gardens comprises large detached dwellings in substantial plots, almost of all of which are occupied by foreign embassies. The eastern part of the Conservation Area comprises Kensington Palace and its gardens.

4.53 Overall, it is considered that the Kensington Palace Conservation Area is characterised by a broad range of different uses. Commercial activities are concentrated along Kensington Church Street and Kensington High Street. In this respect, it is considered that the proposal is consistent with the existing distribution of land uses, by locating within a predominantly commercial area, and in a location which will not affect the character or appearance of the surrounding residential properties. In addition, it should be noted once again that the premises was not last occupied as an antiques or fine art retailers, and therefore the change of use of the unit to Class A2 Estate Agency will not diminish the contribution that antique shops and fine art establishments make to the character of the Conservation Area.

3) Pedestrian and Traffic Flows

4.54 Kensington Church Street is an important thoroughfare in the locality and is the key link between Notting Hill Gate and Kensington Church Street. The route is identified as a secondary route in the adopted UDP, namely a route which links between a primary and/or district road and which forms a main bus route. The highway accommodates a substantial amount of vehicular traffic, particular at peak times. In addition, five frequent bus services operate in each direction along Kensington High Street and Notting Hill Gate throughout the day as follows:

- No. 27 every 10-12 minutes
- No. 28 every 6-15 minutes
- No. 52 every 4-12 minutes
- No. 70 every 10-30 minutes
- No. 328 every 6-15 minutes

4.55 Parking is heavily restricted along Kensington Church. Loading restrictions are in place along the majority of Kensington Church Street - (i.e. unlimited waiting time between 6.30pm and 11am; maximum 20 minutes between these times). Peak time restrictions tend to apply at the junctions at either end (no loading from 7-10am and from 4-6.30pm - marked by a single blip against the kerb). No loading at any time restrictions (marked by two blips against the kerb) are in place at either end of the street at the junctions with Kensington High Street and Notting Hill Gate. With regard to parking there are some pay and display parking near to the junctions with Notting Hill Gate and Vicarage Gate. Otherwise, the area is mostly single yellow lined (parking permitted all day Sunday and between 00.00 (midnight) to 8.00am Monday to Saturday).

4.56 The existence of two principal shopping centres (Notting Hill Gate and Kensington High Street) at either end of Kensington Church Street encourages pedestrian flows along the street. However, the distance between the two centres necessitates a 10 to 15 minute walk, a distance of which some people would choose to use public transport. As already mentioned, frequent bus services operate in each direct, and

the Circle and District lines operate between High Street Kensington and Notting Hill Gate underground stations.

4.57 Furthermore, the appeal premises are located at the southern end of the non-core frontage of the Notting Hill Gate Principal Shopping Area. To the south the area is characterised by a stretch of residential dwellings. As a result there are limited attractions for pedestrians in the vicinity of the appeal site, and the foot-fall for the premises will be somewhat lower than further to the north, and closer to Notting Hill Gate.

4.58 Taking account of the shopping centres located at either end of Kensington Church Street, the volume of vehicle movements along the street in each direction and the area's high public transport accessibility, the overall level of footfall and activity in the shopping area would not be affected by the loss of the appeal premises from a Class A1 use. In turn, this would not be detrimental to the overall character of the Conservation Area.

4) Retail Uses

4.59 A detailed analysis of the retail character of the area has been provided earlier in this statement. The non-core retail frontage in this part of the Kensington Palace Conservation Area and also the Notting Hill Gate Principal Shopping Area, has a diverse retail character, with a number of multi-functional uses, i.e. mixed retail and Class A2 occupiers. An assessment of the mix of retail uses has demonstrated that not all the Class A1 premises are occupied by antique or fine art dealers. Taking account of the broad diversity of occupiers it is considered that the change of use of the subject premises from Class A1 to Class A2 would not serve to dilute the character or function of the area. In turn, it is considered that this diversity makes a positive contribution to the appearance and character of the conservation area.

4.60 At present, approximately 50% of all units within the non-core area are occupied by fine arts or antique dealers and 77.5% of the Class A1 units in the same area are in this use. Whilst the area has a concentration of these uses, the appeal premises was last used as a clothes shop and therefore its change of use to an estate agency will not result in a loss of an antiques or fine arts unit and will not therefore diminish the character of the area.

4.61 This position has been upheld by a number of Inspectors at appeal.

a) Macclesfield Borough Council, Knutsford (1998)

4.62 At this appeal (see **appendix 10**) against the Council's refusal of planning permission for the change of use from Class A1 to Class A2, the Inspector commented:

"The Conservation Area covers the whole of the town centre of Knutsford. In my view, the essential character of this part is its ambience of diverse visual activity at ground level associated with a street of small scale, mainly retail uses, within a context of calm but varied architecture. Uses which leave the display window without the kind of visual interest one would normally expect of a shop front of this kind would, in my view, have a deadening effect on the character and appearance of this part of the Conservation Area.

4.63 The Inspector goes on to conclude that the Conservation Area would not be harmed.

b) Rochford District Council, Rayleigh (1994)

4.64 In respect of Council's refusal of planning permission for the change of use of A Class A1 unit to Class A2 in Rayleigh town centre (see **appendix 14**), the appeal Inspector concluded:

"In the light of the fact that there are no structural alterations proposed to the building... [as is the case with the appeal premises] ***I consider that the development would not have a material impact on its surroundings but merely preserve the qualities, character and appearance of this part of the Rayleigh Conservation Area."***

c) Three Rivers District Council, 114 High Street Rickmansworth (1998)

4.65 The Inspector, when considering the refusal for the change of use of the premises from Class A1 to Class A2 (see **appendix 15**), concluded:

"... the intention of your clients to substantially improve the appearance of the building prior to occupation. [This] would be of significant benefit to the Conservation Area and would also have a spin-off for the general buoyancy of the town centre in my view... I conclude that the proposed development would preserve the character and appearance of the Rickmandsworth Town Centre Conservation Area.

4.66 It is therefore considered that the proposed change of use of the appeal premises would not result in a detrimental impact on the retail function or special function of the conservation area.

ii) Use of the Premises as an Antiques or Fine Art Dealership

4.67 With regard to the re-use of the existing premises, two separate matters warrant consideration in this respect, as follows:

a) Whether a fine arts or antique dealer would occupy the premises?
b) Whether the premises would be occupied by any other type of Class A1 retailer?

4.68 Each of these matters are addressed in this sub-section.

4.69 The Council stated categorically in the reason for refusal that the premises "would" be re-occupied by a fine arts and antiques dealer. We have therefore sought to assess the level of demand in this respect, by undertaking a telephone survey of agents on 21 January 2002. A number of agents who have recently dealt with properties on Kensington Church Street have provided some comments.

4.70 Marsh & Parsons advised that the premises at no. 27 Kensington Church Street has been on the market since November 2001. The premises are currently let to a patisserie and new lease terms have been agreed with another bakers. In addition, no. 33 Kensington Church Street has been on the market since September 2001, but to date there has been very little interest in this unit.

4.71 Berkeley International has advised that 174a Kensington Church Street has been on the market for one week, and so far there has been no interest in this property.

4.72 Orme Prime Retail are marketing no. 7 Kensington Mall, with particular incentives for fine arts dealers, private galleries and showrooms. There has been some, albeit

limited interest in this respect and the premises is currently under offer to a fine arts dealer.

4.73 It is understood that the retail market for antiques and fine art retailers has been adversely affected in a number of ways in the last six months. We understand that the art market has been badly affected since the 11 September 2001 tragedy, although it has picked up in some areas, including the Asian, Chinese and Indian markets. However, the Islamic art market is relatively dead.

4.74 The Daily Telegraph reported on the decline of the High Street art galleries in its Arts section on 21 January 2002. It comments:

"In less than two decades... the art market has changed fundamentally and the way dealers operate is changing with it.... Dealers are making the same decision, operating either from home or from modest off-street premises rather than from large galleries with window displays designed to attract passers-by.

Luca Baroni, until recently the managing director of Colnaghi, says that having a public gallery for his new dealership will not be a priority when he chooses premises...

The trend is also affecting the antiques trade. Stewart Whittington, managing director of the leading furniture dealer Norman Adams, once had 13 near neighbours in the trade, but now only his company is left in Hans Road, Knightsbridge.

The cost of running a large public gallery is one of the reasons why London is following the trend towards more private dealerships which has been evident in New York for years...

But there has also been a major change in the way that people buy art. In an increasingly hectic world, fewer people have time to stroll around several galleries. Potential buyers prefer to go to a fair, where they can look at dozens of stands in a couple of hours. If they are really short of time they can send an art agent to look at a painting for them or ask a dealer to send a picture round to their house for viewing..."

4.75 Another factor, which has contributed to the recent downturn in the antiques and fine art market in the United Kingdom, is the recent changes to the taxation laws in EU Directive 2001/84/EC, which were adopted on 27 September 2001. These may have resulted in a impact on demand.

4.76 Another issue for consideration is, acknowledging that there is a limited demand for premises by fine arts and antiques dealers in the area, whether they would be able to acquire the premises at a market rate, or whether they would be out-bid by another type of retailer.

4.77 No. 174 Kensington Church Street was identified as vacant in August 2001. However, as stated above, this unit has recently been taken up by an Class A1 retailer, selling watches. The neighbouring unit, No. 176, previously occupied by an antiques retailer, is now vacant, and has been since at least August 2001.

4.78 Finally, it should also be mentioned that a clothing retailer last occupied the premises and it is understood that it had been for sometime. The premises was therefore not in