



The Planning Inspectorate

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Council Reference:
LP/MS
Our Reference:
T/APP/C/95/K5600/639368
T/APP/L5600/A/95/255599
Date:

25 JUL 1996

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 174 AND
SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MR P L MOLINARO
LAND AND BUILDINGS AT 359 FULHAM ROAD, CHELSEA, LONDON, SW10.

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeals against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea and a refusal of planning permission by the same council, both concerning the above mentioned land and buildings. I held an inquiry into the appeals on 18 June 1996.

THE NOTICE

2. (1) The notice is dated 29 June 1995.
- (2) The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land to a cafe.
- (3) The requirement of the notice is to stop using the land as a cafe.
- (4) The period for compliance with this requirement is two months.

GROUND'S OF APPEAL

3. Your client's appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act as amended by the Planning and Compensation Act 1991.

THE APPEAL UNDER SECTION 78

4. The development for which the Council has refused planning permission is the change of use from Retail (Class A.1) to Restaurant/Take Away (Class A.3) including permitted extension.

Preliminary Matters

5. It was established at the beginning of the inquiry that the Section 78 application included a single storey front extension, covering the existing forecourt, and a single storey rear extension covering the existing rear service yard (another application had recently been approved for these extensions but not implemented). The change of use application and appeal was intended to refer to the extended building. It was further established that the Council had no objections to the extensions, only the change of use.

6. In relation to the enforcement notice the parties agreed that for the benefit of any doubt, paragraphs 3 and 5 of the notice (which stated what the breach of planning control and requirements were), should be corrected by adding '(Use Class A3)' after the word 'cafe'. Finally it was agreed that the enforcement notice only included the existing building, not the forecourt area but this was not a significant matter in determining either of the appeals.

The appeal on Ground (a) and the Section 78 appeal

7. From the cases presented to me at the inquiry, my inspection of the site and its surroundings and from the written representations made, I consider that the main issues in this case, having regard to the prevailing policies, are whether the development materially harms firstly, the vitality and viability of the Fulham Road West Principal Shopping Centre and secondly, the living conditions of nearby residential occupiers through disturbance and smells.

8. Dealing with the first main issue, the site is located within a Principal Shopping Centre (PSC) in the Royal Borough of Kensington and Chelsea Unitary Development Plan (UDP), approved in August 1995. Policy S1 of the plan states that the loss of shop units will normally be resisted and the objective of S6 is to maintain and improve the vitality, viability and function of shopping centres throughout the borough. Policy S15, however, states that A2 and A3 uses will normally be acceptable in PSC's unless the development would threaten the character or function of the centre; 75% of the shops should be in A1 use and there should be no more than 3 non-shop uses in adjacent premises. Finally, there should be no significant reduction in an area's residential character and amenity by reason of smells or noise.

9. These policies and their objectives follow national advice as expressed in PPG6 and whilst not yet national guidance, both parties agreed that they were generally in accord with the revised PPG6 (to be published shortly) which, like the current guidance, recognises the importance of diversity to encourage both the viability and vitality of town centres. In my view the policies and their objectives are up to date, in accord with national advice and worthy of considerable weight in the determination of these appeals.

10. On the first main issue, the Council did not dispute that the retail character of this centre has been operating at a reduced level compared to other PSC's in the Borough, nor that the level of A1 uses in the centre has always been well below the 75% level set out in policy S15 in the UDP (it has generally only varied between about 55% and 60% since 1983). Indeed the Council admitted that firstly, this particular centre was only designated as a PSC because of the presence of the hospital and the cinema, not the level of A1 uses within

it and secondly, that it contained a high level of A3 uses within its core frontage area. Finally, the Council admitted that the centre was buoyant and vibrant at night.

11. The Council argued that since 1993 the balance between retail and non retail uses had altered and the retail function of the centre, in so far as it related to comparison shopping, had been steadily reduced thereby undermining the viability of the centre. There was no dispute over the figures produced by the Council regarding the level of different uses in the centre between 1983 and 1995 but I agree with your client that there is no significant change in the various levels revealed by these figures. I accept that the level of A1 users in the core, at 55% in 1994 and 1995, is slightly down on 1993 when it reached 60% but 1991 at 61% was the only other year at 60% or more and through most of the 1980's it was around 57%. Similarly although the level of A1 uses in the whole centre at 60% is lower than 1992 to 1995 when it reached 63%, it is higher than 1983 to 1987 when it was always below 60%. I also note that whilst the table shows that 20 units within the core area were in A3 use in 1995, that was not an increase over 1994 and as far back as 1990 there were 17 units in A3 use; in my view not a significant change over a period of 5 years.

12. In considering these figures, which in my opinion do not reveal any significant changes over a period of 12 years, I have also taken into account that Policy S15 states that A3 uses are acceptable in principal shopping centres providing that the development would not threaten their character or function. There was no evidence of any vacancy problem in the centre nor did the Council produce any evidence to support its contention that your client's proposal would materially harm the character or function of the centre in any way. Indeed many of those who wrote in and those who spoke at the inquiry were firmly of the opinion that the use was entirely in character in the centre; that it was the A3 users who largely created and added to the character and vitality of the centre and the variety of those A3 users provided an attraction that brought people into the centre.

13. Several local people gave evidence that the area contained many small flats occupied by single people who had what they required in the way of convenience shops and eating places; this was not really disputed by the Council. Also, they stated that comparison shopping had reduced but this was because of the very short distance to Knightsbridge, High Street Kensington and Kings Road which gave a much better choice.

14. In my opinion the evidence produced by the Council does not show a significant change in the levels of the various uses within the centre. There was no evidence eg., in terms of vacancies or reducing rents, that the viability of the centre was being affected in a detrimental manner by the level of non A1 uses or, in particular, by the level of A3 uses, either in the core or the centre as a whole.

15. Taking all these factors into account, I conclude that the use, even in the extended premises, would be acceptable and would not materially harm either the vitality or viability of this Principal Shopping Centre.

16. Turning to the second main issue, the appeal premises are located on the ground floor of a building containing 4 floors of flats above and there are residential properties to the rear in Limerston Street and to the rear and slightly to the north in Stanley Studios. Few of the commercial premises fronting Fulham Road have residential use above although there is a flat above 353 immediately to the north east of the appeal site. There was evidence that people

were disturbed by noise from the use of the forecourt but there was no dispute that this would not be the case once the extension had been constructed and the use was contained within a building.

17. There was also no dispute that the area was particularly lively in the evening with many places open late for eating and the presence of the cinema nearby added to the high level of evening activity in the vicinity. Whilst there were some objections on the basis of noise I am satisfied that subject to the imposition of appropriate conditions regarding opening hours, the playing of music on the premises, there should not be a materially harmful effect on the living conditions of nearby occupiers. Similarly, odours can be controlled by the installation of suitable extraction equipment.

18. Taking all these factors into account I am satisfied that subject to the imposition of appropriate conditions planning permission can be granted and I shall, therefore, allow your appeals and quash the enforcement notice. In these circumstances there is no need for me to consider the appeal on ground (g).

19. In considering what other conditions, if any, should be attached to any permission granted I have noted those suggested by the parties and agree that a condition prohibiting 'take away' food would also help reduce possible nuisance to residents, particularly in the evenings. The Council suggested that the number of 'covers' be limited to 70 whilst the appellant stated that he could (and wished) to provide 100. In my view there was no evidence put forward to justify limiting the number to 70 and if other health and safety legislation permits 100 to be seated at any time I can see no reason for any restriction to a lower number. Finally, I recognise that the wording of the conditions may need to be altered a little between the 2 permissions I am granting as the 2 appeals refer to slightly different matters and sites (one refers to an existing use and the other to a proposed operational development covering additional land).

20. It would be appropriate for details to be approved by the Council of any machinery to be installed at the premises, particularly of ventilation and extraction equipment and I shall impose a condition to cover that (the Council's suggested condition regarding machinery appears to me to be unenforceable). Finally, the rear extension will necessitate alternative arrangements being provided for the disposal of refuse and these should be submitted to the Council for approval bearing in mind the proximity of the flats.

21. I have taken account of all other matters raised at the inquiry and in the written representations, including the many letters received, both for and against the development but have found nothing of such significance as to outweigh the material planning considerations that have led to my decisions.

FORMAL DECISIONS

22. In exercise of the powers transferred to me and for the reasons given above I hereby determine these appeals as follows:

Section 174 appeal; Ref: T/APPI/C195/KS600/639368

I correct the enforcement notice by the addition of the words "(Use Class A3)" after the word "cafe" in paragraphs 3 and 5 of the enforcement notice. Subject thereto I allow your client's

appeal and quash the enforcement notice as corrected. I hereby grant planning permission, on the application deemed to have been made under S177(5) of the amended Act for the development already carried out, namely the use of the land at 359 Fulham Road, Chelsea, SW10 for a cafe (Use Class A3) subject to the following conditions:

1. The use hereby permitted shall only be operated between 1000 hours and 2300 hours on any day;
2. the use hereby permitted shall only be as a restaurant where food bought by customers is consumed on the premises. This permission does not include any permission for the sale of hot or cold food to be bought and then taken from the premises for consumption;
3. the restaurant hereby permitted shall have not more than 100 covers;
4. no amplified or other music shall be played in the premises at any time that is audible at any of the residential boundaries abutting the appeal site including the flats immediately above the appeal premises;
5. details of any machinery installed at the premises as a result of this change of use (including the details of any ventilation or extraction equipment) shall be submitted to the local planning authority for approval within 1 month of the date of this permission; the approved details, should they require any amendment to what has been installed already, shall be implemented within 1 month of their approval in writing. The use hereby permitted shall cease and any machinery installed for the purposes of the use shall be removed within 28 days if this requirement is not complied with;
6. details of facilities for the storage and disposal of refuse shall be submitted to the local planning authority for approval within one month of the date of this permission; the approved details, should they require any amendment to what has been installed already, shall be implemented within 1 month of their approval in writing. The use hereby permitted shall cease and any equipment brought onto the land for the purposes of the use shall be removed within 28 days if this requirement is not complied with.

Section 78 appeal; Ref: T/APP/K5600/A/95/255599

I hereby allow your client's appeal and grant planning permission for a single storey front extension, single storey rear extension and change of use of the extended premises from retail (Class A1) to restaurant (Class A3) in accordance with the terms of the application (No TP/95/1158/L/22/4246) dated 24 May 1995 and the plans submitted therewith, subject to conditions identical to those set out at 1 to 4 above plus the following additional conditions:

7. details of any machinery to be installed at the premises as a result of this permission (including the details of any ventilation or extraction equipment) shall be submitted to, and approved in writing by, the local planning authority; the approved details shall be implemented before the development hereby approved commences;

8. details of facilities for the storage and disposal of refuse shall be submitted to, and approved in writing by, the local planning authority; the approved details shall be implemented before the development hereby approved commences;

9. full details and/or samples of the materials to be used on the external surfaces of the extensions hereby approved shall be submitted to and approved in writing by, the local planning authority, before the development hereby approved commences.

23. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of these permissions has a statutory right of appeal to Secretary of State if consent, agreement or approval is refused, or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

24. These decisions do not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

RIGHTS OF APPEAL AGAINST DECISIONS

25. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against my decisions to the High Court are enclosed for those concerned.

Yours faithfully



D E MORDEN MRTPI
Inspector

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APPEARANCES

FOR THE APPELLANT

Mr Ian Albutt - Counsel, instructed by Sheridans
Solicitors, 14 Red Lion Square, London,
WC1 4QL

He called:

Mr M Thorncroft BSc FRICS - Chartered Surveyor, The Corner House,
Vicarage Road, London.

Mr K R Snellings FRICS - Partner, Bentley Snellings & Partners, 10
Hollywood Road, London, SW10.

FOR THE LOCAL PLANNING AUTHORITY

Miss Le Verne Parker - Senior Planning Solicitor, L B
Kensington & Chelsea.

She called:

Mr D Cassells BA Dip TP - Senior Planning Officer, L B
Kensington & Chelsea

Mr N Brown BSc ARICS - Valuer, L B Kensington & Chelsea

INTERESTED PERSONS

Mrs E Brewington - 36a Evelyn Road, SW7

Mrs R M Anderson - 204 Colherne Court, SW10

Mr R Pritchett - 53 Cathcart Hill, SW10

Mr B Miller - 67 Peel Street, W8

Mrs E Decoulos - 2a Ifield Road, SW10

Mr J P Sullivan - 3 Stanley Studios, Park Walk, SW10

DOCUMENTS

- Document 1 - List of persons present at the Inquiry.
- Document 2 - Council's letter of notification of the Inquiry and list of persons notified.
- Document 3 - Letters of representation.
- Document 4 - Extract from RPG3 - Strategic Guidance for London Planning Authorities.
- Document 5 - Bundle of papers attached as Appendices 1 - 3 to Mr Thorncroft's proof of evidence.
- Document 6 - Bundle of papers attached as Appendices A1 - A4 to Mr Snellings' proof of evidence.
- Document 7 - Bundle of papers and plans attached as Appendices 1 - 14 to Mr Cassells' proof of evidence.
- Document 8 - Bundle of papers, plans and photographs attached as Appendices A - I to Mr Brown's proof of evidence.

PLANS

- Plan A - Enforcement Notice plan.
- Plan B(i)-(ii) - Application plans.