APPENDIX 1(E)

APPEAL DECISION - HIGH STREET, STAINES

Appeal Decision

Site visit made on 17 May 2007

by Robin Bradbeer BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

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Date: 12 June 2007

Appeal Ref: APP/Z3635/A/06/2033563

Part of ground floor 66-68 High Street, Staines TW18 4DY

- 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 Starbucks Coffee (UK) Ltd against the decision of Spelthorne Borough Council.
- The application Ref. 06/00756/COU, dated 18 August 2006, was refused by notice dated 12 October 2006.
- The development proposed is change of use to coffee shop within a mixed A1/A3 use.

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

Main issue

1. The main issue is whether the proposal would undermine the retail function of Staines town centre.

Planning Policy

2. The development plan includes the Spelthorne Borough Local Plan 2001. Inset Map 1 denotes the site within the core shopping area. Policy S1 expresses the broad aim to maintain and enhance the vitality and viability of existing centres by various measures. Of particular relevance is clause (d), which provides for non-retail uses that contribute to the overall vitality of the centre whilst maintaining an appropriate balance between retail and non-retail uses in the shopping frontage; and clause (e), which resists proposals that would undermine the vitality and viability of any existing centre. Policy S2 applies this general aim to Staines town centre by measures that include generally resisting the loss of retail floorspace. Policy S3 sets out the Council's approach to assessing proposals for change of use of existing premises within Class A1. Within the High Street section of the core shopping area, criterion (a) seeks to maintain the retail frontage length to at least 80%. Policy S13 sets out design and amenity considerations in relation to proposals for restaurant and take-away facilities.

3. I have also been referred to national policy guidance in Planning Policy Statement 6 (PPS6) *Planning for Town Centres* and to Circular 03/2005 *Changes of Use of Buildings and Land,* which at paragraph 36 deals with coffee shops.

Reasons

4. The appeal site comprises the eastern section of these vacant shop premises, which are located on the north side of the pedestrianised High Street opposite the entrance to the Elmsleigh Centre. That recently refurbished covered shopping mall is the prime retail location in the town centre. Nearby, the Two

Rivers and Tilly's Lane retail developments, both completed since 2001, provide significant new shopping facilities in the town centre.

5. The proposed layout of the premises shown on drawing No BRS.0889_03-1A includes seating for some 41 customers, a servery situated towards the front of the unit and merchandise displays in the vicinity of the shopfront. No hot food sales either for eating in or for take-away are proposed. The Appellant anticipates that take-away trade, including sale of retail goods is likely to represent approximately 40-50% of total trade.

6. The explanatory text that follows Policy S3 defines the retail frontage length in the High Street section of the core area. It also says that allowing for the outstanding permission for the Tilly's Lane development the retail frontage length at December 1999 was calculated to be 75.4%, which I note is below the 80% minimum referred to in the Policy. It is common ground between the parties that the retail frontage length within this defined area is currently below the December 1999 figure.

7. The Council claims that in spite of the proposed merchandise displays the extent of seating would nonetheless cause the premises to be perceived as predominately A3. It adds that provision of outdoor seating, which is not proposed in this application, would exacerbate this problem. The Council also argues that there is adequate provision for A3 uses and coffee shops nearby. No objection is raised on design and amenity grounds.

8. The Appellant's case is supported by evidence, unchallenged by the Council, prepared by independent market research firms that includes surveys of existing Starbucks premises occupying similar town centre high street locations. A patronage survey indicates that the proposed use would be likely to attract significant customer flows throughout the day and generate an overall level of customer activity similar to or greater than A1 use of the site. A customer survey indicates that the proposed use would be likely to perform a complementary function to town centre shopping facilities as well as attracting people to the town centre in its own right. I have no reason to disagree with these findings.

9. Although a significant proportion of the premises would comprise customer seating areas I am satisfied the intended position of the servery and merchandise displays, which could be controlled by condition, taken together with the likely level of pedestrian activity generated by the use, would maintain both the appearance and character of a retail frontage. The matter of outdoor seating is not before me to determine and any such proposal would be subject to due process independently from this appeal. I saw that there are other refreshment facilities in the area including two branded coffee shops, one in Norris Road and another in Tilly's Lane. However, bearing in mind the Government's objectives for town centres as set out in PPS6, which include enhancing consumer choice and supporting a competitive retail sector, I give limited weight to the Council's objection based on its assertion of inadequate need.

10. The proposed mixed use does not fully accord with the relevant development plan policies to which I have referred, because it would result in a loss of retail floorspace. However, taking into account the particular characteristics of the proposed use, which is associated with market changes that have arisen largely

since the development plan was prepared, I conclude that it would not harm the vitality and viability of the town centre and therefore it would not undermine its retail function.

Other Matters

11. Marketing evidence provided by the Appellant demonstrates the difficulties that have been experienced in letting these premises over a period of some 12 months. This consideration, combined with the support for the proposal expressed by the Surrey Chambers of Commerce and a number of local traders together with the appeal decisions for similar uses elsewhere referred to by the Appellant, lends weight to my findings.

Conclusions

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

Conditions

13. Conditions suggested by the Council relating to internal layout and the extent of cooking at the premises are necessary in view of the mixed nature of the use and having regard to the Council's shopping policies. For the same reasons a further condition, suggested by the Appellant, relating to use of the premises as a coffee shop is also necessary.

Formal Decision

14. I allow the appeal, and grant planning permission for use as a coffee shop within a mixed A1/A3 use at part of ground floor 66-68 High Street, Staines TW18 4DY in accordance with the terms of the application, Ref. 06/00756/COU, dated 18 August 2006, and the plans submitted therewith, subject to the following conditions:

    1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.

    2) The premises shall not be used other than as a coffee shop also serving other hot and cold drinks, sandwiches and similar light refreshments for consumption on or off the premises.

    3) No primary cooking of unprepared food shall be carried on within the premises. Only reheated or cold food that has been prepared elsewhere shall be served within the premises.

    4) The use shall not commence until the servery and merchandise displays shown on drawing No BRS.0889_03-1A have been provided. Those elements of the proposal shall be retained thereafter in the permitted positions.

Robin Bradbeer

INSPECTOR

APPENDIX 1(F)

APPEAL DECISION - MARKET STREET, RUGBY

Appeal Decisions

Inquiry held on 2 September 2008

by Michael Hurley BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
9 September 2008

Appeal Ref: APP/E3715/C/07/2062333
No 7 Royal George Buildings, Market Place, Rugby, CV21 3EA

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeal is made by Nero Holdings Ltd against an enforcement notice issued by the Rugby Borough Council.
- The Council's reference is MEA/AG/5/3/542.
- The notice was issued on 12 November 2007.
- The breach of planning control as alleged in the notice is:
  The change of use, without planning permission, of the land as defined by the Town and Country (Use Classes) Order 1987 from a Class A1 (retail) to mixed uses within Class A1 (retail) and A3 (café).
- The requirements of the notice are:
  Cease the mixed use of the premises within Class A1 (retail) and A3 (café) and reinstate the former Class A1 use.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

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

The appeal on ground (a) and the deemed planning application

Main issue

1. I consider the main issue to be whether the present (unauthorised) use of the appeal premises is beneficial to the vitality and viability of Rugby's Primary Shopping Area, to the extent that this should override the presumption against such development set out in Policy TCR1 of the Rugby Borough Local Plan 2006.

The appeal premises and the Local Plan

2. The appeal premises consist of a ground-floor shop unit in a 3-storey terraced building within the town centre of Rugby. Since February 2007 this unit has been occupied as a coffee bar by Caffé Nero. Caffé Nero is a national chain, which sells coffee and other beverages, sandwiches, cakes and pastries. At the appeal premises, about 82% of the produce sold is consumed on the premises, the remainder being taken away by customers for consumption elsewhere. It is common ground between the parties that the existing use is a mixed use, having both Class A1 (retail) and Class A3 (café) components. I concur with that view.

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3. The appeal premises fall within Rugby's Primary Shopping Area as defined in the Local Plan. Policy TCR1 of the Local Plan provides that, within the Primary Shopping Area, development will be permitted only where the ground-floor use is to be exclusively for retail purposes falling within Use Class A1. It is common ground between the parties that the current mixed use of the appeal premises is contrary to this policy. I also concur with that view.

The effect of the unauthorised use

4. The reasoned justification for Policy TCR1 explains that it is essential that retail uses should remain concentrated, as this will assist the vitality and viability of the town centre. It points out that there is a risk that the introduction of other uses into the Primary Shopping Area will weaken the attraction of Rugby as a retail centre.

5. However, there is no firm evidence that the introduction of Caffé Nero has had such an effect. This coffee bar is open for business from 08:00 hours to 18:00 hours on weekdays and Saturdays, with slightly reduced trading hours on Sundays. It is therefore open during normal shopping hours. A survey commissioned by the appellants reveals that it attracted some 598 customers during the 2-day survey period (Wednesday 18 June and Saturday 21 June 2008). This was substantially higher than the inflow of customers to any of the neighbouring shops that were surveyed.

6. In a questionnaire survey commissioned by the appellants, 280 customers using the Rugby Caffé Nero were asked the main purpose of their visit to the town centre. "Shopping" was the most common answer, given by 39% of respondents. A further 24% indicated that they would be shopping while in the town centre, although this was not the main purpose of their visit. This suggests that well over 60% of the respondents would be visiting shops in the town centre on their present trip. Other reasons for customers' visits to the town centre included for work purposes; to meet friends; and to use various non-retail services. Some 17% of those surveyed indicated that the main purpose of their trip to the town centre was to visit Caffé Nero itself.

7. This suggests to me that Caffé Nero contributes to the commercial success of Rugby's central shopping area. It attracts substantial numbers of customers during normal shopping hours, and most of those customers spend money in other town centre shops. It is clearly a popular facility. Over 1,200 people have signed a petition to the effect that it is an asset to the town centre. It appears that, for many people, Caffé Nero enhances the quality of the town centre.

8. I have no reason to doubt the appellants' evidence that, were the present appeal to be dismissed, Caffé Nero would close. The notion that this business might continue solely as a retail outlet (without the café component) seems to me to be fanciful, since this would entail a potential reduction in turnover of more than 80%. It would be possible for the café component of the business to be housed on the upper floors of the appeal premises, which are now partly used for storage and partly vacant. But this would require substantial investment; it would offer no apparent advantage to the appellants; and it would considerably detract from the convenience of their customers. Understandably, the appellants indicated that they would be unwilling to adopt

such a course. They would also be unwilling to occupy premises outside Rugby's Primary Shopping Area.

Alternative retail use

9. In my view the closure of Caffé Nero would be likely to have an adverse effect on the vitality and viability of the town's Primary Shopping Area. That is not to say that an alternative (exclusively retail) use of the appeal premises could not offer equivalent benefits to this area, by attracting customers and contributing to the quality and commercial success of the town centre. However, I have reservations about whether this would be likely to happen, were Caffé Nero to close.

10. First, I note that a double shop unit at No 5 Royal George Buildings, next door but one to the appeal premises, was formerly occupied by H Samuel, the retail jewellers. This property has now been vacant for over 6 months. Plainly, in its present state, it makes no contribution to the town centre's vitality or viability. The fact that it has remained vacant for so long may reflect its relatively weak trading position. Counts commissioned by the appellants show that the flow of pedestrians along this eastern side of the Market Place is substantially less than that along the western side, where there is an entrance to the Clock Tower Shopping Centre. If Caffé Nero were to close, that might have a further deadening effect on this frontage, making it even less attractive to prospective occupiers.

11. Second, I understand that currently there are about 10 vacant shop units within Rugby's Primary Shopping Area. Although the proportion of vacant units in the town centre is a little below the national average, there is evidence that it is growing. Given current economic circumstances, this trend may continue. The prospects for attracting traders to occupy empty shops do not appear to be particularly propitious at present.

12. Third, a major new retail development is currently under construction in Chapel Street, at the western edge of the town centre shopping area. This will consist of an anchor store, to be occupied by Asda, and 16 smaller retail units, for which there are as yet no known tenants. The Chapel Street development will be linked to the Clock Tower Shopping Centre. In my view it is likely to re-enforce the trading position of shops on the west side of the Market Place, relative to those to the east (including the appeal premises). The prospect of additional retail accommodation becoming available in the Chapel Street development, and the potential shift in the shopping area's centre of gravity, might well give rise to a degree of uncertainty. This could also affect the speed with which the appeal premises might be reoccupied.

13. Fourth, even if the appeal premises were quickly re-occupied for an exclusively retail use, there is no guarantee that such a use would attract as many customers as Caffé Nero. In my view these considerations tell in favour of allowing the appeal, as a departure from Policy TCR1. While I fully understand the Council's concern to concentrate retail activity in the Primary Shopping Area, it seems to me that the balance of advantage rests with permitting the existing coffee bar to remain.

Precedent

14. My attention was drawn to the fact that in December 2005, the Council granted planning permission for the use of a shop unit at No 1 High Street, Rugby, by Costa Coffee. That decision authorised the use of premises (within what is now the Primary Shopping Area) for a mixed retail and café use, similar to the appellants' business. It was taken at a time when the present Local Plan was proceeding toward adoption. In their reasons for approval, the Council acknowledged that the proposed development would conflict with (then draft) Policy TCR1. However, they concluded that it "would not harm the prime shopping area, due to the increased footfall and the A1 element".

15. That decision does not establish a binding precedent. Nevertheless, Costa Coffee has now been trading for some time. There is no evidence that it has detracted from the vitality or viability of the Primary Shopping Area; or that the Council's reasons for granting permission as a departure from (then emerging) Policy TCR1 were flawed. In my view those reasons apply with equal force in the present case, since the footfall at Caffé Nero is very similar to that at Costa Coffee, and the A1 (retail) components of these two businesses appear to be much the same. It seems to me that this adds some weight to the arguments in favour of allowing the appeal.

16. However, a decision to grant planning permission in the present case would not vitiate Policy TCR1, or set a precedent to justify the introduction of further non-retail uses into the Primary Shopping Area. It would remain incumbent upon the promoters of any such schemes to demonstrate that there were material considerations which should override this policy.

Other Matters

17. The appeal premises are within the Rugby Town Centre Conservation Area. I consider that the use of this building as a coffee bar contributes positively to the commercial character and well-maintained appearance of this area.

18. I have considered the planning conditions discussed at the inquiry. I note that following successful appeals concerning Caffé Nero coffee bars in Sidcup and Sevenoaks, conditions were imposed to define the use permitted with some precision, and to preclude the cooking of raw foodstuffs on the premises. For consistency, I shall adopt the same approach. However, I see no reason to restrict the opening hours of the appeal premises on this occasion.

19. I have taken account of all the other matters raised, including the findings of the recent Retail and Leisure Study undertaken for the Council by Messrs Drivers Jonas; and the appeal decisions cited by the Council, concerning premises in Epping and Skipton. However, I do not find any of these factors to be sufficient to outweigh the considerations that have led me to conclude that the present appeal should be allowed.

The appeal on ground (g)

20. Since the appeal is to be allowed on ground (a) and planning permission is to be granted on the deemed application, the appeal on ground (g) no longer falls to be considered.

Formal decision

21. I hereby allow this appeal; I direct that the enforcement notice be quashed; and I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of No 7 Royal George Buildings, Market Place, Rugby, CV21 3EA, as shown on the plan attached to the notice, for mixed uses within Class A1 (retail) and Class A3 (café) of the Town and Country Planning (Use Classes) Order 1987, subject to the following conditions:

    1 The premises shall not be used other than as a coffee bar serving coffee, other hot and cold drinks, sandwiches and similar light refreshments, for consumption on or off the premises.

    2 No primary cooking of unprepared food shall be carried on within the premises. Only re-heated or cold food that has been prepared elsewhere shall be served within the premises.

Michael Hurley

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr James Findlay QC	Instructed by Brian Madge Ltd Chartered Town Planner 20 Westmead Road, Sutton, SM1 4JT
He called:	
Mr B Price MICA	Finance Director, Caffé Nero Group
Mr S C T Arnold MA MRTPI MRICS	Planning Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Miss Sarah Clover of Counsel	Instructed by the Rugby Borough Council
She called:	
Mr R Redford BSc MRTPI	Senior Planning Officer, Rugby Borough Council

DOCUMENTS

1 Attendance list
2 Inquiry Notice
3 Petition submitted by the appellants
4 Caffé Nero Philosophy
5 Schedule of planning status of all Caffe Nero premises in UK
6 Note of conversation between appellants' agent and Robin Richter
7 Proof of evidence of Mr B Price with appendices
8 Proof of evidence of Mr S J T Arnold with appendices
9 Proof of evidence of Mr R Redford with appendices
10 Objection to Rugby Local Plan Review
11 Rugby Retail and Leisure Study, July 2008
12 Council's Core Strategy Options Discussion Paper, January 008
13 Questionnaire used in Customer Survey of Caffe Nero, Rugby
14 Statement of Common Ground

APPENDIX 1(G)

APPEAL DECISION - HIGH STREET, HARPENDEN

Appeal Decision

Inquiry held on 15 and 16 May 2007
Site visits made on 14 and 16 May 2007

by D L Burrows DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

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Date: 21 May 2007

Appeal Ref: APP/B1930/A/06/2026933
Caffe Nero, 2-4 High Street, Harpenden AL5 2SN

- 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 Nero Holdings Ltd against the decision of St Albans City & District Council.
- The application Ref 5/06/1133, dated 22 May 2006, was refused by notice dated 18 July 2006.
- The development proposed is change of use to mixed A1/A3.

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

Preliminary matters

1. I understand the appeal site had been in A1 retail use (a furniture store) as defined by the Town and Country Planning Order (Use Classes) Order 1987 before Caffe Nero occupied the premises in the Spring of 2006. The evidence includes some debate as to whether the actual use of the premises by the appellant company falls within Class A1 or is a mixed Class A1/A3 one. However it was agreed by the parties that the application was for and the Caffe Nero operation is a mixed A1/A3 use and I shall determine the application on this basis.

2. The Council and the appellant have produced different figures for the proportion of retail vis service uses within the centre of Harpenden. The Council's figures are based on the Goad classification which breaks the categories down into A1 convenience, A1 comparison, service uses, miscellaneous and vacant. The appellants base their figures on the Use Classes Order.

3. The Goad approach, unlike the Use Classes Order, classifies a number of uses such as hairdressers, dry cleaners etc as service uses. This means that using the Goad figures does not allow a like with like assessment of how the centre is performing in terms of policy. The adopted City and District of St Albans Local Plan Review policies and the Council's annual shopping monitoring reports are all based on the Use Classes Order. Given these circumstances, whilst I appreciate the Goad classification permits comparison with other centres nationwide, I believe it would be more appropriate to use figures based on the Use Classes Order in reaching a decision.

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4. I note that there are minor differences between the parties resulting from the extent of the town centre chosen, but these do not fundamentally affect the generality of the figures put forward and are not, to my mind, critical in reaching a decision.

Main issue

5. From all I have seen, heard and read on the matter I consider the main issue to be the effect of the change of use on the vitality and viability of Harpenden town centre

Planning policy

6. National policy and guidance on town centres is set out in *PPS6: Planning for Town Centres*. The Government's key objective for town centres is to promote their viability and vitality. A number of health checks for measuring vitality and viability are to be found in paragraph 4. These include monitoring key indicators such as diversity of town centre uses, type and amount of floorspace, vacant properties, pedestrian flows, customer and residents' views and the like. PPS6 says that shopping frontages should be realistically defined and that primary shopping frontages should contain a high proportion of retail uses.

7. The development plan policies most relevant to the appeal are contained in the City and District of St Albans Local Plan Review 1994 (LP). In the LP the appeal site is located within Harpenden town centre where policy 51 seeks to maintain/enhance its vitality and viability as a minor town centre. Policy 130(4F) goes on to identify 2 High Street as a redevelopment site for shopping on the ground floor and B1 uses above. It says that permission has been granted for 320sqm of shops and 750 sqm of offices. However following adoption of the LP, a further application (5/97/0574) for 2 storey shops, offices and restaurant was permitted and it is this later permission which was implemented.

8. Under policy 53 the appeal site is allocated as part of a primary shopping frontage (PSF 6) where policy 57 is permissive of service uses (classes A2/A3) subject to policy 56 which says that the loss of retail (A1) floorspace will only be acceptable if at least 90% of the built up length of the frontage at ground level remains in retail use.

Reasons

9. Under the Town and Country Planning Uses (Classes Order) 1987 (as amended), the use applied for is a *sui generis* one consisting of a mixture of A1 and A3. It is agreed that the split between the uses is 75% A3 and 25% A1. According to the Council's 2006 Shopping Monitoring report PSF 6 has a frontage of 96m of which 35% was at that time in A1 use. The frontage was therefore already dominated by non A1 uses and the report indicates that the level of A1 usage had remained constant since 2001. Given that the appeal site has a frontage of 10m, approval of the proposal would mean that the proportion of A1 uses on the PSF 6 frontage reduce to about 25%. The change of use would be clearly contrary to policy 56. In reaching this conclusion I have taken account of the element of A1 within the mixed use which would remain at the appeal site.

10. S38(6) introduced by the Planning and Compulsory Purchase Act 2004 requires that applications be determined in accord with the development plan unless material considerations indicate otherwise. There are a number of considerations to be taken into account in this case.

11. Harpenden is a second tier centre in the district and all parties agree it is a thriving and vital place with a consistently low vacancy rate. The January 2007 survey indicates only 2 vacant properties and I saw that this has changed little.

12. The centre is linear, based on High Street, a busy through route which runs north to south. To its west, Leyton Road runs parallel to it, whilst to the east of High Street - Vaughan Road and Station Road are at right angles and also contain shopping frontages. The 2006 St Albans and District Council Retail and Leisure Study confirms that Harpenden functions as a minor district centre catering for convenience and weekly grocery shopping needs of residents as well as providing a small range of comparison goods and services with the retail offer aimed at the more affluent market. My impression was that a significant proportion of the comparison shopping was in the fashion/clothing sector.

13. Although there are a number of pedestrian crossing points of High Street, the road causes a degree of fragmentation in the centre. And whilst the landscape creates an impression of spaciousness it also adds to the fragmentation of frontages. There is also a significant level of on-street parking, but despite the potential conflict of pedestrians and drivers the centre is an attractive one with its numerous areas of greenery and mature trees. I saw at my visits, on a late Monday afternoon and a Wednesday lunchtime, that there was a busy and vibrant atmosphere.

14. 2-4 High Street mark the southern most extent of the town centre on the western side of High Street. The premises are set back behind a pavement and planting area and immediately to their south is a grassed area with mature trees containing a small toilet block, beyond that a link road between Leyton Road and High Street marks the northernmost part of Harpenden Common.

15. The defined primary shopping frontages face either High Street or Leyton Road. They contain the highest concentration of A1 uses. However only PSF 1 and PSF 5 (both facing Leyton Road and containing a Waitrose supermarket and Marks and Spencer "Simply Food" have a frontage in A1 use of over 90%. The other PSF frontages vary in percentage with PSF 6 having the lowest proportion of A1 uses.

16. The PSF 6 frontage was defined in the 1994 adopted local plan when the LP inquiry inspector considered that the block marked the gateway to the shopping core and was vital in creating a good first impression to travellers from the south. If it wasn't designated as primary shopping frontage he thought it likely that the block could become almost entirely dominated by service uses which could unbalance the public perception of the shopping centre and even affect its long term vitality and viability. At that time I understand the site was boarded up and had previously been used by a car sales showroom.

17. Things have moved on since the LP was adopted. Planning permission was granted and implemented for the major part of the frontage of 2-4 High Street

to be developed as a restaurant. The Pizza Express premises occupy all the south facing frontage and a proportion of that on High Street. It is these premises which are the most prominent when approaching from the south although the greenery in front of them means they do not dominate the street scene and the design of the building is in keeping with its surroundings.

18. By its set back the appeal site frontage is not to my mind as prominent as the restaurant. I agree that when passing the frontage the perception is one of a significant amount of seating and tables rather than a shop counter, but such frontages are these days common on main shopping streets. They do not present a dead frontage, but permit the passer-by to see into the premises where the internal activity creates interest. They are daytime uses which to a certain extent rely on a relatively high turnover of customers rather than the more traditional café/restaurant where the primary purpose is to sit for longer and have a meal. As such they can attract a relatively high level of day time custom commensurate with any number of A1 uses.

19. When quoting from the Council's case, the LP report says that PSF 6 was predominantly in service usage at the time of the LP inquiry. It therefore appears that the frontage has always had an imbalance of uses and not functioned as a PSF. The situation at that time, together with the Council's approval of a significant length of A3 frontage with the redevelopment of the appeal site means that the PSF 6 frontage remains dominated by services even without the change of use of the appeal premises. At present apart from the appeal site there is only one High Street property in PSF 6 which is in A1 use. Despite this, there is no substantive evidence to indicate that this has or will cause material harm to the vitality and viability of either the centre or the PSF frontage. Overall I find the block provides an attractive entrance to the town centre, albeit is not primarily in A1 use.

20. The appellant company has undertaken pedestrian flow and customer inflow counts which show, even when discounting for longer opening hours, the appeal use compares favourably with the amount of activity generated by other nearby uses including the A1 use next door but one. Moreover the customer surveys show that for a small percentage (10%) the primary purpose was to visit Caffe Nero whilst 27% of customers visited the High Street more often than they did before the premises opened.

21. I note there were no figures to compare the views of Caffe Nero customers to other shoppers in the centre and it is possible that there may be an element of coincidence about the increased number of visits to the centre. The figures need to be treated with some caution. However the survey does indicate that the premises are, for some, an attractor in their own right. It seems to me that the evidence points generally to the use being an attractor to rather than a detractor of the centre.

22. There is no substantive evidence which demonstrates that the loss of A1 use has caused harm. The Council are concerned about diverted trade from other premises, but the evidence on this point relates primarily to a letter from another business which says that coffee custom has reduced since the appeal premises were opened. That letter whilst it demonstrates competition between businesses does not mean that there has been or will be harm to the centre as a whole.

23. The 2006 retail and leisure study, amongst other things, found that Harpenden was a vital and viable centre, albeit a number of retail units were under pressure from A3, A4 and A5 operators with various parties believing the centre was reaching saturation point for those type of uses. It was clarified at the inquiry that those parties were principally the Town Council and Council officers. However the Town Council are supportive of the change of the use of the appeal site. A letter from them dated 5 April 2007 says that .... *On balance, perhaps a fine line needs to be drawn on whether the district plan is sacrosanct or whether common sense dictates in this case that the change of use be allowed...* The Chamber of Commerce by letter of 1 May 2007 take the view that ....*that there is a substantial case for an exception to be made* (to policy). There is therefore support for the proposal from local organisations.

24. I appreciate the Council's concerns about a preponderance of A3, A4, A5 uses causing an imbalance in the centre and thus harming vitality and viability, but the use is a mixed, daytime one which complements the retail function. It is not an evening economy use which presents a dead daytime frontage and even though there may be pressure for the operation to change over time, I consider the planning conditions suggested by the Council would ensure that its fundamental nature did not change.

25. The LP policies have been adopted since 1994 at which time the block was not a prime shopping frontage, nor since then has it become so. It was and remains service use dominated. Despite this the locality has every appearance of being viable and vital. There are concerns about precedent, but I am required to treat each case primarily on its own merits in the light of the development plan. Should there be pressure for A3, A4 or A5 uses or even mixed A1/A3 uses they would need to be assessed taking into account, amongst other things, the nature of the use, the size and location of premises together with the health of the centre and its vitality and viability. I do not consider my findings in this particular case would create a precedent. For similar reasons I give little weight to the two previous appeals referred to by the Council.

26. I have taken account of the previous appeal (APP/B1930/A/98/294408) on the site, but the circumstances of that development were different. It was for a different use at a time when the premises had only been recently completed and not used for retail purposes.

27. The appellant has said categorically that should planning permission be refused for a mixed use, the premises would continue trading as an A1 use with ancillary A3 provision. This would mean that the premises would be likely to attract less customers which would have a consequent impact on activity generated by the premises and thus to my mind be more likely to harm vitality and viability than the present proposal.

28. I have taken into account all the other matters raised but find none which are sufficient to alter my conclusions that, even though the proposal would be contrary to development plan policy, it would nevertheless be acceptable as it would not harm the vitality and viability of the centre which is the underlying objective of both national and local plan policies.

29. I have looked at the conditions suggested by the Council in the light of Circular 11/95. I consider them all to be necessary to control the nature of the use in the interests of vitality and viability. For the reasons given in para 18 I do not consider it necessary to impose a condition requiring a shop front as suggested by the appellant company.

Conclusions

30. For the reasons given above, I conclude that the appeal should be allowed.

Formal Decision

Appeal Ref: APP/B1930/A/06/2026933

31. I allow the appeal, and grant planning permission for the change of use to mixed A1/A3 at 2-4 High Street, Harpenden AL5 2SN in accordance with the terms of the application, Ref 5/06/1133, dated 22 May 2006, and the plans submitted with it, subject to the following conditions:

    1) The premises shall not be used other than as a coffee bar serving coffee, other hot and cold drinks, sandwiches and similar light refreshments for consumption on or off the premises.

    2) No primary cooking of unprepared food shall be carried on within the premises. Only reheated or cold food that has been prepared elsewhere shall be served within the premises.

    3) The premises shall remain closed from 20.00 hours until 07.00 hours and no alcoholic drinks shall be displayed or served on the premises.

D L Burrows

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Walton	Of Counsel
He called	
Mr P Smith BA(Hons), DipTRP MRTPI	Associate Director of Brian Bamber Associates, 4 Kimbell Mews, Humfrey Lane, Boughton Northampton NN2 8XB
Mr J Sutton BA(Hons) MSc MRTPI	A Director of Town Planning at G L Hearn, 20 Soho Square, London W1D 3QW

FOR THE APPELLANT:

Mr J Findlay assisted by Miss Irena Sabic	Of Counsel
He called	
Mr B Price MICA	Finance Director of Caffe Nero Group plc, 3 Neal Street, London WC2H 9PU
Mr STC Arnold MA(Cantab) MA(TP) MRTPI MRICS	Managing Partner of the Development Planning Partnership, 21 The Crescent, Bedford MK40 2RT

DOCUMENTS submitted at inquiry

1 Attendance lists x 2
2 St Albans Shopping Monitoring Report April 2001
3 St Albans City and District Council Retail and Leisure Study January 2006
4 Statement of Common Ground
5 Mr Sutton - Diversity of Uses Briefing Note
6 Mr Arnold - Supplementary evidence
7 Mr Arnold appendix 24 – assessment of uses in Harpenden
8 Harpenden Town Council correspondence
9 Silver Palate letter 14 May 2007
10 Customer petition

APPENDIX 1(H)

APPEAL DECISION - HIGH STREET, LOUGHTON

Appeal Decision

Site visit made on 28 November 2006

By B C Scott BA(Hons) Urban & Regional Planning MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

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Date 13 December 2006

Appeal Ref: APP/J1535/A/06/2021937
230 High Road, Loughton, IG10 1ET.

- 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 Costa Coffee against the decision of Epping Forest District Council.
- The application ref: EPF/2176/05, dated 8 December 2005, was refused by notice dated 1 February 2006.
- The development proposed is a change of use to mixed A1/A3 (coffee shop).

Preliminary Matters

1. The appeal premises comprise a vacant shop.

2. Since its decision, the Council has adopted Local Plan Alterations in July 2006 (LPA), which I apply.

Decision

3. I allow the appeal and grant planning permission for a change of use to mixed A1/A3 (coffee shop) at 230 High Road, Loughton, IG10 1ET, in accordance with the terms of the application number EPF/2176/05, dated 8 December 2005, and the plans submitted therewith, subject to the following conditions:

   1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.

   2) The premises shall be used solely as a mixed A1/A3 use and at no time shall become an A3 use only, without the prior written approval of the Local Planning Authority.

   3) There shall be no cooking on the premises at any time.

Reasons

4. The appeal premises are part of Loughton Town Centre, which is identified in the Epping Forest Local Plan 1998 as a principal centre. Policies of the LPA for such centres are directed at safeguarding their character and enhancing their role in the face of competitive pressures from larger centres. The LPA Proposals Map shows the appeal premises to be within a recognised Key Retail Frontage (KRF). The Council states that: 'there is 74% retail presence within the shopping centre'. Many restaurant/cafes (A3) type establishments exist within the KRFs. The proposed development would reduce a retail (A1) use at the premises and would add to existing A3 uses in the centre; its effect on the character and vitality of the centre is the main issue in this case.

5. LPA Policy TC4 is designed to protect the retail character of KRFs. The Council accept that the proposed development would satisfy the criteria listed in that policy, which provide for up to 30% of non-retail frontages. Given the 74% retail presence and bearing in mind that an A1 use would be retained in part, I have no reason to conclude that the retail character of the frontage would be harmed by the proposed development.

6. Government policy recognises the need for a diversity of uses in shopping areas and this is reflected in LPA Policy TC2 that aims to safeguard and strengthen an appropriate mix of uses in centres. The Parties dispute the similarity of the A3 component of the proposed mixed use in relation to the existing A3 type establishments. I am referred to several appeal decisions and many examples of mixed-use developments elsewhere in support of the contention that the proposed development would not function primarily as a café/restaurant with merely ancillary retail sales.

7. The centre is focussed upon High Street and is characterised by most of it having KRFs. I observed that the centre has a lively, vibrant nature with strong pedestrian footfall as much in the vicinity of the vacant appeal premises as anywhere I examined all the existing A3 type establishments I am referred to and formed the view that they are not all the same and differ from the proposed development for various reasons: some do not keep shop hours; some have restricted or no dining areas; most have dining areas at the front – some incorporating the pavement. Moreover, I saw that the A3 establishments do not comprise geographical concentrations, even where they are neighbours, because of their differences and their distribution. From submissions, I am satisfied that the proposed development is not an enterprise that would attract little additional pedestrian traffic (or dwell time) or fail to provide a lively image, because of its mixed-use nature.

8. Given all those things, the evidence before me points to a reasonable mix of uses in the centre and not a harmful proliferation of A3 establishments, in accordance with the aim of Policy TC2. Accordingly, I conclude that the proposed development would not be harmful to the character and vitality of the centre

9. I understand the concern in representations about further competition to existing establishments but I am mindful of the fact that the planning system does not exist to restrict competition.

10. As my conclusion, above, is largely governed by the mixed-use nature of the proposed development, I impose all the Council's suggested conditions that are directed at retaining that mix. I do not impose the Council's suggested condition for essential drainage because that is a matter adequately covered by other legislation.

B C Scott

INSPECTOR

APPENDIX 1(I)

APPEAL DECISION – 80 - 82 HIGH STREET, MALDON

Appeal Decision

Site visit made on 27 September 2010

by Ian Currie BA MPhil MRICS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
4 October 2010

Appeal Ref: APP/X1545/A/10/2129106
80-82 High Street, Maldon, Essex, CM9 5ET

- 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 Costa Coffee against the decision of Maldon District Council.
- The application (Ref:- FUL/MAL/09/00889), dated 20 October 2009, was refused by notice dated 20 January 2010.
- The development proposed is change of use to a coffee shop (mixed A1/A3) with external seating.

Decision

1. I allow the appeal, and grant planning permission for change of use to a coffee shop (mixed A1/A3) with external seating at 80-82 High Street, Maldon, Essex, CM9 5ET, in accordance with the terms of the application (Ref:- FUL/MAL/09/00889), dated 20 October 2009, and the plans submitted with it, subject to the following conditions:-

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) The development hereby permitted shall be carried out in accordance with the following approved plans:- SEA Design Group drawing number 28157/09 and OS Licence 40006978, Licence number 100004955 Scale 1:1,250.

   3) The premises shall be used as a coffee shop and for no other purpose, including any other purpose in Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

   4) No primary cooking of unprepared food shall be carried on within the premises; only reheated or cold food, which has been prepared elsewhere, shall be served within the premises.

   Informative

   This permission relates solely to a material change of use of the ground floor of these premises, and any alterations to the front elevation of the former retail unit (although it is recognised that planning permission for a new shopfront and advertisement consent for signs have already been granted), and/or to the building as a whole resulting from any external ventilation or extraction equipment required in conjunction with the use hereby approved, will need to be the subject of a further planning application to the local planning authority.

Main Issues

2. I consider that the main issues in this appeal are firstly, the impact of the use of these ground floor premises as a mixed Class A1/A3 on the vitality and viability of the retail function of Maldon Town Centre, having regard to the provisions of Policy SH1 of the adopted Maldon District Replacement Local Plan 2005, and secondly the physical and visual impact of its use upon the character and appearance of the Maldon Conservation Area.

Reasons

Impact on vitality and viability of Maldon Town Centre shopping function

3. The appeal premises are a two-storey flat roofed building, dating from the 1960s and situated on the south side the High Street well within the eastern and western extremities of this linear town centre. The premises had operated as independent electrical retailers for many years before trading ceased in 2008. According to the submitted drawings, only the ground floor of the building is to be used for the proposed coffee shop, the first floor former ancillary storage and office space presumably to be left unused. The premises lie within a reasonably continuous frontage of ground floor retail uses. The lighting store to its east is a Grade II listed building, beyond which are a travel agency, hairdressers' premises, and clothes and shoe shops. To the west are a jewellery store, a clothes shop and a greengrocery, before the first non-retail use, a bank, is encountered.

4. Section 38(6) of the Planning & Compulsory Purchase Act says that if regard is to be had to the development plan, for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. Policy SH1 of the adopted Maldon District Replacement Local Plan 2005 states that within the core retail areas of Maldon (which includes the appeal premises) and Burnham-on-Crouch town centres, and Heybridge district centre, ground floor retail units will be protected from changes to other uses with the exception of Class D1(a) uses relating to the provision of medical and health services. Within these areas, only changes of use that result in A1 retail uses or D1(a) uses will be permitted.

5. Clearly, the use of the ground floor premises in the core retail area of Maldon Town Centre, as a Class A1/A3 coffee shop, which is neither a wholly class A1 retail use, nor as a D1(a) medical use, conflicts with Local Plan Policy SH1. Moreover, this policy has been 'saved' by virtue of a letter from the Government Office for the East of England dated 23 September 2008. However, as is evident from paragraph 3 above, it cannot be argued that if this use were permitted it would lead to a significant concentration of non-retail/non-medical uses in this part of Maldon High Street. As far as this part of the town centre is concerned, it would represent something of a 'one-off'.

6. In that regard, a section 38(6) 'material consideration' is, in my opinion, highly significant. PPS4, "Planning for Sustainable Economic Growth", was issued in December 2009. It is therefore a recent statement of government policy, which not only post-dates Local Plan Policy SH1 by a considerable margin, but is also much more up-to-date than the Go-East letter saving the Local Plan Policy. Its Policy EC4.1(a) states that local planning authorities should

proactively plan to promote competitive town centre environments and provide consumer choice by supporting a diverse range of uses which appeal to a wide range of age and social groups, ensuring that these are distributed throughout the centre.

7. Policy EC4.2(a) goes on to say that local planning authorities should manage the evening and night-time economy in centres, taking account of and complementing the local authority's Statement of Licensing Policy and the promotion of the licensing objectives under the Licensing Act 2003. Policies should encourage a diverse range of complementary evening and night-time uses that appeal to a wide range of age and social groups, making provision, where appropriate, for leisure, cultural and tourism activities such as cinemas, theatres, restaurants, public houses, bars, nightclubs and cafés. In these particular circumstances, I consider that, if there is conflict between the provisions of the adopted Local Plan and those of PPS4, then the latter should be given greater weight. Those considerations should determine the outcome of this appeal.

8. The introduction of a Class A1/A3 coffee shop to Maldon Town Centre, where none exist at present, particularly in a part of the High Street with a significant preponderance of Class A1 retail uses, would add to consumer choice by increasing the range of town centre activities to a wider sector of the local urban population and its rural hinterland. Although this particular use is unlikely to contribute greatly to the night-time economy, it may well maintain activity in a part of the town centre where most of the retail outlets would appear to close early. The local planning authority objects to the principle of a Class A1/A3 coffee shop use but provides no evidence to refute the firm representations made on behalf of the appellants that such a use can be an important generator of trade in a town centre in its own right, even if it is not a wholly retail use.

9. I note what is said by local traders, especially established cafés, that they fear competition from a national chain. However, market considerations cannot be an overriding consideration when recent government advice indicates that there should be greater variety in an overall town centre 'offer' to cater for as wide a cross-section of the community as possible. In any event, it seems to me that an independent café/tea-room can continue to cater successfully to its established market. Such outlets will still be able to provide a wide variety of hot and cold food and beverages, prepared and cooked on the premises, to their customers, in contrast with the limitations normally imposed on a Class A1/A3 coffee shop, if the latter is meant to retain its important retail element in a primarily shopping environment.

Impact on character and appearance of Maldon Conservation Area

10. The reason for refusal refers to loss of retail floor space depriving Maldon of an opportunity to attract a retailer requiring more floorspace than is generally available in single units within the town centre, reducing the potential for greater representation by national chains in Maldon, which is perceived to be weakness in the town's retail offer. I accept the Council's arguments that this is unlikely to be met by the amalgamation of the significant number of listed buildings adjoining one another. Such development would be likely to require listed building consent, which may be difficult to achieve. Even if this approach

were confined to merging non-listed buildings within the conservation area, this may well lead to unacceptable erosion of the character and appearance of the conservation area as a whole.

11. On that basis, the loss of such a large fairly modern shop unit from orthodox retailing is unfortunate. If the premises were on the south side of the High Street in the immediate vicinity of the mini-roundabout junction with Market Hill, where most of the national retail chain representatives in Maldon tend to congregate, then I consider that a case for the protection of a larger shop unit of this sort for retailing may be justified. However, these particular premises are sited well to the east, among mainly smaller independent specialist retailers, where the first coffee shop chain representative in Maldon may become a significant magnet, in its own right, for generating additional business to its immediate neighbours. Overall, I do not consider that the proposed change of use in these particular premises would have any more than a neutral impact upon the character and appearance of the conservation area and is therefore acceptable.

12. However, although the building is of little if any architectural merit, it is worth reminding the appellants, by means of an informative attached to the decision, that planning permission is likely to be required for any significant alterations to its front elevation, especially if they are not carried in accordance with an extant planning permission. This informative can be expanded to point out that further planning permission is also likely to be necessary for any form of external extraction or ventilation system that may be necessary, as indicated in condition 4 of the Council's conditions suggested in paragraph 8.1 of its statement. With regard to the others set out in that paragraph, I accept the need for conditions requiring development to start within three years, for development to be carried in accordance with submitted drawings and for premises to be limited to hot and cold drinks and light refreshments. This can be achieved by limiting Class A3 activity as well as precluding the cooking of food prepared on the premises. On the other hand, I see no need for control over opening hours in a town centre location with few residents living close to this particular site.

Conclusions

13. For the reasons given above, I conclude that the appeal should be allowed.

Ian Currie

Inspector