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**FROM: EXECUTIVE DIRECTOR OF
PLANNING & CONSERVATION**

MY REF(S): RAG/PP/04/02306
ODPM's Reference: App/K5600/ A/05/1172723
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DATE: 18/05/2005

TOWN AND COUNTRY PLANNING ACT, 1990

APPEAL 114-120 Notting Hill Gate, London, W11 3QE

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:

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Mrs R Townley
Kensington And Chelsea R B C
Planning Services Department
3rd Floor
The Town Hall
Hornton Street
London
W8 7NX

Your Ref: pp/04/02306/MINR
Our Ref: APP/K5600/A/05/1172723
Date: 16 May 2005

Dear Madam

TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY TESCO STORES LTD
SITE AT 114/120 NOTTING HILL GATE, LONDON, W11 3QE

EX DIR	HDC	TP	CAC	AD	CLU	AU AK
R.B. K.C.		17 MAY 2005			PLANNING	
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I enclose a copy of our Inspector's decision on the above appeal.

7

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 Mr Darren Cryer

COVERDL1



Appeal Decision

Site visit made on 10 May 2005

by **P A Davies** BSc(Econ) MCD Dip.URS MRTPI

an Inspector appointed by the First Secretary of State

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

Date **16 MAY 2005**

Appeal Ref: APP/K5600/A/05/1172723
114 – 120 Notting Hill Gate, London W11 3QE

- 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 Tesco Stores Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
- The application ref: PP/04/02306/A dated 8 October 2004, was refused by notice dated 17 November 2004.
- The development proposed is described as “2 no. ATM’s within shopfront”

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

Procedural Matters

1. Although the application form described the development as set out in the summary above, it is evident that the proposal was subsequently amended to reduce the number of proposed ATMs from two to one. The Council has described the development as “installation of one cash dispensing machine within shopfront to front ground floor street elevation”. This description has been adopted by the appellant and I have therefore determined the appeal on the basis of the revised description.

Main Issue

2. I consider the main issues in this case to be the effects of the proposal on firstly, the character and appearance of the area; and secondly, the living conditions of neighbouring residents, with particular reference to noise and disturbance, crime and anti-social behaviour.

Planning Policy

3. The development plan includes the Royal Borough of Kensington and Chelsea Unitary Development Plan (UDP), adopted in 2002. A number of policies in the plan have been drawn to my attention, but I consider the following to be most pertinent to my consideration of this appeal. Policy CD27 seeks to ensure that all development is to a high standard of design, and is sensitive to and compatible with its surroundings. Policies CD50 and CD51 aim to prevent unsympathetic alterations and small-scale developments that would be harmful to the external appearance of buildings or the surrounding area.
4. I have also had regard to the Council’s Supplementary Planning Guidance on the Design and Conservation of Shopfronts and Shopping Streets, and Notting Hill Shopfront Improvements. However, as the status of these documents has not been

made clear to me, I have attached limited weight to them.

Reasons

Character and Appearance

5. The appeal premises comprise a retail foodstore situated in the Core Frontage of the Notting Hill Shopping Centre. The modern two storey building and those which adjoin it are, in my opinion, are of no special architectural merit.
6. The proposed cash dispensing machine would be installed at the eastern end of the store's long shop front, and would occupy only a small proportion of the total frontage. Having regard to its limited size and projection, I consider that the proposed development would represent a relatively modest alteration. It would be compatible with the commercial character of the building and, in my judgement, would not unduly affect the proportions or rhythm of the shop front. For these reasons, I consider that the proposal would not be harmful to the external appearance of the building or the local townscape. As such, it would have no material effect on the character or appearance of the nearby Kensington Conservation Area.
7. Accordingly, I conclude that the proposal would not adversely affect the character and appearance of the area and accords with the policies of the UDP referred to above.

Neighbours' Living Conditions

8. The proposed cash dispensing machine would be sited adjacent to the entrance to Camden Hill Towers, a large residential block. I have given careful consideration to the concerns expressed by objectors that the proposed development would result in persons loitering outside the entrance to these flats, leading to increased noise and disturbance, crime and other forms of anti-social behaviour. However, the proposed facility would be located on a busy commercial thoroughfare close to a bus stop and several cafes and fast food outlets. In the circumstances, I consider that the proposal would be unlikely to result in a significant difference in the numbers of persons congregating in the area. For this reason, I conclude, on balance, that the proposal would not have an unduly adverse effect on the living conditions of neighbouring residents.

Other Considerations

9. Although some objectors have questioned the need for an additional cash dispensing facility, it is not normally necessary for appellants to demonstrate need for such facilities in primary shopping areas. I therefore do not regard this issue as a material planning consideration in this case.

Conditions

10. In my view, no conditions other than the standard time limit condition are necessary.

Conclusion

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

Formal Decision

12. I allow the appeal and grant planning permission for the installation of one cash dispensing machine within shop front to front ground floor street elevation at 114 – 120 Notting Hill Gate, London W11 3QE in accordance with the terms of the application ref: PP/04/02306/A, dated 8 October 2004, and the plans submitted therewith, subject to the following conditions:
13. The development hereby permitted shall begin before the expiration of five years from the date of this decision.

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INSPECTOR



The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990: **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Council on tribunals

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

Contacting us

High Court Section
The Planning Inspectorate
4/07 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8962

Website

www.planning-inspectorate.gov.uk

General Enquiries

Phone: 0117 372 6372

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

Complaints

Phone: 0117 372 8252

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

Cardiff Office

The Planning Inspectorate

Room 1-004

Cathays Park

Cardiff CF1 3NQ

Phone: 0292 082 3866

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

The Parliamentary Ombudsman

Office of the Parliamentary

Commissioner for Administration

Millbank Tower, Millbank

London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

E-mail: opca-enqu@ombudsman.org.uk



INVESTOR IN PEOPLE



The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

Our Complaints Procedures

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms. We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.



INVESTOR IN PEOPLE

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. Minor slips and errors may be corrected under the terms of the Planning & Compulsory Purchase Act 2004 but we cannot amend or change in any way the substance of an Inspector's decision.

Who checks our work?

The Government has said that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report on our performance. APOS regularly examines the way we deal with complaints and we must satisfy it that our procedures are fair, thorough and prompt.

Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"If you cannot change a decision, what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. It can investigate and has discretionary powers to take action if a condition is being ignored.

Further information

Every year we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with and how we plan to meet the targets which Ministers set for us. At the end of each financial year we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.odpm.gov.uk/

Contacting us

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

Website

www.planning-inspectorate.gov.uk

Enquiries

Phone: 0117 372 6372

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The Planning Inspectorate
Room 1-004
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The Parliamentary Ombudsman

Office of the Parliamentary
Commissioner for Administration
Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033

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