

## Other Documents

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REPORT BY THE DIRECTOR OF PLANNING AND TRANSPORTATION

APPLICANTS NAME/ADDRESS

Michael Thorncroft FRICS.,  
30 New Bond Street,  
London W1Y 9HD

Application dated 15/09/88

Revised

Completed 02/11/88

Polling Ward I

ON BEHALF OF : Private Capital Group Ltd., 8 Hill Street,  
INTEREST :

District Plan Proposals Map:

<u>Cons. Area</u>	<u>CAPS</u>	<u>Article 4 Direction</u>	<u>Listed Building</u>	<u>HBMC Direction</u>	<u>A/O Consulted</u>	<u>Objectors (to date)</u>
7	NO	NO	NO	NO	5	4

RECOMMENDED DECISION :-

REFUSE PLANNING PERMISSION for the change of use of the ground and basement floors from Class A1 to an Estate agents office (Class A2)

At: 112 KENSINGTON CHURCH STREET, KENSINGTON, W.8

As shown on submitted drawing(s) No(s): TP/88/2276

Applicants drawing(s) No(s) : unnumbered floorplans

REASONS FOR REFUSAL

1. The proposed introduction of a further Estate Agent's office, located in the middle of a terraced row of antique shops, and within an internationally established trading centre for antiques and fine arts, would detract from the character and function of the street and would be contrary to the District Plan policy, paragraphs 14.5.4.
2. The loss of a ground floor retail use is contrary to District Plan policy 14.5.5 which seeks to retain ground floor retail uses within shopping frontages.
3. The proposed use is considered undesirable and detrimental to the character of the street.

**RECOMMENDATION  
ADOPTED**

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### The Property

This property, which comprises of a ground floor antiques shop, with ancillary basement and two upper residential floors, is situated on the east side of Kensington Church Street, 25 metres north of the road intersection with Berkeley Gardens/Bedford Gardens.

### The Application

The applicant seeks planning permission to change the use of the basement and ground floors from the existing A1 retail use to an Estate Agent's office (i.e. A2 use).

### Planning History

There is no planning history.

### Planning Considerations

1. Kensington Church Street is an internationally established trading centre for antiques and fine arts. There are two main concentrations of shops associated with trade: (a) the northern parts of the road between Kensington Mall and Sheffield Terrace, and (b) the central/southern parts between the junctions of Vicarage Gardens and Vicarage Gate. There are a total of seventy-eight antique/fine art shops in the street.
2. The subject property forms part of a continuous line of six antique shops situated immediately north of Berkeley Gardens. There are six antique shops on the immediately opposite side of the road.
3. There is presently a total of eight estate agents offices within the street namely: (i) & (ii) Marsh and Parsons at Nos. 5 and 9; (iii) Winkworths at No. 65; (iv) Knight, Frank and Rutley at No. 67; (v) Aylesford at No. 103; (vi) Barnard Marcus at No. 104; (vii) Alex Neil at No. 118; and (viii) John D. Wood and Co. at Nos. 162-164.
4. The main issue in relation to this application is the proposed location. The subject property is situated within the Notting Hill Gate Principal Shopping Centre, but outside the shopping core frontage. The District Plan has no specific policy towards all shop uses in the Borough, only convenience shops are singled out for this type of protection; however, the intention is to protect shop uses in shopping centres. The District Plan states that regard will be given to the "needs of particular areas" and "the character of the shopping centre concerned" (para. 14.5.2).

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

Department  
The Town Hall  
North Street  
London  
W8 7NX

M/L J. Thornicroft, FRICS  
30 New Bond Street  
London, W1Y 9HD

Telephone: (01) 837 8464  
Extension: 2081  
Facsimile: 01 838 1445

9 MAR 1989

My reference: PV/TP/88/2276/L/44/79  
Your reference:

Please ask for: Miss P. Vallely

Dear Sir/Madam,

TOWN AND COUNTRY PLANNING ACT, 1971  
TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER, 1977

Refusal of permission to develop (TP8)

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

SCHEDULE

DEVELOPMENT

Change of use of the ground and basement floors from Class A1 to an Estate agents office (Class A2), at 112 KENSINGTON CHURCH STREET, KENSINGTON, W.8, as shown on submitted drawings Nos. TP/88/2276, Applicant's unnumbered floorplans, in accordance with your application dated 15/09/88, completed 02/11/88.

/ REASONS FOR REFUSAL ...

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1. The proposed introduction of a further Estate Agent's office, located in the middle of a terraced row of antique shops, and within an internationally established trading centre for antiques and fine arts, would detract from the character and function of the street and would be contrary to the District Plan policy, paragraphs 14.5.4.
2. The loss of a ground floor retail use is contrary to District Plan policy 14.5.5 which seeks to retain ground floor retail uses within shopping frontages.
3. The proposed use is considered undesirable and detrimental to the character of the street.

Yours faithfully,

*E.A. Sanders*

Director of Planning and Transportation

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

M. J. FRENCH, Architect  
Chief Director of Planning and Development

Department  
Town Hall  
North Street  
London  
W8 7NX

Mrs. G. Thornicroft, FRICS  
30 New Bond Street  
London W1Y 9HD

Telephone: (01) 837 5444  
Extension: 2081  
Facsimile: 01-838 1445

9 MAR 1989

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Yours faithfully,

*E.A. Sanders*

Director of Planning and Transportation

**THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA**



ALFRED FRENCH ARCHITECTS  
County District of Kensington and Chelsea

Department of Planning  
Town Hall  
Norman Street  
London W8 7NX

Mr G. J. Thornicroft, FRICS  
30 New Bond Street  
London W1Y 9HD

Telephone: (01) 837 5484  
Extension: 2081  
Facsimile: 01-838 1445

**9 MAR 1989**

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**/ REASONS FOR REFUSAL ...**



**REASONS FOR REFUSAL**

1. The proposed introduction of a further Estate Agent's office, located in the middle of a terraced row of antique shops, and within an internationally established trading centre for antiques and fine arts, would detract from the character and function of the street and would be contrary to the District Plan policy, paragraphs 14.574.
2. The loss of a ground floor retail use is contrary to District Plan policy 14.5.5 which seeks to retain ground floor retail uses within shopping frontages.
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Yours faithfully,

*F.A. Sanders*

Director of Planning and Transportation

(34)

5. The Department of the Environment Policy Note No. 11 (dated 1985) states in paragraph 14 that: "It will be a matter of judgement for the local planning authority whether or when the overall number of service outlets can reach or has reached a level at which further changes from retail shop use should be resisted. This judgement should not be made solely by reference to numbers of outlets, proportions or floorspace or length of frontages, and should always take account of the type of shopping centre, the trends in usage of that centre and the views as far as they may be known, of both those who trade there and those who shop there. The question whether any particular non-retail service is already sufficiently represented in a shopping centre is a matter of commercial judgement; it will not be material to a planning application."
6. The Council granted planning permission in May 1987 for two estate agents offices at nos. 67 and 104 Kensington Church Street.
7. It is considered that a further change from this existing retail shop use should be resisted, for the reasons given.

#### Public Consultation

The Site Notice advertising this proposal was posted on 26th November, 1988. Letters to adjoining premises were sent on 11/11/88 and 17/02/89.

To date, four letters of objection to the proposal have been received.

The Chairman for the Kensington Church Street Association has written: "The representations which my Committee have been receiving and about which they and I feel strongly are that another estate agent would destroy the character of the street. There are already eight estate agents in Kensington Church Street; one of them (Alex Neil & Co.) are only three doors away at 118 Kensington Church Street. There are a fair number of estate agents in Kensington High Street with another one (Hamptons) opening just opposite the Prudential; there are also another eight or nine estate agents in Notting Hill Gate so that within half a mile of the centre of Kensington Church Street, the public has access to about 25-30 separate estate agency businesses. Surely this is quite sufficient... In order to preserve the character of the street we need more antique shops and furniture shops but there is also a demand from residents for greengrocers and other similar domestic suppliers."

The Kensington High Street Study Group refer to their previous letter dated 23.4.87 in relation to previous applications, which expressed concern at any erosion of Kensington Church Street's international reputation and note that it is more important than ever that the street retains its character.

Two other letters of objection have been received.

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Recommendation

The Committee is recommended to refuse planning permission.

E.A.SANDERS  
DIRECTOR OF PLANNING AND TRANSPORTATION

LIST OF BACKGROUND PAPERS

- 1) The contents of the file number TP/88/2276 referred to at the head of this report.

REPORT PREPARED BY: BR  
REPORT APPROVED BY: MJF  
DATE REPORT APPROVED: 16/02/89

APPROVED BY  
T.P. SUB-COMTEE  
- 5 MAY 1987

1986 LWS -  
SMAY 1987

34

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

TOWN PLANNING (APPLICATIONS) SUB-COMMITTEE 28/04/87  
5/05/87

APPLICATION NO. TP/87/0489/1A  
AGENDA ITEM 16/54

REPORT BY THE DIRECTOR OF PLANNING AND TRANSPORTATION

APPLICANTS NAME/ADDRESS: Knight Frank & Rutley, 20 Hanover Square, London W.1 OAH

Application dated: 04/03/87

Revised:

Completed: 09/03/87

Polling Ward: 1A

ON BEHALF OF: Knight Frank & Rutley.

INTEREST: Not known

District Plan Proposals Map:

Cons: Area	CAPS	Article 4 Direction	Listed Building	HBMC Direction	A/O Consulted	Objectors (to date)
6	NO	NO	NO	NO	12	13

RECOMMENDED DECISION

GRANT PLANNING PERMISSION for the change of use of the ground floor and basement from retail shop to estate agents

At: 67 KENSINGTON CHURCH STREET, KENSINGTON, W.8

As shown on submitted drawing(s) No(s): TP/87/0489  
Applicants drawing(s) No(s): MG202/1

RECOMMENDATION ADOPTED

CONDITIONS

- C:22
- C:39 "Estate Agents"
- A window display shall be permanently maintained and the windows shall not be obscured or blanked off.

REASONS FOR THE IMPOSITION OF CONDITIONS

- R:13
- R:16
- In the interests of the visual amenities of the area.

INFORMATIVES

- I:1
- I:7
- I:18
- This permission conveys no consent for external alterations to the building.

IP/07/0489 : 2

### Site

The property which comprises a ground floor (with basement) shop with three residential floors above is situated on the west side of Kensington Church Street on the corner of Campden Grove.

### Proposal

A change of use from shop to estate agents is proposed on the ground floor and basement.

### Planning History

Permission was granted on 28th November, 1986 for the retention of a new shopfront.

### Planning Standards

There are no standards relevant to this case.

### Considerations

1. The premises situated in a small parade of retail units fall within the Kensington High Street Principal Shopping Centre but outside of the Core Shopping Frontage. They are currently vacant but were last in use as "W.H. Cullens" delicatessen.
2. The applicants have stated in support of their application that with much of their business being conducted in Kensington and Chelsea a more local office is required. Five staff will be employed in the new premises with 2 of these being transferred from their Sloane Street branch.
3. The loss of a convenience retail shop is regrettable, however a refusal of an application for this reason alone would be unlikely to receive much support at appeal. The applicants actually comment that the last occupants experienced difficulty in sustaining their presence in this particular location.
4. The District Plan Group consider that given the demand for this type of non-shop use and the relatively few non-shop uses outside of the Core Shopping Frontage in this Shopping Centre (25 in August 1986 out of a total of 258 commercial ground floor properties in the Shopping Centre) plus this particular location at the extreme edge of the centre this application should be allowed. No adverse effect on local amenity is seen to arise.

TP/87/0489 : 3

Public Consultation

12 letters of objection from local residents and on behalf of local firms have been received to date raising the following points:

1. There are already quite enough estate agents operating in Kensington Church Street.
2. The use will generate additional on street parking and exacerbate traffic congestion to the detriment of the area.
3. It would add to the plethora of "For Sale" boards.
4. There is already a lack of local shops and trades in the area.
5. This proposal will destroy the "village feeling" and general character of the street.
6. The use will not be of benefit to local residents. The Cherry Trees Residents Amenities Association comment that the proposed use will increase the amount of available office space which goes against the District Plan and the Council's proposed policies regarding office use in this area, that there are already sufficient estate agents in the area and that it will result in the loss of a retail shop, previously a delicatessen and encroach into an area well known for the antiques trade.

Recommendation

Having had due regard to Government advice and Circulars and recent planning appeal decisions, conditional planning permission is recommended.

E.A. SANDERS  
DIRECTOR OF PLANNING AND TRANSPORTATION

LIST OF BACKGROUND PAPERS

- 1) The contents of the file number TP/87/0489 referred to at the head of this report.

REPORT PREPARED BY: JG  
REPORT APPROVED BY: MJF  
DATE REPORT APPROVED: 07/04/87



1

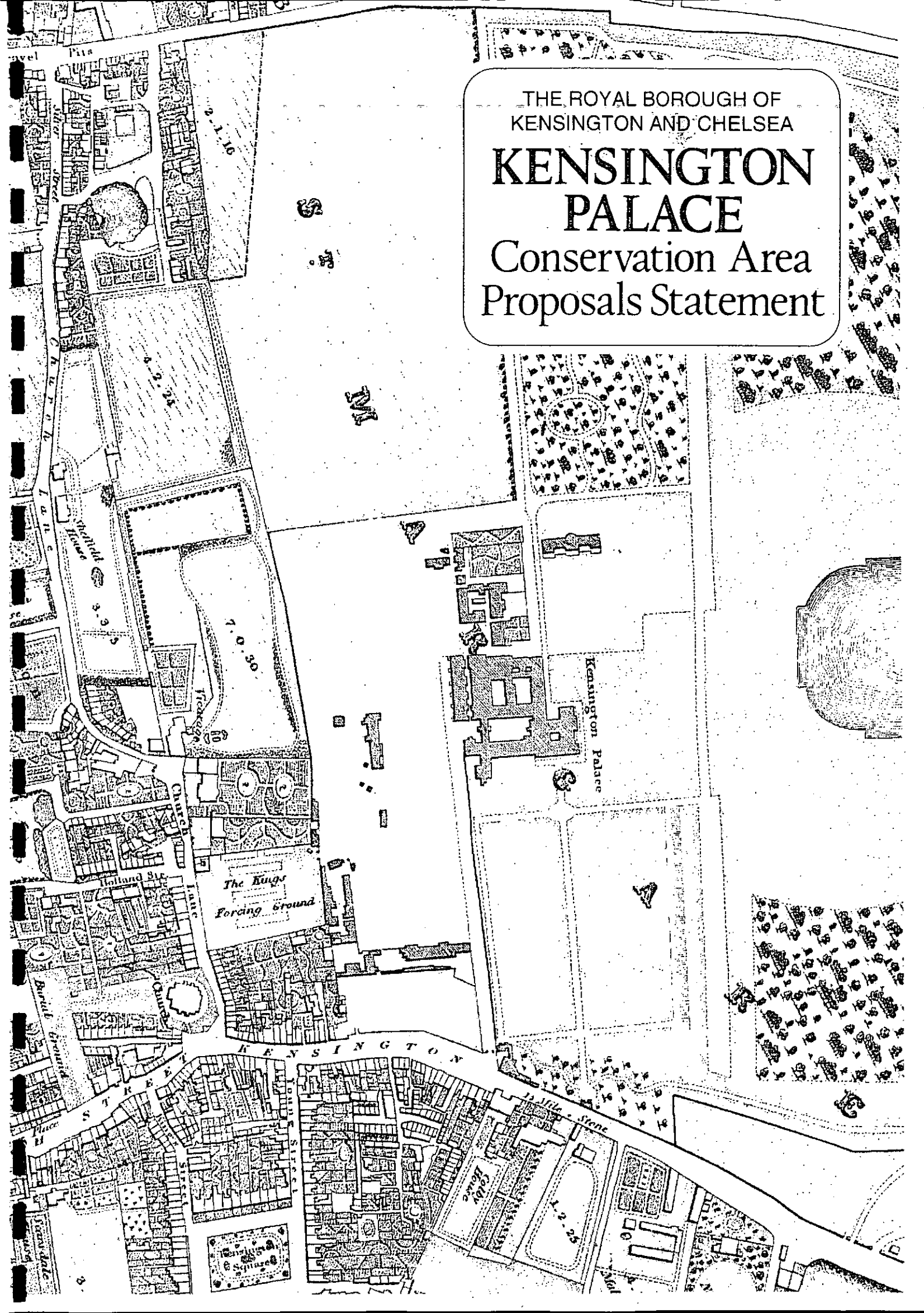




THE ROYAL BOROUGH OF  
KENSINGTON AND CHELSEA

# KENSINGTON PALACE

## Conservation Area Proposals Statement



The Council has published a Borough-wide guide to shopfronts and advertising entitled "Design and Conservation of Shopfronts and Shopping Streets". This gives a detailed interpretation of UDP policies and has been issued as Supplementary Planning Guidance. It should be referred to in relation to the general design of shopfronts and advertising in this conservation area. Copies of the publication are available from the Planning Information Office.

Illustrations of good and bad practice as described in the guide are illustrated on page 33. In addition, more specific advice is set out below for the shops in Kensington Church Street which has a special character which the Council seeks to maintain and enhance.

### Kensington High Street and Notting Hill Gate

The Council has prepared separate guidelines for commercial properties on or associated with these shopping areas. Reference should thus be made to these documents as well as the above advice.

### Kensington Church Street

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 its shopfronts make a significant contribution to the character or appearance of Kensington Conservation Area and of Kensington Palace Conservation Area. The preservation of this character and where possible its enhancement will be assisted by general recognition of those features which together establish the Areas' special identity.

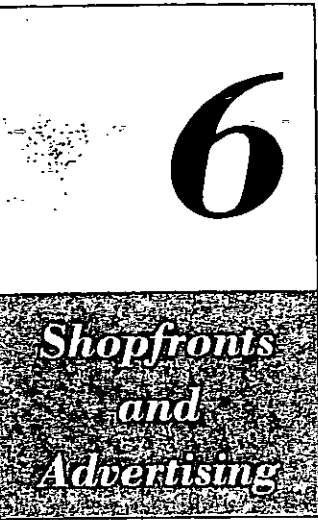
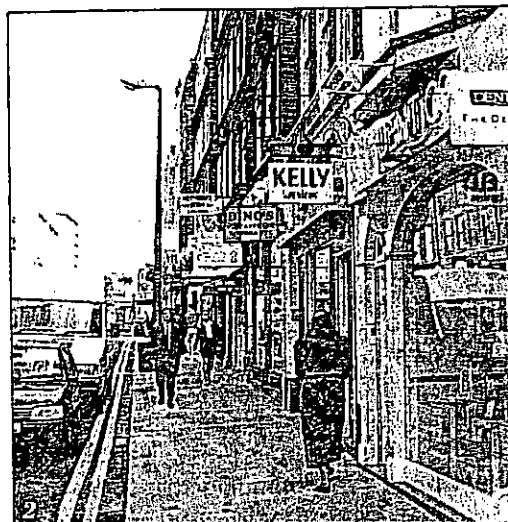
Design guidance for both sides of Kensington Church Street was commissioned as part of the Proposals Statement for Kensington Conservation Area adopted on 9 January 1995. Publication of the Kensington Palace Conservation Area Proposals Statement is being taken as an opportunity to reinforce this guidance.

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 within terraces or groups, creating coherent shopping parades to the mutual benefit of all traders. These surrounds perform the role of design frameworks, and are most evident in the best Victorian terraces and at the well-articulated modern facade of Lancer Square, within which shopfronts with a high degree of individuality can be satisfactorily contained.

Detailed characteristics which can be observed are:

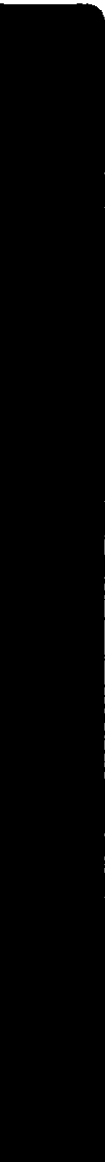
- the use of dark colours in the shopfront designs, most striking when seen below light-coloured stucco;
- the celebration of the skills of sign writers;
- the scarcity of internally-illuminated signs of any sort;
- the relatively few projecting signs to be found.



1 Church Close provides a consistent framework for shopfronts

2 A wider range of shopfront and projecting sign styles at the foot of Kensington Church Street





**Royal Borough of Kensington and Chelsea  
Directorate of Planning Services - Policy Observations**

TP No: PP/01/1227	Address: 110 Kensington Church Street, W8	Date Received 12/6/01	Date of Obs. 26/6/01
UDP Prop Alts Paras/Policies		Obj.	No obj. ***
	Development: Change of use from shop (A1) to professional services (A2)	HMO? No	No. of dwelling Units Existing 0
			Proposed 0
		D.C. Officer NC	Policy Officer TA

**Site:**

Is located within the Notting Hill Gate Principal Shopping Centre (PSC), non-core, in the shopping parade between Kensington Mall and Berkley Gardens (east side).

**Existing Use:**

Is a retail shop, at ground floor.

**Proposal:**

To change the use to an estate agent, no external alterations are proposed.

**Issues:**

The relevant shopping frontage is 106 through 172 (even). There are twenty-six units within the frontage, of which five are currently in non-shop use. Criteria of *adopted* Policy S15 states that a proposal should not result in less than 65% of the total non-core ground floor units being in A1 use. 64% of the total non-core ground floors units are in A1 use. As the proportion is finely balanced the location of the unit and the health of the individual parade is crucial.

The relevant shopping frontage is 106 through 172 (even). There are twenty-six units within the frontage, of which five are currently in non-shop use. The proposal accords with *altered* Policy S15a 'retail character and function criteria', as it would not before or after result in, (a) more than one third of the ground floor units in the relevant street frontage and occupied by non-shop uses, or (b) there are more than three adjoining units at ground floor level in the same use class order, 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.

The criteria of policies S15 and S15a that discuss potential adverse impact on traffic or amenity remain to be satisfied. Policy S15 resists proposals that would result in, (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. The 'environmental criteria' of Policy S15a, resist proposals 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.

**Recommendation:**

On balance there is no policy objection.

M.W. Sonch 26.6.01

PLANNING AND CONSERVATION  
INTERNAL MEMORANDUM

TO: George Allpress (DC Central) ROOM NO: -  
CC: Jonathan Wade (DC South East), Paul Kelsey, Nicola Cowley (DC Central), Justin Ayton (Design),  
LeVerne Parker (Legal), Rebecca Gill (Appeals), Steve McCormack, David Rafael (Policy)  
FROM: Tony Appleyard (Policy) ROOM NO: 331  
TELEPHONE: (020) 7361 2092 EMAIL: tony.appleyard@rbkc.gov.uk  
DATE: Monday 7 January 2002 REF: -  
SUBJECT: Appeal: 110 Kensington Church Street, W8 (PP/01/1227)

The following are my comments regarding the letter to Councillor Freeman dated 21 December 2001 from Mr de Lotbiniere (GVA Grimley) on the above appeal (copy attached).

Para 6 of the letter refers to the Council's figure of 64% of the total of the Notting Hill Gate Principal Shopping Centre (PSC) No 2 non-core being in Class A1 use. The accuracy of this figure is challenged by Mr de Lotbiniere's calculations in that, '...the non-core ground floor units are those defined on the UDP proposals map, and which form the cluster around the northern section of Kensington Church Street on both sides of the road', a total figure of 71 units. In fact the calculation of the non-core of the PSC under *adopted* Policy S15 is based on the total non-core frontage of the Centre, which also includes addresses to the eastern and western extremities of Notting Hill Gate and also the southern end of Portobello Road. The Council's PSC Survey of 2000 found that there were 99 units within the entire non-core and not 71 as suggested by Mr de Lotbiniere.

Mr de Lotbiniere goes on to state that were retail units south of Bedford Gardens (addresses not specified) taken into account then this would further support his arguments that the Council's approach is incorrect. This contention is also mistaken, for the reason that the units are not contained with a PSC and therefore not taken into account when making the assessment.

Para 7 of the letter questions the actual number of units within the parade 106-172 (even) Kensington Church Street. The Council's report gives the number at 26 (5 in non-retail use), which is what I also found on surveying the parade. Mr de Lotbiniere argues that there are in fact 28 units in the parade, although no specific detail on their uses or addresses is given. The Council's 2000 PSC Survey puts the number of units at 25 (5 in non-retail use) in 1990 the figure was 24 (7 in non-retail use). It should also be acknowledged that there are several combined units within the parade that have a history of changing over time. The PSC Survey of summer 2001 puts the number of units in the parade at 25 (6 in non-retail use). It is considered that Mr de Lotbiniere fails to give specific evidence that there are 28 units. In any case, the proposal fails under *adopted* Policy S15 and complies under *altered* Policy S15a.

Para 8 of Mr de Lotbiniere's letter refers to the Inspector's Report on the proposed revisions to the UDP. The survey of the parade and observations by Forward Planning were completed on 6 June 2001 while the Inspector's Report was not received until 3 July 2001. It was anticipated in the comments that the *altered* policies S15 and S15a would not face any significant modifications as a result of the Inspector's findings and this was taken into account when applying *altered* Policy S15a to the proposal. Generally the Inspector supported the revisions to Policy S15 and the introduction of Policy S15a. In particular, Mr de Lotbiniere misinterprets the Inspector's intention in the definition of shop frontages. The Inspector stated:

*'As the explanatory text refers to "individual street frontages and parades" I consider it unlikely that this could be interpreted to relate to two separate shopping frontages on opposite sides of the street. However, the Council has suggested additional wording if I consider it to be necessary. I am not fully convinced that it is, but no harm can be caused by the insertion of the words "on either side of the street" after "In any one street frontage", as a "belt and braces" approach'. (Para 8.77)*

Cont...

Forward Planning's interpretation of the Inspector's meaning is the opposite of Mr de Lotbiniere's - if the Council had meant to say both sides of the street it would have said so.

In regard to the possibility of there being unauthorised non-retail uses within the parade (Nos. 106-172) this should be investigated. Given the workings of the *adopted* Policy S15a and in the context of 99 non-core units within the PSC then one or two unauthorised uses would be material in reaching the figure of 64% of Class A1 use in the non-core. The 2001 PSC Survey gives the total number of units in the PSC at 154 of which 99 are non-core, and 64% of the non-core in Class A1 use.

I trust you find this useful.







#### 4.0 PLANNING CONSIDERATIONS

- 4.1 The main consideration is whether the proposed change of use complies with shopping policy, and the impact on the vitality and function of the shopping centre.
- 4.2 The relevant planning Policies are contained in the "Shopping" Chapters of the Unitary Development Plan and Unitary Development Plan proposed Alterations. Policies STRAT6, STRAT29, STRAT29c, S6, S15 and S15a, CD48, CD49, and CD52 are of particular relevance to this application.
- 4.3 This property is located within the non core frontage of Notting Hill Gate Principal Shopping Centre. Within the Adopted Unitary Development Plan (1995), Policy S15 is relevant to this application:

**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.

- 4.4 With regard to criterion (b) above, 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 this criteria of the adopted UDP.
- 4.5 The shops either side of the application site are in Class A1 use (both retail shops) and therefore, the proposal meets criterion (c).
- 4.6 In relation to (d) and (e) above, it is not considered that the proposal will result in either of these adverse impacts.
- 4.7 Policy 15a proposed in the UDP Proposed Alterations (April 2000) is relevant when considering this proposal and states the following:

**S 15a Normally to permit uses falling within Use Classes 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

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

4.8 With regard to the Environmental Criteria of Policy S15a, it is considered that this proposal is in accordance with these as there will be no material increase in traffic or parking when the property is in Class A2 use. In addition, it is considered that there will be no reduction in residential character and amenity, as Class A2 uses typically have similar opening hours to that of an Class A1 use.

4.9 Criterion (a) of the Retail Character and Function Criteria specifies that permission would not normally be granted if more than one third of the ground floor units in the relevant street frontage be occupied by non-shop uses. This policy in the UDP Alterations adopts a different approach to assessing the mixture of uses within a particular shopping area. It is only the specific shopping parade local to the proposal which is assessed. Therefore a different calculation for assessing this proposal is used to that in para 4.5 above. There are twenty-six units within this frontage, of which five are currently in non-shop use, which equates to less than one third.

4.10 In relation to criterion (b) above, there are not more than three adjoining units at ground floor level in the same use class as proposed. The shops either side of the application site are in Class A1 use (both retail shops).

4.11 This proposal complies with Criterion (c) as there would not be 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.





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

FILE COPY

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FILE

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Switchboard: 020-7937-5464

Direct Line: 020-7361-2771

Extension: 2771

Facsimilie: 020-7361-3463

Date: 19 December 2001

~~My Ref: DPS/DCC/PP/01/01227~~

DTLR's Reference: App/K5600/A/01/1079287

Please ask for: G. Allpress

Dear Sir/Madam,

TOWN AND COUNTRY PLANNING ACT 1990

Notice of a Planning Appeal relating to: 110 Kensington Church Street, London, W8 4BH

A Planning Appeal has been made to the Planning Inspectorate in respect of the above property. This appeal is against the Council's decision to refuse planning permission for: Change of use of existing ground floor shop and basement unit (Class A1) to estate agency (Class A2).

This appeal may be heard at an informal hearing or public inquiry which you may attend and, at the discretion of the Inspector, make representations. In the meantime, any representations you wish to make in writing should be sent to:

**The Planning Inspectorate, Room 3/07 Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN**

Please send 3 copies, quoting the DTLR's reference given above, and indicate if you wish to speak. **The Inspectorate must receive your representations by 24/01/2002 for them to be taken into account.** Correspondence will only be acknowledged on request. Any representations will be copied to all parties including the Inspector dealing with the appeal and the Appellant. Please note that the Inspectorate will only forward a copy of the Inspector's decision letter to those who request one.

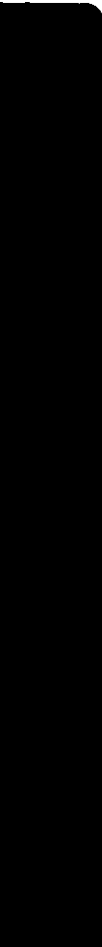
The Council's reasons for refusal and the Appellant's grounds of appeal may be inspected in the Planning Information Office at the Town Hall. When this department receives further details regarding the date and procedure by which the appeal will be heard, we will write to you again. If you have any further queries, please do not hesitate to contact the case officer on the above extension.

Yours faithfully

M. J. FRENCH

Executive Director, Planning and Conservation





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1. FILE COPY
2. THE OCCUPIER  
OFFICES  
106 KENSINGTON CHURCH STREET  
KENSINGTON  
W8
3. THE OCCUPIER  
SHOP  
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KENSINGTON  
W8
4. THE OCCUPIER  
FLAT  
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W8
9. GARRY & JULIE ATKINS  
THE FLAT  
107 KENSINGTON CHURCH STREET  
KENSINGTON  
W8 7LN.

10. THE OCCUPIER  
109 KENSINGTON CHURCH STREET  
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12. THE OCCUPIER  
SHOP  
111 KENSINGTON CHURCH STREET  
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13. ANTIQUES  
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14. THE OCCUPIER  
FLAT A  
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16. THE OCCUPIER  
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17. THE OCCUPIER  
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FLAT E  
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19. THE OCCUPIER  
FLAT F  
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KENSINGTON  
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20. THE OCCUPIER  
SHOP  
115 KENSINGTON CHURCH STREET  
KENSINGTON  
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21. THE OCCUPIER  
FLAT  
115 KENSINGTON CHURCH STREET  
KENSINGTON  
W8

22. THE OCCUPIER  
FLAT  
115 KENSINGTON CHURCH STREET  
KENSINGTON  
W8

23. THE OCCUPIER  
8 BERKELEY GARDENS  
KENSINGTON  
W8

24. THE OCCUPIER  
8A BERKELEY GARDENS  
KENSINGTON  
W8

25. THE OCCUPIER  
8B BERKELEY GARDENS  
KENSINGTON  
W8

26. THE OCCUPIER  
9 BERKELEY GARDENS  
KENSINGTON  
W8

27. THE OCCUPIER  
BASEMENT  
9 BERKELEY GARDENS  
KENSINGTON  
W8

28. THE OCCUPIER  
10 BERKELEY GARDENS  
KENSINGTON  
W8

29. THE OCCUPIER  
UNIT 1  
11 BERKELEY GARDENS  
KENSINGTON  
W8

30. THE OCCUPIER  
UNIT 2  
11 BERKELEY GARDENS  
KENSINGTON  
W8

31. THE OCCUPIER  
UNIT 3  
11 BERKELEY GARDENS  
KENSINGTON  
W8

32. STREET ANTIQUE DEALER'S ASSOC.  
YOUR REF: P.C.F. SANDBERG  
150-152 KENSINGTON CHURCH STREET  
KENSINGTON  
W8 4BN

33. ANTIQUES  
YOUR REF: MRS F. MARNO  
114 KENSINGTON CHURCH STREET  
KENSINGTON  
W8 4BH

34. KNAPTON  
133 KENSINGTON CHURCH STREET  
KENSINGTON  
W8 7LP

35. Richard P. Marchant  
1 S. Marchant & Son,  
120 Kensington Church Street,  
London,  
W8 4BH.

36. ART  
F.F. SHIMIZU  
134 KENSINGTON CHURCH STREET  
KENSINGTON  
W8 4BH

37. GALLERIES  
117 KENSINGTON CHURCH STREET  
KENSINGTON  
W8 7LN

38. CALLAGHEN  
FLAT 1  
100 PALACE GARDENS TERRACE  
KENSINGTON  
W8

39. ENTERPRISE  
YOUR REF: MR J. SCOTT  
233-235 WESTBOURNE GROVE  
LONDON  
W11 2SE

40. CAMPBELL  
123 KENSINGTON CHURCH STREET  
KENSINGTON  
W8 7LP

41. Winkworth  
118 Kensington Church Street  
London  
W8 4BH

42. COUNCILLOR TIM AHERN J.P  
5 CAMPDEN HILL SQUARE  
LONDON  
W8 7LB

43. COUNCILLOR CHRISTOPHER BUCKMASTER  
23 KENSINGTON PLACE  
LONDON  
W8 7PT

44. COUNCILLOR ROBERT J FREEMAN  
12 PITT STREET  
LONDON  
W8 4NY

45. MS SUSIE SYMES  
19 DENBIGH TERRACE  
LONDON  
W11 2QJ

46. MR WILLOUGHBY WYNNE  
CHERRY TREES RES. ASS  
39 BRUNSWICK GARDENS  
LONDON  
W8 4AW

47. JASON LARKIN  
THE BELL CORNWALL PARTNERSHIP  
OAKVIEW HOUSE  
STATION ROAD  
HAMPSHIRERG27 9TP

## Rebuttal

5

2.2 58, 54-56, 62, 67 & 67A do not  
fall into same Principle Slippin Area,  
They do however fall into the  
same Conservation Area.

Decision 112 & 140-142 do pre-date adopted  
ODP. However, the issues and its policies  
in this respect remain ~~the same~~  
unchanged

## CONDITIONS AND REASONS FOR THEIR IMPOSITION

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission. (C001)  
*Reason - As required by Section 91 of the Town and Country Planning Act 1990, to avoid the accumulation of unexercised Planning Permissions. (R001)*
2. The development hereby permitted shall be carried out exactly and only in accordance with the drawings and other particulars forming part of the permission and there shall be no variation therefrom without the prior written approval of the Local Planning Authority. (C068)  
*Reason - The details are considered to be material to the acceptability of the proposals, and for safeguarding the amenity of the area. (R068)*
3. All work and work of making good shall be finished to match the existing original work in respect of material, colour, texture, and profile and, in the case of brickwork, facebond and pointing unless otherwise approved by the Executive Director, Planning and Conservation in writing. (C071)  
*Reason - To preserve and enhance the character and appearance of the Conservation Area. (R072)*



appeal against the refusal of listed building consent does not proceed and that the appeal against the refusal of planning permission does proceed. The Local Planning Authority is in agreement.

The appellant's grounds for appeal are that the professionally qualified officers found the proposal acceptable and recommended approval, English Heritage issued a direction for approval, and therefore the reason for refusal is not sustainable. The appellant's grounds of appeal continue to assert that there is no Policy conflict and they imply the structure would have a marginal plot coverage in relation to the garden as a whole and therefore minimal impact.

Advice for elected members is found in Planning Policy Guidance Note 1, General Policy and Principles. The advice is clear and concise and states that it is important that elected members receive open and impartial professional advice and that they should make decisions on the basis of a written officer's report.

However, Councillors may, if they have good reason, based on land use planning grounds, resist such advice. (see PPG1)

It is considered that the reasons for refusal demonstrate that the elected members decision was based on good reasons and based on land use planning grounds, irrespective that they chose to not to accept the officer recommendation.

The Council's Statement amplifies the reasons for refusal and why the proposal conflicts with the Revised Unitary Development Plan Policies.

### Statutory Plans and Policies

The following is a summary of the Unitary Development Plan policies, their relevance to the development and the status of the Development Plan.

On 28<sup>th</sup> August 1995, this Council's Unitary Development Plan (UDP) was formally adopted and is the statutory plan for the Borough.

The Council has reviewed its development plan and proposed a set of alterations to the UDP to keep it up to date and in accordance with Central Government policy. The UDP Alterations were deposited on the 6<sup>th</sup> August for a period of six weeks. A second deposit period lasted for six weeks from 28<sup>th</sup> January 2000. The UDP Alterations were subject of a public inquiry between 10<sup>th</sup> January and 15<sup>th</sup> February 2001. The Council received the Inspectors Report into the Proposed Alterations in July 2001. The Council has approved modifications for public consultation to run from the 1<sup>st</sup> February to the 15<sup>th</sup> March 2002.

? WHAT NOW

Council adopted 17/4/02  
26/4 notice of intention  
6 weeks

The Unitary Development Plan proposed alterations is at an advanced stage, and therefore in line with current Government guidance, the emerging Plan policies are considered to carry considerable weight.

The Unitary Development Plan (UDP) includes strategic policies in addition to local, topic based land use policies which are relevant to this appeal. They are quoted in full in 'Informative' I51 of the Council's decision letter. (see background documents sent under separate cover)

The policies which are of direct relevance are those set out in the reason for refusal of planning permission.

They are supported by strategic policies, of relevance to this appeal are Strategic Policies: STRAT 1, STRAT 5, STRAT 6, STRAT 7.

**Site at  
110, Kensington Church Street,  
W8.**

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**RBK&C Ref:**

**DPS/DCC/PP/01/1227**

**D.T.L.R. Ref:**

**APP/K5600/A/01/1079287**

**Statement and  
Documents**

**30th April 2002**

**Informal Hearing**

THE ROYAL  
BOROUGH OF



KENSINGTON  
AND CHELSEA

**ROYAL BOROUGH OF KENSINGTON AND CHELSEA**

**Appeal under Section 78 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) by Druce Lamy Ltd against the Royal Borough of Kensington and Chelsea refusal to grant planning permission for: the Change of use of existing ground floor shop and basement unit (Class A1) to estate agency (Class A2), 110 Kensington Church Street, London, W8**

**Local Authority Reference:           DPS/DCC/PP/01/01227**

**DTLR Reference:                   APP/K5600/A/01/1079287**

## STATEMENT

### 1.0 SITE AND SURROUNDING AREA

- 1.1 This appeal is submitted against the decision of The Royal Borough of Kensington and Chelsea to refuse to grant planning permission for the change of use of this property from its current retail use to the use of the premises for an estate agency within use class A2.
- 1.2 The appeal premises is a ground floor retail unit that measures approximately 51 sq.m. in floor area. It is a mid-terrace property with two upper floors, the upper floors having an independent access to the ground floor unit. There is no separate rear access to the retail unit. (See Appendix 1)
- 1.3 The shop to the north (no.112) is in use as a general convenience shop and that to the south (no.108) an antique and fine art retailer.
- 1.4 Kensington Church Street is in general characterised by the unique collection of specialist antique and fine art shops and this part of Kensington Church Street is in particular characterised by the presence of this retail function.
- 1.5 The application property lies within the Kensington Palace Conservation Area, the boundary of which runs the length of Kensington Church Street, (see Appendix 2). A Conservation Area Proposals Statement was adopted on the 22<sup>nd</sup> April 1996. The properties opposite are within the Kensington Conservation Area. The property is also located within the non core frontage of the Notting Hill Gate Principal Shopping Centre.

### 2.0 RELEVANT PLANNING HISTORY

- 2.1 Planning permission was granted in 1979 for an extension at 1st and 2nd floor levels at rear and alteration to shop front.
- 2.2 The premises are currently vacant but would appear to have been in use as a retail shop (Class A1) for many years.
- 2.3 Separate applications are currently being considered for alterations to the shopfront and signage. (PP/01/1505 and CA/01/1506)
- 2.4 The appeal application was refused planning permission on the 20<sup>th</sup> September 2001.

2.5 Also of relevance are the following planning decisions of this Council:

PP/01/02404 – 58 Kensington Church Street, W8, planning permission refused 19/12/2001  
TP/98/1306 – 54-56 Kensington Church Street, W8, planning permission granted 20/04/99;  
TP/98/1546 – 140-142 Kensington Church Street, W8, planning permission refused 09/03/89;  
TP/94/264 – 172 Kensington Church Street, W8, planning permission granted 06/94;  
TP/97/2610 – 62 Kensington Church Street, W8, planning permission granted 27/03/98;  
TP/89/0876 – 67A Kensington Church Street, W8, planning permission granted 25/09/89;  
TP/88/2276 – 112 Kensington Church Street, W8, planning permission Refused 09/03/89;  
TP/87/0489 – 67 Kensington Church Street, W8, planning permission granted 13/05/97;

(See Appendix 3)

3.0 **STATUTORY PLANS AND POLICIES**

3.1 On 28<sup>th</sup> August 1995, this Council's Unitary Development Plan (UDP) was formally adopted and is the statutory plan for the Borough.

3.2 Other relevant documents are Circulars, Planning Policy Guidance Notes and other advice from Central Government together with the statutory framework provided by the Town and country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning and Compensation Act 1991.

3.3 Section 54A of the Town and Country Planning Act 1990 places an emphasis on the need to meet the requirements of the development plan, and states:

**'Where in making any determination under the Planning Acts, regard is to be had to the development plan, and determination shall be made in accordance with the plan unless material considerations indicate otherwise'**

3.4 PPG1 (revised February 1997) outlines the general policies and principles under which the planning system is to operate. Paragraph 40 states:

**'The Government is committed to a plan led system of development control. This is given statutory force by Section 54A of the 1990 Act. Where an adopted or approved Development Plan contains relevant policies, Section 54A requires that an application for planning permission or an appeal shall be determined in accordance with the Plan**

unless material considerations indicate otherwise. Conversely, applications which are not in accordance with the relevant policies in the Plan should not be allowed unless material considerations justify granting the planning permission. Those deciding such planning applications or appeals should always take into account whether the proposed development would cause harm to interests of acknowledged importance in all cases where the Development Plan is relevant, it will be necessary to decide whether the proposal is in accordance with the Plan and then to take into account other material considerations'

3.5 At paragraph 50, PPG1 states:

**'In principle...any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances.'**

3.6 PPG15 (Planning and Historic Environment) issued in September 1994 outlines the policies which local planning authorities should take into consideration when determining applications for works to listed buildings or buildings within conservation areas. In particular, paragraph 4.14 of PPG15 states:

**'Section 72 of the Act requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the character and appearance of the conservation area. This requirement extends to all powers under the Planning Acts, not only those which relate directly to historic buildings. The desirability of preserving or enhancing the area should also, in the Secretary of State's view, be a material consideration in the planning authority's handling of development proposals which are outside the Conservation Area but would adversely affect its setting, or views into or out of the area'**

3.7 Paragraph 1.1 (inter alia)

**'It is fundamental to the Government's policies for environmental stewardship that there should be effective protection for all aspects of the historic environment.'**

3.8 Paragraph 1.5 states:

**'Conservation can itself play a key part in promoting economic prosperity by ensuring that an area offers attractive living and working conditions which will encourage inward investment - environmental quality is increasingly a key factor in many commercial decisions.'**

3.9 Paragraph 2.18 states:

**'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.'**

3.10 However, and of particular relevance to this appeal is that stated by paragraph 4.2:

**'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 – on the historic layout of property boundaries and thoroughfares; on a particular 'mix' of uses.... Conservation Area designation should be seen as the means of recognising the importance of all these factors and of ensuring that conservation policy addresses the quality of townscape in its broadest sense as well as the protection of individual buildings.'**

#### 4.0 UNITARY DEVELOPMENT PLAN POLICIES

4.1 The Unitary Development Plan (UDP) includes strategic policies in addition to local, topic based land use policies. The strategic policies which are of relevance in this case are as follows:

**'STRAT 6 To protect listed buildings and to preserve the character and appearance of conservation areas, areas of Metropolitan Importance, areas of local character and other buildings or places of interest'**

**'STRAT 29 To seek to enhance the vitality and viability of principal and Local Shopping Centres and to ensure that they are the focus for any new retail development and continue to provide shopping facilities in The Royal Borough.'**

4.2 Chapter 4, 'The 'Conservation and Development' Chapter of the UDP includes four objectives which the Council wishes to see achieved through the policies of that Chapter. These objectives are as follows:

**(A) To protect or enhance areas of character throughout the Borough, both in terms of use and physical environment;**

- (B) To ensure that all development respects local character, is of a high standard of design, takes into account people with special mobility needs and does not adversely affect residential amenity ;
- (C) To preserve or enhance the Boroughs Conservation Areas and listed buildings;
- (D) To protect or enhance the natural environment and to preserve the archaeology of the Borough.

4.3 Policy CD48 of the UDP states the Council's intentions in respect of conservation areas and states:

**'To pay special attention to the desirability of preserving or enhancing the character or appearance of each conservation area'**

4.4 In addition Policy CD52 states:

**'To ensure that any development in a conservation area preserves or enhances the character or appearance of the area'**

4.5 The Unitary Development Plan shopping policies are found at chapter 8. Policy S6 states:

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

4.6 Policy S15 states:

**'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.'

4.7 The Council has reviewed its development plan and proposed a set of alterations to the UDP to keep it up to date and relevant in accordance with Central Government policy. The UDP alterations were approved for consultation by the Council's Planning and Conservation Committee on 19<sup>th</sup>



April 1999. The UDP alterations have been the subject of consultation with statutory bodies in line with government guidance (PPG12, Development Plans and Regional Guidance [Annex E], February 1992). This consultation took place between 30 April and 11 June 1999. The UDP Alterations were deposited on the 6<sup>th</sup> August for a period of six weeks. A second deposit period lasted for six weeks from 28<sup>th</sup> January 2000. The UDP Alterations were subject of a public inquiry between 10<sup>th</sup> January and 15 February 2001. The Council received the Inspectors Report into the Proposed Alterations in July 2001.

4.8 The relevant policy changes are as follows:

**STRAT 29c To improve the attractive and competitiveness of the Borough's shopping centres by improving the townscape and streetscape environment.'**

4.9 Policy S15:

**'Normally to permit uses falling within use classes A2 and A3 in the 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 quarter of the ground floor units in the relevant street frontage are occupied by non-shop uses; or
- (b) There are more than two 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 two times the average width of units in the core frontage of the centre.

4.10 The UDP Proposed Alterations includes a new Policy S15a and this states:

**Normally to permit uses falling within use classes A2 and A3 in the non-core frontage of a principal shopping centre, subject to the following:**

### **Environmental Criteria**

- (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) There are more than three 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.

## **5.0 AMPLIFICATION OF COUNCILS REASONS FOR REFUSAL**

- 5.1 The Council reasons for refusal are that the loss of this retail property would adversely affect the special character of this part of the Kensington Palace Conservation Area. The local character of this part of the Kensington Palace Conservation Area is distinctive and characterised by the high presence of antique and fine art retailers. The loss of this shop would result in the loss of premises available for occupancy by specialist retailers and would unbalance the distinct character of this street.
- 5.2 Section 54A of the Principal Act requires that an application for planning permission or an appeal shall be determined in accordance with the Plan unless material considerations indicate otherwise. Planning Policy Guidance Note 1, reminds:(inter alia) "Those deciding such planning applications or appeals should always take into account whether the proposed development would cause harm to interests of acknowledged importance".
- 5.3 In respect of Conservation Areas, Section 72 of the Act requires that special attention to be paid in the exercise of planning functions to the desirability of preserving or enhancing the character and appearance of conservation areas.
- 5.4 In the exercise of these powers, PPG 15, provides the relevant guidance. At paragraph 2.18 it is stated that:
- 'The Secretary of State is not generally in favour of tightening development controls over changes of use as a specific instrument of conservation policy.
- 5.5 The advice is that in general, the same provisions in respect of a change of use should apply to historic buildings as to all others. That is, patterns of economic activity inevitably change over time, and in general terms it is

considered be unrealistic to seek to prevent such change by the use of planning controls.

- 5.6 However, at paragraph 4.2 qualifies the general guidance provided by its preceding paragraph and emphasises that:

**“It is the quality and interest of areas, rather than that of individual buildings, which should be the prime consideration in identifying conservation areas.”**

- 5.7 The Guidance continues to elaborate these considerations by stating that:

**“There has been increasing recognition in recent years that our experience of an historic area depends on much more than the quality of individual buildings..”**

- 5.8 It is recognised that the experience of historic areas is also influenced by:

**“...the historic layout of property boundaries and thoroughfares; *on a particular ‘mix’ of uses....*”(italics added).**

- 5.9 Conservation Area designation is seen as a means of recognising the importance of all these factors and of ensuring that conservation policy addresses the quality of a townscape in its broadest sense as well as the protection of individual buildings.

- 5.10 The Council’s decision in the appeal case is in recognition of these broader factors, the considerations that extend beyond the purely built fabric of the Borough, that is in the broadest sense of the character and function of this area.

- 5.11 The Kensington Palace Conservation Area Proposals Statement quite rightly places great emphasis on the importance of the built fabric and its historical development. The CAPS moreover, also recognises the importance of the function of Kensington Church Street and the way it is used. (See Appendix 4)

- 5.12 The CAPS recognises that Kensington Church Street:

**“...has a distinctive character which deserves some individual analysis”. (page 31)**

- 5.13 The CAPS continues:

**“The strong personality of this shopping centre derives from developments of very different 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.*”(italics added)**

- 5.14 The character of Kensington Church Street is not homogeneous. There is a mixture of uses. There is a substantial number of antique and fine art dealers throughout its length.

- 5.15 However, the proportion of antique and, or fine art dealers (and similar specialist shops) in the area of the appeal premises is such that they are considered by the Council to define the strong personality of this part of the street. They are a dominant and striking feature of this area and one which is considered to deserve protection.
- 5.16 To amplify; the appeal property is one unit of a retail frontage which numbers 106 to 172. The frontage runs from Berkley Gardens, in the south to Kensington Mall in the north. This frontage comprises 25 commercial units and of these 16 are antique, fine art dealers or similar specialist shops. That is 64 per cent of this part of Kensington Church Street is characterised by this type of use.
- 5.17 Opposite, of the frontages comprising nos. 121 to 141 (13 properties in total) 10 are antique and or fine art dealers, equalling 77%. Similarly the frontages comprising nos.103 to 119, 7 units, rounds to 77% out of a total of 9 units which are antique and or fine art dealers or similar specialist shops.
- 5.18 It is recognised that the Council is not in a position to determine the particular type of retail user. However, there is a considered view from concerned local residents and businesses, that this property would be occupied by another antique or fine art establishment if the property is retained in retail use. However, the loss of this retail unit would deprive the area of this potential
- 5.19 The continued threat to this area are of on going concern to the Council. Planning permission was refused in 1989 for a similar change of use at no.112 and for similar reasons.(see Appendix 3: Planning Reference TP/88/2276).
- 5.20 The Council's reasons for refusal were: (inter alia) the proposed introduction of a further Estate Agent's office, located in the middle of a terrace row of antique shops, and within an internationally established trading centre for antiques and fine arts, would detract from the character and function of the street; and the proposed use is considered undesirable and detrimental to the character of the street.
- 5.21 Prior to the above decision and in granting planning permission (at no.67 in 1987), the officers report recognised the same issues of concern concluding that, "The loss of a convenience retail shop is regrettable". However planning permission was granted because of the flexibility allowed by the then applicable Local Plan policy limits. (See Appendix 3 officers report TP/87/0489, paragraph 3.0) Recognition of the fragility of the local distinctiveness and special character has been recognised in the determination of other planning applications referred to in Appendix 3.
- 5.22 In contrast the subject of this appeal proposal is considered barely acceptable when measured against the Unitary Development Plan Shopping Policies. The proposal would not have been appropriate in by Policy S15 of the adopted UDP and it only just complies with Policy S15a of the Proposed Alterations as set out in the Committee Report paragraph 4.1 to 4.11 (See Appendix 6) and the Policy background papers (Appendix 5).

- 5.23 The concern of the local interest groups is that there is sufficient scope for diversity within this location and that a further loss of retail would begin to erode the potential to maintain the character of this street. There is considered to be a need for this type of specialist retailer to cluster.
- 5.24 The Council is not in a position to control the type of user. However, whilst the property remains in retail use, the potential for the property to be occupied by one of these specialist users is maintained.
- 5.25 It is also acknowledged that a change of use from an estate agents to a retail shop within Class A1 does not need planning permission. However, the reality is that once the change of use to use Class A2 takes place, the use is likely to be lost from retail forever.
- 5.26 As stated above, Kensington Church Street is an extremely high quality and special street with a distinctive and unique character. Its character is defined by small specialist shops comprising antique dealers and fine art establishments. The local residents and traders have expressed their concerns. They are an established part of this community. They are emphatic, that the survival of these specialist shops is heavily dependent upon their grouping together. The location is of international renown and its reputation is justifiably reasoned as dependent upon the grouping of these specialist shops. Maintaining this balance of provision has been of concern to the Council for some time. The concerns of the Council are on public record. The loss of this retail unit is considered to jeopardise the potential presence and future opportunity for similar businesses to be located and therefore to harm character of the street, and thus the character of the Kensington Place Conservation Area.

## 6.0 COMMENTS ON APPELLANTS GROUNDS OF APPEAL

- 6.1.1 The appellants first ground of appeal contests the Council's assertion that this change of use would adversely impact on the special character of this part of the conservation area.
- 6.1.2 For the reasons expressed in paragraphs 5.1 to 5.26 of this statement, the Council disagrees with the appellant's ground of appeal.
- 6.2.1 The appellant's second ground of appeal reiterates the first, with the supportive insinuation that the change of use will result in a mix of uses within the non-core retail frontage and also diversity.
- 6.2.2 No supportive explanation is provided. However, and equally, (as stated at paragraphs 5.9 and 5.10) the character of Kensington Church Street is considered, unique and distinctive and formed by the concentration of antique and fine art dealers.
- 6.2.3 In support of this view, the Council considers Government Guidance (as outlined in PPG15 is particularly relevant; it is the quality and interest of areas, not just that of individual buildings that our experience of an historic

area depends upon and that our experience of an area may be equally, if not more dependant, upon the particular 'mix' of uses. This is considered to be the case with Kensington Church Street.

- 6.2.4 The initial planning application received 13 letters of objection at the time of determination. The majority of respondents expressed their concern with the further loss of a retail unit in this location and feel that the character of the street would be severely compromised by the change of use if allowed. The representations express the opinion that the character and function of this location for an antique and fine art retailers contribute to an attractive living and working environment which will encourage inward investment.
- 6.2.6 These concerns are not new, they have been the subject of previous considerations in the determination of applications in the past and also the reasons for the refusal of planning permission. The Planning Services Committee chose not to accept the officer recommendation in respect of no.140/142 Kensington Church Street and refused planning permission, irrespective that on balance there would have been no loss of a retail unit. (See Appendix 3) No appeal was received on this decision.
- 6.2.7 Therefore, the Council does not share the view of the appellant. The Council supports the perception of the local businesses and residents who have commented that the appeal proposal would if allowed harm the character of this part of the Conservation Area.
- 6.3.1 In the appellant's third ground of appeal they state, their case will consider the what factors contribute to the "special character" of this part of the conservation area.
- 6.3.2 The Council has nothing to add to this statement at this stage.
- 6.4.1 The appellant's fourth ground of appeal refers to other Class A2 uses existing in the surrounding area, their evolution and their impact to the special character of the area.
- 6.4.2 The Council has nothing to add to this statement at this stage.
- 6.5.1 The appellant's fifth ground of appeal states that compliance with Council's policies will be demonstrated.
- 6.5.2 The policy considerations on which the application was determined were twofold, the shopping policies contained in chapter 8 of the Unitary Development Plan (and Proposed Alterations), and the Conservation and Development Policies found in chapter 4. (See Appendix 6)
- 6.5.3 The reasons for refusal were based on the Conservation and Development Chapter Policies CD48 and CD52. The reasons why the subject of this appeal

is considered to have been justifiably refused planning permission is clearly expressed in the Amplification of the Council's Reasons for Refusal.

- 6.5.4 For the reasons stated in the officers report, the proposal only just complies with the Unitary Development Plan shopping policies. The reason for the refusal is because of the impact on the character of the Conservation Area and for the reasons stated in the Council's submission the Inspector is requested to refuse planning permission.

## 7.0 CONCLUSION

- 7.1 The Unitary Development Plan policies enable the Council to determine applications in a consistent and even handed manner. They are considered up-to-date and to be in line with recent Government guidance. The proposed conflicts with the UDP and for the reasons stated would result in demonstrable harm. The Planning Inspector is therefore respectfully requested to dismiss this appeal.

8.0 **CONDITIONS**

8.1 In the event the Inspector is minded to grant planning permission, the following are requested to be attached to safeguard the character and appearance of the Kensington Conservation Area

**Condition 1**

The development hereby permitted shall be begun before the expiration of five years from the date of the permission

**Reason**

As required by Section 91 of the Town and Country Planning Act 1990 to prevent the accumulation of unexercised permissions



## List of Appendices

- Appendix 1 Site Plan
- Appendix 2 Conservation Area Boundary
- Appendix 3 Copies of Officers Reports:
- PP/01/02402 – 58 Kensington Church Street, W8, planning permission refuse 19/12/2001
  - TP/98/1306 – 54-56 Kensington Church Street, W8, planning permission granted 20/04/99;
  - TP/98/1546 – 140-142 Kensington Church Street, W8, planning permission refused 09/03/89;
  - TP/94/264 – 172 Kensington Church Street, W8, planning permission granted 06/94;
  - TP/97/2610 – 62 Kensington Church Street, W8, planning permission granted 27/03/98;
  - TP/89/0876 – 67A Kensington Church Street, W8, planning permission granted 25/09/89;
  - TP/88/2276 – 112 Kensington Church Street, W8, planning permission Refused 09/03/89;
  - TP/87/0489 – 67 Kensington Church Street, W8, planning permission granted 13/05/97;
- Appendix 4 Extract from the Kensington Conservation Area Proposals Statement
- Appendix 5 Copy of RBK&C Policy observations and additional Policy advice dated 7<sup>th</sup> January 2002.
- Appendix 6 Extract of Officers Report PP/01/01227 (paragraphs 4.0-4.11)
- Appendix 7 Copy of letters notifying third parties
- Appendix 8 List of persons notified of appeal