25 CASTLE STREET
HINCKLEY
LEICESTERSHIRE
LE10 1DA

SUPPORTING STATEMENT FOR PLANNING APPLICATION FOR CHANGE OF USE TO A COFFEE SHOP (MIXED A1 / A3) PREPARED BY CLIFF WALSINGHAM & COMPANY ON BEHALF OF COSTA COFFEE

JUNE 2009

B057/09Statement

DEVELOPMENT SERVICES
12 JUN 2009
RECEIVED

1.0 INTRODUCTION

1.1 Costa Coffee wishes to occupy the 25 Castle Street, Hinckley and establish one of their coffee shop operations.

1.2 The proposed use will be a coffee shop mixed A1/A3. This statement is submitted to support this application for change of use.

1.3 The application site is a grade II listed building. An application for listed building consent will be submitted under separate cover.

1.4 As this application solely relates to change of use, there is no requirement for a design and access statement.

2.0 COSTA COFFEE

2.1 Costa Coffee is part of the Whitbread Group. Costa Coffee started in 1971 and have their own roastery in London. The care and special attention that goes into selecting, preparing and roasting their beans is what make the Costa Coffee distinctive and so popular. All stores have specially trained staff so that customers can enjoy a good product at its best.

2.2 At present Costa is the largest chain of branded coffee shops in the UK with over 1000 outlets. Working in conjunction with Café Direct (the UK's leading Fairtrade Company), Costa is able to offer Fairtrade options to customers on all of its coffees. A copy of the Costa Coffee illustrative brochure is attached in the appendix.

2.3 Costa Coffee has been voted "best Coffee Chain by Customers". A survey of thousands of customers using Costa Coffee, Starbucks, Caffe Nero and Coffee Republic was undertaken. Customers were surveyed when they entered a store to understand why they were there, who they were there with, what they were buying and how they rate the store. The survey also talked to customers when they were leaving the different stores to understand the customer's experience. Costa Coffee came out top.

2.4 Costa Coffee has a bespoke training and development programme called the 'Whitbread Model' which is the first and largest employer led programme of its kind in the hospitality industry. The programme is a 6 month apprenticeship and available to all employees. By the end of the year 3,000 employees are expected to have achieved qualifications such as NVQ's.

2.5 Coffee shops are now regarded as part of the usual town and city centre amenities by visitors, shoppers, residents and local workers. They are used to purchase sandwiches, cakes, hot cups of coffee (and other drinks), all to take away together with other retail items, as well as providing somewhere to sit down and consume such products. The proposal will increase the range of services available and, as such, contribute to town centre vitality and viability.

2.6 Costa hold the view that they contribute more to the vitality and viability of a town centre than many retailers.

2.7 In order to prove this to be the case Costa have had surveys undertaken by Pedestrian Market Research Services. PMRS were commissioned to count the number of customers entering the Costa Coffee unit and two adjoining or nearby shops in five towns across the country. Details of PMRS methodology are available on request.

2.8 I attach a table that sets out the results.

2.9 It can be seen that many of the retailers against which comparisons have been made are household names: Allsports, Currys, Specsavers, Whittards, Fat Face and Going Places (There was a sale in Allsports on the day of the survey).

2.10 It can also be clearly seen that only in the very busy Bishops Centre mall in Durham do the retailers attract more footfall. Elsewhere Costa is consistently higher than the other measured retailers on both Friday and Saturday. Averaged over the five towns Costa attracts more footfall on both Friday and Saturday than the A1 retailers.

2.11 The survey also serves to demonstrate the huge variations between different A1 retail activities. Albeit during the summer 'Going Places' having only 9 and 12 callers all day on Friday and Saturday or 'Whittards' with only 62 and 87 respectively.

2.12 These surveys give a very strong demonstration of the strength of Costa within the shopping hierarchy, its popularity with town centre users and the contribution it can make to attracting and retaining custom.

2.13 These figures very strongly support the fact that a high quality coffee shop is a popular and well used High Street amenity that attracts strong customer footfall and patronage compared to typical A1 retail offers.

2.14 A survey undertaken on behalf of Costa in respect their store at Epping, Essex compared their coffee sales to the number of pedestrians passing the site and showed that, assuming one cup of coffee per customer, 9-12% of all passers by diverted into the coffee shop. This was compared to the diversion rates of Burtons and Boots where the figures ranged between 4 and 9%.

2.15 In an appeal case in Loughton for Costa Coffee, the Inspector concluded *"that the proposed development* (Costa Coffee) *would not be harmful to the character and vitality of the centre."* (paragraph 8). Costa Coffee won this appeal. A copy of the Inspectors decision is attached in the appendix.

Conclusion

2.16 It can therefore be seen that the proposal is compatible with other town centre uses and activities it will not give rise to any neighbourly impacts and it is likely to attract as much if not more footfall than any similarly sized A1 retail units.

3.0 EXISTING USE AND SHOPPING FRONTAGE

3.1 The application site is in A1 use.

3.2 The properties on either side of the application site are in A1 use.

3.3 The Council undertook a survey of uses in the primary shopping frontage in March 2009. The survey found that the application site sits in a street block of 20 units of which 90% are in A1 use. There are two units in non retail use these are located at either end of the street block, i.e. some distance from the application site.

3.4 Within the primary shopping frontage as whole there are 84 units of which 7% are in non A1 use.

3.5 There is only one A3 use in the whole of the primary shopping frontage.

Conclusion

3.6 The site is located within an area having a robust level of A1 units.

4.0 PROPOSED USE

4.1 The unit would sell coffee and other hot and cold drinks, sandwiches, filled rolls, cakes, pastries, coffee beans, cafetieres, percolators, coffee cups and mugs and other related products.

4.2 There would be retail display units and a food servery / counter together with seating available for use by customers.

4.3 The unit will have no cooking facilities, though some sandwiches will be toasted on request. All sandwiches and cakes, etc are prepared and packaged off site and delivered to the unit each morning.

4.4 All customers choose goods from the same range. Customers will choose whether or not to consume their sandwiches or coffee etc., on or off the premises, but it will be the same product in either instance

4.5 Opening hours will be varied to accord with public demand. Currently these are envisaged as 08.00 – 18.00, but they may be varied to suit the opening times of the centre.

4.6 The unit has a ground floor area of c. 207 sq m, c. 34% of the floor area would be devoted to tables and chairs.

4.7 Some of the larger Costa units, with 100 or more seats and an obvious emphasis on consumption on the premises with very low levels of A1 trade are clearly A3 uses. The small kiosk Costas with hardly any seating at all are equally obvious A1 uses.

4.8 The revised Use Classes Order left the definition of A1 retail uses much as in the 1987 Order, but adds that "internet cafes" are an A1 use. The advice formerly contained in Circular 13/87 (now cancelled) on "Sandwich Bars" remained largely unchanged.

4.9 It is now set out in Circular 03/2005 that a sandwich bar does not cease to be a shop merely because there is some seating for customers to consume products on the premises, nor because limited amounts of hot drinks, soup or food are served.

4.10 Use Class A3 "Restaurants and Cafes" is described in paragraph 3a of 03/2005 as "places where the primary purpose is the sale and consumption of food and light refreshments on the premises".

4.11 Paragraph 36 of 03/2005 sets out that coffee shops "will need to be considered on a case by case basis. Whether their primary purpose is as a shop, i.e. premises for the sale of beverages to be taken away, or as a café, where the primary purpose is the consumption of beverages on the premises, or indeed it is a mixture of both uses". Unhappily, the Circular offers no suggested means to measure "primary purpose".

4.12 Various appeal cases have established the limits of A1 use and the credentials of a mixed use under the 1987 Use Classes Order. There is no reason that the updated Use Classes Order should revise those interpretations.

4.13 The concept of a mixed A1/A3 use and its applicability to a coffee shop is illustrated by the attached appeal case (192 Chiswick High Road, Chiswick). The decision letter sets out the various arguments deployed by each side, describes the premises (c. 100 sq m over two floors, 53 seats within the unit plus 17 outdoor seats, shared servery, etc) and balance of trade (56% as A3, 44% as A1). The Inspector finds that there are:

"two distinct activities and that it is really impossible to say whether the shop use is ancillary to the café use or not. In the circumstances I find, as a matter of fact and degree, which the current use of the site, is a mixed use".

4.14 An appeal case in Winchester (107 High Street, decision letter dated 6 December 2004), extends this "envelope" of what might comprise a mixed use. At paragraph 16 the Inspector observes:

"I take the view that the 20% retail sales element of the use is significant in its own right and, had I considered it necessary to address the point in detail in this decision, I would have concluded that, as a matter of fact and degree, the premises are in a mixed use". (He goes on to add: "As the A1 element occupies the front of the premises, I would also have concluded that they remain a retail frontage".)

4.15 In this instance, the applicants anticipate that there will be a mixture of A1 and A3 activities. Furthermore, the activities are very closely related, making use of exactly the same products sold in the same way over the same sales counter. Whether the sale amounts to an A1 or an A3 activity will depend solely on whether or not the customer chooses to sit down or walk out of the door.

4.16 These different activities are inseparably linked and take place within the same planning unit. Neither activity dominates the other; neither is ancillary to the other.

4.17 An appeal decision dated 11 September 2006; was the first such appeal to be determined by public inquiry since the Use Classes Order was updated. It relates to a unit occupied by Caffe Nero in which the nature of the trade was 20% take-out and 80% eat-in. On this basis the Inspector accepted that the use was a mixed one (A1 and A3) and that, as the 20% A1 element represented a large number of customers, the mixed nature of the use maintained a vibrant retail element and did not prejudice the retail function of what was, in this case, a primary shopping frontage. She further accepted that the appearance of the premises, which was more akin to a café than a shop, had no adverse impact upon its retail function because people are well aware of the nature of the operation.

Conclusion

4.18 The proposed use in Hinckley is therefore treated as a mixed use.

5.0 PLANNING POLICY

5.1 The Local Plan (adopted 2001) designates the site as falling within the primary shopping area (PSA) of Hinckley Town Centre.

5.2 Policy RETAIL 2 relates to changes of use in the primary shopping frontage, the policy sets out that in assessing proposals for change of use to A3 uses the Council will take account of the following criteria:

i) Whether the proposed use would have an adverse effect, through over concentration of such a use on any continuous frontage, on the overall retail function and character of the town centre;

ii) Whether the proposed development would have a seriously detrimental effect on the amenities of adjoining properties, and

iii) Whether the proposed development would not involve the removal of any existing shop type frontages.

5.3 The Council also have a supplementary planning guidance on Shopping & Shop Fronts (adopted January 2003). The document addresses proposals for change of use which affect retail activity within primary shopping frontages of Hinckley Town Centre.

5.4 Section 2.4 of the document specifically deals with Hinckley Town Centre Primary Shopping Frontage. The text sets a guideline figure for not more than 12% (of all shop units) to include existing, permitted and proposed of the whole of primary shopping frontage to be in non A1 use. In addition not more than 3 adjoining shop units or 15 metres in length of continuous frontage should be occupied by non A1 uses.

5.5 The proposal is for a mixed A1/A3 use and change of use would only result in the partial loss of an A1 unit. As set out in section 3 of this statement there is only 1 A3 use in the Primary Shopping Frontage. Only 7% of the Primary Shopping Frontage is in non A1 use. The non A1 uses are distributed throughout the Primary Shopping Frontage and the units on either side of the application site are in A1 use.

5.6 Therefore, the change of use of the application site would not result in an over concentration of non A1 uses and retail uses would continue to predominate.

5.7 The figures set out at section 3 show that there is a strong retail character to this part of Hinckley. The robust character will not be adversely impacted by the presence of Costa. Indeed, it seems more likely that the Costa will help to draw the public into this part of the town.

5.8 The proposal would increase the variety of uses available in Hinckley as there are no other branded coffee shops. The presence of a premium brand coffee shop well known throughout the country from the hundreds of other outlets will help to attract people into this part of Castle Street and make a positive contribution to both this part of Castle Street and the centre as a whole.

5.9 Shoppers now expect to find premium coffee shops available as part of their shopping trips. Visitors to towns expect the same thing as part of their visit and these can help to bring them from other attractions into the shopping centre. It is the presence of this sort of facility and the social interaction it brings that can make shopping in real life a more attractive prospect than sitting at home using the internet. Workers in other shops in the town centre expect to find good quality take away drinks and food available as snacks or for lunches.

5.10 As set out in section 2 of this statement, the proposal would not fragment or deaden the frontage. The PMRS studies show the attractiveness of a Costa outlet compared to other retailers with similar floor area and demonstrate that Costa will generate additional footfall. PPS6 identifies pedestrian flows as a key indicator of the health of a town. The expected pedestrian flows associated with the Cost Coffee will sustain and enhance the vitality and viability of Hinckley.

5.11 Research shows that the coffee market is the second largest retail growth sector and that three out of four adults now drink coffee outside of the home. Indeed, the British now spend more time in coffee shops than either the French or Italians. It is estimated that by 2010 approaching 70% of all the food we eat will be consumed "on the go". (As set out in the Costa brochure attached)

5.12 The success of Costa in the retail environment is illustrated by the fact that most shopping malls specifically allocate units for coffee shops. Costa have recently opened an outlet in the Galleria (a very well known sub regional shopping centre) in Hatfield and this has been specifically welcomed by the Centre Manager as a means to "assist our goal of improving the general retail provision and profile of the centre". The Centre Manager in Poole reported: "We have noted that pedestrian flow and dwell times have increased around the new Costa store ..." following the opening of the unit.

5.13 There will be no cooking on site and the hours of operation will be similar to other units along Castle Street. The proposed use will therefore not have an adverse impact on residential amenity.

5.14 There are no proposals to change the existing shopfront, the proposals are to repair, retain and decorate the existing shopfront. Comments are currently being sought from the Conservation Officer in this regard.

Conclusion

5.15 The proposal would sustain and enhance the vitality and viability of Hinckley. The proposal complies with policies in the Local Plan and advice contained in the supplementary planning guidance on shopping. The proposal would not result in an overconcentration of non retail uses and retail would remain predominant in the primary shopping frontage.

6.0 COSTA COFFEE CASTLE STREET, HINCKLEY

6.1 There is no cooking on site and so the proposal will not give rise to any nuisance or disturbance from cooking odours.

6.2 The unit will not stay open late (except perhaps during Christmas late night shopping or similar) and trades as a coffee shop. It will not cause any noise or disturbance to the town centre.

6.3 There will be one or two deliveries per day. These will be timed to minimise any disturbance or inconvenience to other town centre users.

6.4 It is expected that the Costa would be widely welcomed by visitors, shoppers, local workers and residents using Hinckley.

7.0 SUMMARY AND CONCLUSIONS

7.1 The proposed coffee shop is a mixed A1/A3 use.

7.2 The proposed site is within a very robust retail frontage.

7.3 The proposal would sustain and enhance the vitality and viability of Hinckley. The proposal complies with Local Plan policy and guidance contained in the supplementary planning guidance on shopping.

7.4 The coffee shop will not have any adverse impact on the area through noise, odours or any other disturbance. Indeed, it can be expected that it will be widely welcomed.

7.5 Planning permission should be granted for the proposal.

Natalie Jarman BA (Hons) Dip TP MRTPI
Cliff Walsingham & Company
June 2009

APPENDICIES

1. Costa Coffee brochure

2. Table to show pedestrian attraction of Costa Coffee compared to other retailers.

3. Appeal decision letter dated 2 December 2002, Caffe Nero, 192 Chiswick High Road.

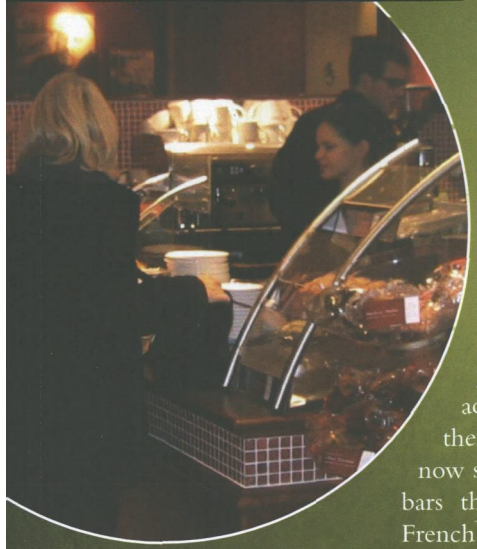
4. Appeal decision letter dated 6 December 2004, Caffe Nero, 107 High Street, Winchester.

5. Appeal decision letter dated 11 September 2006, Caffe Nero, 112 High Street, Sevenoaks.

6. Appeal decision letter dated 13 December 2006, Costa Coffee, 230 High Road, Loughton

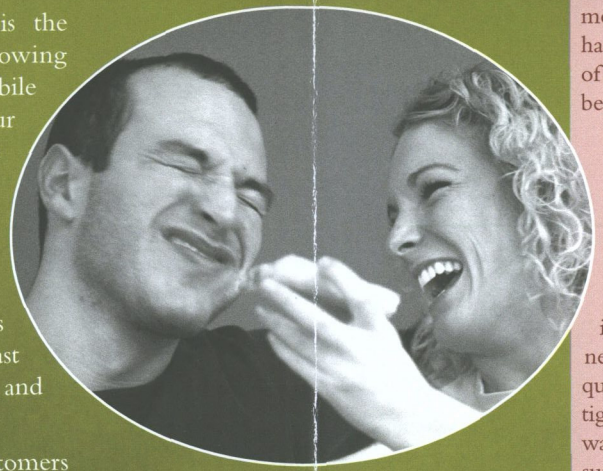
APPENDIX 1


COSTA
italian about coffee



Three out of four drink coffee outside the home

The coffee market is the second-fastest growing sector in the UK after mobile phones. Three out of four adults drink coffee outside their home, and the British now spend more time in coffee bars than the Italians and the French.



Coffee may be what Costa is famous for, but its shops are fast forging a reputation for great food and innovative new products.



Research has shown that customers come to Costa for treats they can't make at home or buy in the supermarket.

These include a quality sandwich range which changes with the seasons; summer favourite Frescato - a super-refreshing range of blended ice drinks; a range of miniature treats including a variety of biscuits or mini muffins; and Chocolissimo, a hot drink made from real melted chocolate.

Maximum benefit - minimum impact

Whitbread's own Supply Chain Logistics company - which delivers chilled food and drink products to Costa stores - is leading the way in minimising any impact from its operations.

All vehicles use low sulphur diesel and operate to Euro standard 3, the latest and most stringent European requirement for reducing exhaust emissions.

To keep fuel consumption to a minimum, all vehicles have speed limiters restricting them to 56mph, the most fuel-efficient driving speed.

And in consideration of neighbours in built-up areas where early-morning deliveries are made, city settings have been introduced so that the engines operating the fridge compressors can be run more slowly - and noise reduced.



What Costa is NOT

There is NO COOKING on site, so NO NOXIOUS ODOURS to disturb neighbours

Our trading hours reflect those of the local retail community - so NO LATE OPENING

How we're servicing a growing need

Hectic modern lifestyles mean more and more of us leave home without having had breakfast. The leisurely lunch-hour of yesteryear is now far more likely to be just a 30-minute break.

In fact, the latest lifestyle research indicates that by 2010 - within five years! - as much as 70% of all the food we eat will be consumed 'on the go'.

Coffee shops will play an increasing role in servicing this need - where better to grab a quick take-away when time is tight, or stop and chat when you want to take time out in relaxing surroundings?

It's already been proved that consumers will spend more time shopping if they are able to take a break regularly and easily.

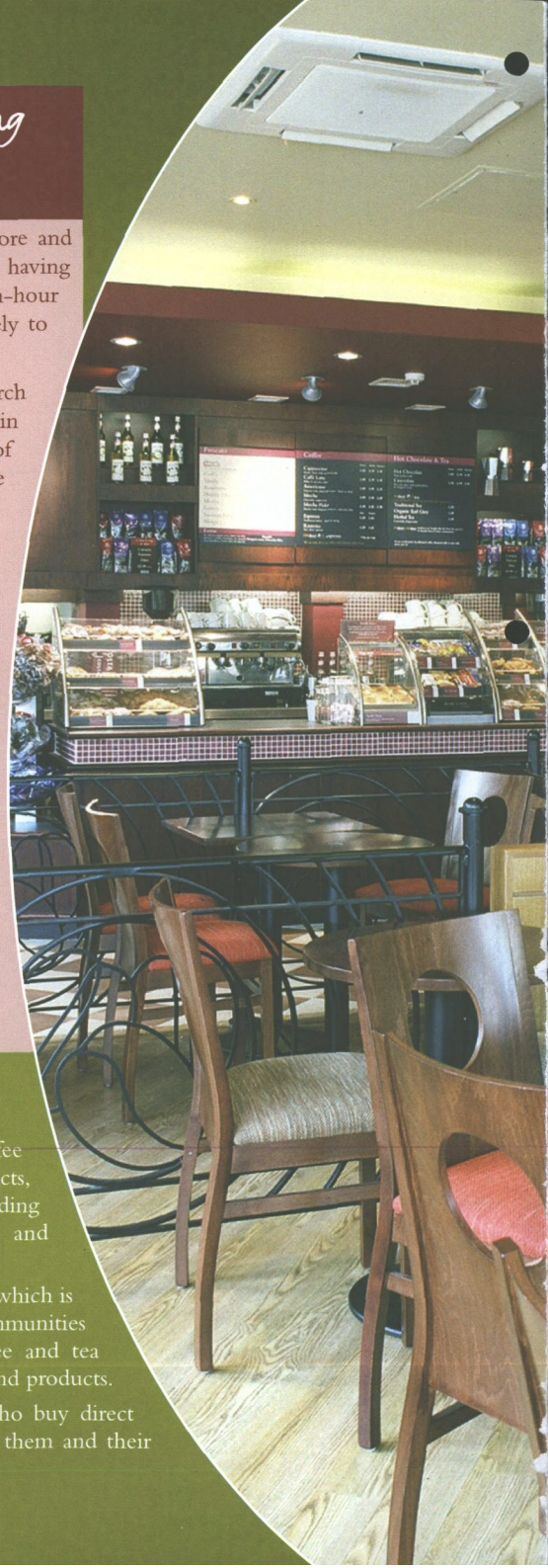
And that's why Costa is seeking sites in prime retail areas where there is a need to provide weary shoppers with quality surroundings in which to recharge their batteries.

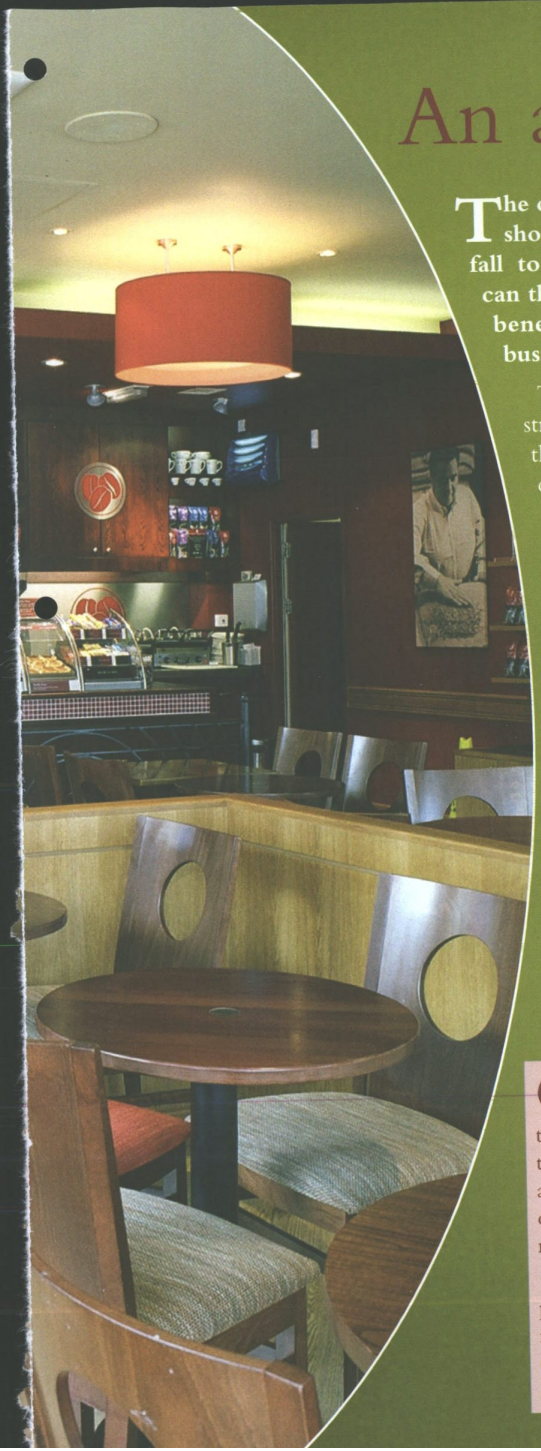
Fair play for growers

Costa was the first national coffee chain to offer Fairtrade products, and works with Cafedirect, the leading British Fairtrade-accredited tea and coffee company.

Fairtrade is a global organisation which is dedicated to ensuring that the communities who grow products such as coffee and tea receive a fair price for their work and products.

Fairtrade accredits companies who buy direct from the growers and thus benefit them and their communities.





An asset for surrounding businesses

The opening of a Costa coffee shop draws increased foot-fall to surrounding areas, and can therefore bring substantial benefits to surrounding businesses.

This has been ably demonstrated by the Costa store in the Palace Gardens shopping centre in Enfield.

From a planning policy point of view, the whole of the centre is core retail frontage, so changes of use from A1 retail are resisted unless the proposed use will contribute towards the vitality and viability of the centre.

The unit Costa chose was considered to be a mixed A1/A3 use, and so the council granted permission for a scheme with 44 internal and 32 external seats within the mall because they recognised the contribution the coffee shop could make.

> '...Pedestrian flow and dwell times have increased around the new Costa store...'

Recent research conducted by Costa to count the number of customers who visit their premises compared to similarly-sized A1 retail units in towns across the country now provides a statistical basis for this and other similar decisions. It proved that Costa attracts more customers than similar units, and therefore makes a positive contribution to the prosperity of surrounding businesses.

This has been borne out by experience at The Dolphin Centre in Poole, opened in the summer of 2004.

Centre director Steven Connolly reported: "We have noted that pedestrian flow and dwell times have increased around the new Costa store, trade is spread evenly through the day, and the offer appeals to a broad cross-section of our customer base."

Meanwhile, Tim Stirling, director of Hatfield Galleria, said of the new Costa store there: "We believe this store will be a valuable long-term addition to the retailing line-up of The Galleria, and will assist our goal of improving the general retail provision and profile of the centre."

And his words were echoed by Glen Fulton, manager of the Main Square shopping centre in Camberley. He said: "We have received highly complimentary comments from a large number of our customers, which indicates that the brand has been very warmly welcomed and provides a much-appreciated facility.

"The store is well-used, which inevitably will be impacting positively on footfall and dwell times at that part of the centre."





Earning a great reputation

Costa is determined to be the employer of choice in the coffee shop market, and is therefore continually refining and enhancing the package it offers to its 4,000 store team members.

The company aims to promote at least 50% of its store managers from within, and offers one of the best deals around for new team recruits.

Stores are staffed by teams of full and part-time workers, with managers able to offer flexible hours to suit personal needs - particularly to single parents, mothers with young children and students.

Full training and clearly-structured career paths are provided - and with the current rapid expansion programme, the sky really is the limit!

Within three months of joining and completing their training, team members are guaranteed a minimum rate well in advance of the current national minimum wage - plus free drinks and half-price food while on duty.

And they are also entitled to a wide range of benefits as part of the Whitbread family.

These include pension, health and sharesave schemes; special rates on everything from spectacles to car rental, and legal services to holidays; plus a privilege card offering up to 25% off at hundreds of Whitbread restaurants, hotels and leisure clubs throughout the UK.


Costa is owned by
Whitbread
Welcome with a smile

APPENDIX 2

	FRIDAY			SATURDAY			ESTIMATED WEEKLY		
	Costa	Retailer 1	Retailer 2	Costa	Retailer 1	Retailer 2	Costa	Retailer 1	Retailer 2
Durham 1	424	462	683	639	729	912	2501	2802	3753
Farnham 2	259	207	101	282	289	139	1273	1167	565
Horsham 3	544	118	422	622	180	549	2744	701	2285
Salisbury 4	144	58	62	162	73	87	720	308	351
Welwyn G.C 5	205	47	9	89	52	12	692	233	49
Total	1576	892	1277	1794	1323	1699	7930	5211	7003
Average	315.2	178.4	255.4	358.8	264.6	339.8	1586	1042.2	1400.6

1. Durham, survey dates 23 & 24 July — Retailer 1 = Stationery Box — Retailer 2 = Allsports
2. Farnham, survey dates 11 & 12 June — Retailer 1 = Currys — Retailer 2 = Specsavers
3. Horsham, survey dates 16 & 17 July — Retailer 1 = Wakefield Jewellers — Retailer 2 = Birthdays
4. Salisbury, survey dates 16 & 17 July — Retailer 1 = Fat Face — Retailer 2 = Whittards
5. Welwyn G.C, survey dates 23 & 24 July — Retailer 1 = Holland & Barrett — Retailer 2 = Going Places

table.B3304

APPENDIX 3

Appeal Decision

Inquiry held on 22 October 2002

Accompanied site visit made on 22 October 2002

by A J J Street MA(Oxon) DipTP MRTPI

an Inspector appointed by the First Secretary of State

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

Date
02 DEC 2002

Appeal Ref: APP/F5540/C/02/1087789
Land at 192 Chiswick High Road, Chiswick. London

- 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 Caffe Nero against an enforcement notice issued by the London Borough of Hounslow Council.
- The Council's reference is HF/P11.3453.
- The notice was issued on 18 February 2002.
- The breach of planning control as alleged in the notice is the material change of use of the premises to a café (A3) use.
- The requirements of the notice are cease the use of the premises as a café (A3) use.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the deemed application for planning permission does not fall to be considered.

Summary of Decision: The appeal is allowed and the notice is quashed.

PROCEDURAL MATTERS

1. After my accompanied site inspection I made an unaccompanied visit to the Costa Brothers premises at 181 Camden High Street, NW1, at the request of the Appellant Company.

APPEAL SITE AND SURROUNDINGS

2. No 192 Chiswick High Road lies within the busy Chiswick High Road shopping centre. It occupies a corner site at the junction with Elliot Road, a mainly residential street of terrace houses. The appeal site comprises the basement and ground floor of No 192. Above the appeal premises are three floors of self-contained flats.

CAFFE NERO

3. The Appellant Company told the inquiry that Caffe Nero (which means black coffee in Italian) trade specifically to meet the demand for speciality coffee in town centre locations. They say that they have 100 units spread across the country and that each operates on a similar basis. They describe their units as coffee bars or coffee shops and say that typically each one has a majority of sales in speciality coffee (in hot liquid form), no primary cooking activity, no table service and daytime opening hours.

THE LAYOUT AND USE OF THE APPEAL PREMISES

4. There is little dispute between the parties as to the basic geography and statistics of the Appellant's use at the appeal site, which I summarise briefly below. The premises have a total floor area of about 100 square metres, split about equally between the two floors. Basement and ground floors both have a rectangular shape.

5. The ground floor is laid out as follows. The entrance door is on the south west corner. Display cabinets and the serving area occupy part of the long east wall. There is a queuing and circulation area in front of that and a staircase to the basement and a staff/customer toilet at the north end of the room. The rest of the ground floor is devoted to small tables and seating, with 24 seats in all. The approximate breakdown of the floorspace is as follows: display/serving area 18 %; queuing/circulation 26 %; seating 36 %; staircase 10%; and toilet 10 %. Outside on the pavement are tables and about 17 chairs, available for use in clement weather.

6. The basement is entirely taken up by small tables and seating, with benches, sofas and chairs, about 29 seats in all.

7. From the Company's records (two weeks in September 2002) the premises are patronised by about 450 customers a day, spending about £2.75 per purchase. A percentage breakdown of the sales is as follows: speciality coffees 59 %; other hot drinks 4 %; cold drinks 7 %; sandwiches (some toasted) and salads 14%; cakes, biscuits and pastries 14 %; re-heated food 1%.

8. The Appellant and the Council undertook a joint survey on Monday 16 September 2002 during the opening hours 07.00 – 18.00 hrs. A total of 399 customers were recorded of whom 226 were eat- in customers (56.6 %) and 173 were take away customers. The busiest three hours were 08.00 – 10.00 hrs with the numbers reducing progressively thereafter to 18.00 hrs. Take-away customers were in the majority up till 09.00 hrs but thereafter were in a minority.

9. The Council undertook their own survey in the week beginning 12 August 2002, taking counts at four periods on most days. The figures produced are broadly in line with those shown by the joint survey. One additional set of data were produced, concerning the number of customers seated in the premises at the start of each of the observation periods. A total of 296 seated customers were observed at the 20 observation times.

THE APPEAL AGAINST THE NOTICE ON GROUNDS (b) AND (c)

Background

10. I deal with these grounds of appeal together as the representations from the parties on them are closely inter-related.

11. For the appeal on ground (b) to succeed the Appellant has to show, as a matter of fact, that the matters stated in the notice, that is the material change of use of the premises to a café (A3) use, has not occurred. For the appeal on ground (c) to succeed the Appellant Company has to show that the matters stated in the notice do not constitute a breach of planning control. The onus is on the Appellant to prove its case.

12. There is no dispute between the parties that the lawful use of the premises is a use for purposes falling within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (the UCO). The long established use of the premises has been as a hairdressers shop (Class A1.(e)).

13. There is also no dispute that the whole of the premises, ground floor and basement, forms the appropriate planning unit for the consideration of matters relating to changes of use.

14. The relevant parts of the UCO and of Circular 13/87, which gives Government advice on that UCO, are as follows. "Class A1. Shops" refers to use for all or any of 9 different purposes, including: "(a) for the retail sale of goods other than hot food" ... and "(d) for the sale of sandwiches or other cold food for consumption off the premises". In respect of each of the 9 categories Class A1 says that the use is one where "the sale, display or service is to visiting members of the public". "Class A3. Food and drink" says " use for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises".

15. Paragraph 3 of Circular 13/87 explains that the aim of the UCO is twofold: to reduce the number of classes while retaining effective control over changes of use that, because of environmental consequences or relationships with other uses need to be subject to specific planning applications; and to ensure that the scope of each class is wide enough to take in changes that generally do not need to be the subject of specific planning control.

16. The Circular reminds readers that in considering whether a material change of use has occurred it is necessary to consider first the existing primary use and that "it is the main purpose of the use that has to be considered". In connection with this point and referring to Class A1 the Circular notes, at paragraph 17, that "a sandwich bar does not cease to be in the shops class merely because it also sells hot drinks or if a few customers eat on the premises". Paragraph 19 refers to the (then) new food and drink class and indicates that it brings together establishments previously treated as sui generis like hot food shops, restaurants, cafes, snack bars, wine bars and public houses. It says that the new class reflects the breaking down of the traditional boundaries between different types of premises and will enable the catering trade to adapt to changing trends and demands with greater speed and certainty in premises where the potential environmental nuisances such as smell, traffic and parking have already been accepted. It also refers to the need to consider the option of granting planning permission subject to conditions in cases where serious environmental problems are envisaged.

The Cases

17. Very briefly the main points of the cases advanced by the main parties in regard to the appeals on grounds (b) and (c) are as follows.

The Appellant

18. The Appellant says that the company's purpose is the retail sale of coffee and whether it is served on or off their premises is of no concern in the context of the UCO. On a correct reading of the UCO the serving or drinking of coffee could fall within Class A1 or Class A3. The UCO does not adopt a "priority" approach. The Council's "legalistic" emphasis on the bare words of Class A3 is incorrect. The proper way to determine which use class, if

any, the use at No 192 falls into is to decide, having looked at a range of factors, into which use class it fits most comfortably.

19. In this regard a number of planning appeal decisions have been examined. This analysis has revealed a number of factors that have led Planning Inspectors to conclude that an establishment operates within Class A3. These include: the provision of a range of hot foods, food cooked on the premises, waiter/waitress service, external consequences such as smell or parking problems, the impression created that the purpose is to serve food and drink. The Caffe Nero operation has none of these characteristics and this is powerful evidence that the use does not fall within Class A3.

20. A number of factors have led Inspectors to conclude that an establishment operates within Class A1, shops. These include: cases where the sale of speciality coffees for consumption on or off the premises is the predominant use of the premises; where no external harm is caused; where the character of the use could be distinguished from the normal expectation of a café or restaurant. The use at the appeal site has all of these characteristics and this is further powerful evidence that if falls within Class A1.

21. Reliance is placed upon two appeal decisions in particular as supporting the Appellant's case. These are, first the appeal by Costa Brothers Coffee Company relating to 181 Camden High Street, NW1 (the Costa case) and second, the appeal by Cornerstones Coffee Company relating to 178 Fulham Road, SW10 (the Cornerstones case). These establishments and their uses are very similar to the appeal operation. In each of the two cases the predominant use was found to be speciality coffee sales, whether on or off the site, and the presence of numbers of chairs and tables on the premises and the occurrence of significant on-site consumption was not found to be critical.

22. The appeal decisions submitted by the Council do not undermine the Appellant's case.

23. Overall it is concluded that the use of the appeal site falls squarely within Class A1. It is a coffee shop not a café. The appeals on grounds (b) and (c) should succeed.

24. If it is concluded that the use is not A1 then it must be a mixed use – 43 % of customers buying refreshments for consumption off the premises is far to big to be an ancillary use. If it is found that the use is a mixed use then the appeal on ground (b) would succeed but it is agreed that, if the notice were corrected to refer to a mixed use, then the appeal on ground (c) would fail. It would cause injustice to the Appellant if the notice were to be corrected and if the notice were then upheld. The Appellant's case has been based on the fact that the breach alleged is a material change to an A3 use. Had the allegation been of a mixed use the Appellant would have appealed on ground (a) and the outcome of the appeal might well have been different. Accordingly in the mixed use situation the notice should be quashed.

The Council

25. The Council say that the determination as to the use class, if any, into which the establishment falls must start with the bare words of Classes A1 and A3 of the UCO. The primary use of the appeal premises is plainly a use for the sale of food or drink for consumption on the premises – the survey shows that well over half of the customers consume food or drink on the premises. A look at the UCO puts the use squarely within Class A3. Class A1 does not provide for the sale of food or drink on the premises. The sale of coffee is the sale of drink. It matters not that the predominant use may be the sale of

32. I accept that the wording of Class A1, "Shops", does not say specifically, under the heading Class A1.(a), that the retail sale of goods other than hot food is of goods for consumption off the premises only. But the goods sold by most conventional shops, including food shops, is obviously intended for consumption or use off the premises only. Moreover where Class A1 does refer to the sale of food items, that is under Class A1.(d), it does specify that the sale is for consumption off the premises. Furthermore it seems to me that if the authors of the UCO had intended that serving or drinking coffee could fall within either Class A1 or Class A3, regardless of whether the drink was being consumed on or off the premises, they would not have drafted Class A3 in the way that they have done, since they would have realised that they were creating a conflicting provision. Had it been intended that coffee should be regarded as a "special case" in the context of "drink" I would have expected the UCO to say so.

33. These considerations lead me to take the view that the intention of the UCO is that primary uses for the sale of food or drink for consumption on the premises are to be regarded as falling within Class A3 and not Class A1. I find nothing in the advice in Circular 13/87, including paragraph 17, to suggest otherwise.

The Appearance and Layout of the Premises

34. Turning to the question of the appearance and layout of the appeal premises I saw at my inspection that substantial and prominent parts of the ground floor are occupied by tables and chairs and that the whole of the basement, apart from the small store and cleaners rooms, is devoted to tables and chairs. The standard of furnishing and décor is good and the place has a comfortable and relaxing atmosphere. The whole establishment gave me the feeling of a place where refreshments are taken. As I have indicated above appreciably more than half of the customers consume their purchases on the premises and the spot surveys indicate that sizeable numbers of people are to be found sitting there throughout the day. In this establishment of modest size I consider that the numbers involved will be very apparent in the rooms. By contrast the amount of floorspace devoted to the display of goods for sale is quite limited. The premises have little of the appearance of a shop. Even the two sizeable boards on the walls of the ground floor, advertising the drinks and foods for sale, gave me the feeling of a place where refreshments are taken rather than of a shop. In all these circumstances I am strongly of the view that the man or woman in the street walking around the premises would conclude that he or she was in some form of café rather than in a shop.

The Nature of the Refreshments and Service Provided

35. In support of the case that the appeal premises are in A1 use the Appellant drew my attention to matters like the limited range of food on offer, particularly hot food, to the fact that there is very little food preparation or handling, to the absence of waiting staff and laid tables and to the early closing time.

36. Certainly these factors strongly support the view that the premises are not a restaurant. But they do not rule out the view that the enterprise is some other form of A3 use and they do nothing to show that a shop use exists.

37. Basically what the premises offer the customers is a wide range of quality coffees and a limited range of snacks. Moreover the snacks on offer include items like hot soup and pannini and although the service is cafeteria-style customers who choose to take

refreshment on the premises can drink and eat in some comfort. Although the shortness of the menu and perhaps the smallness of the tables does not encourage people to stay eating and drinking for long periods the establishment offers a comfortable spot for a coffee break or a mealtime during a working or shopping day. I find that in terms of the range of refreshments and the service offered to customers on the premises the use can reasonably be described as a "café". Although distinguished to a degree from earlier forms of café by the quality and range of the coffees provided I take the view that the premises have much of the character of a traditional high street café, tea room or coffee bar, uses of the kind that are normally found within use Class A3.

The Impact of the Use on the Surroundings

38. The Appellant Company said that the appeal use does not have any damaging effects on its surroundings or on local amenity, unlike most uses falling within Class A3.

39. As there is no appeal on ground (a) in this case matters relating to the environmental and amenity impact, if any, of the establishment were not considered in depth at the inquiry. I offer no formal comments on those matters at all here, as I would not wish to prejudice any future consideration of planning merits.

40. However a number of points relating to the impact of the use need to be made here. It is the case that no fume extraction equipment is needed or used and so no problems of fumes or fan noise arise. The premises do not stay open late at night and so the problems associated with some late night uses do not arise either. However in my opinion all such considerations as these are of limited relevance in the determination of the appeals on grounds (b) and (c) or in the determination of the use class into which this branch of Caffe Nero falls. No doubt many uses falling within Class A3 do create problems for their neighbours. But uses do not have to generate environmental or amenity problems to fall within Class A3. The UCO and the advice in Circular 13/87 makes no such stipulation and I am in no doubt that many traditional tea rooms and cafés in town centres up and down the country, that would be regarded as A3 uses because they sell food and drink for consumption on the premises, cause no serious amenity or other problems.

41. With regard to the general question of environmental harm the Appellant has drawn my attention to one point about the recent appeal relating to a fast food outlet at 271 High Street, Orpington. This point concerns a view expressed by the Inspector in that case. The Inspector says that for him one implication of what is said in paragraph 19 of Circular 13/87 is that Class A1.(d) of the UCO refers to food outlets that possess little potential for environmental harm of the kind attributed to A3 uses. I note that remark but it has very little relevance to the present case. Class A1.(d) covers, in terms, uses for the sale of sandwiches or other cold food for consumption off the premises. The use at the appeal site is quite clearly radically different from such a use and so any implication about Class A1.(d) that the Inspector detected have no bearing on the case before me.

Other Appeal Decisions

42. Considerable weight was attached by both main parties to a sizeable number of appeal decisions that they put to me for consideration. The view of each side was that the cases that the side was putting to me contained strong pointers as to how I should determine the current appeal. Attention at the inquiry focussed on two particular cases put in by the Appellant company, the Costa and Cornerstones cases, but I have considered all of the

representations made about all of the cases. It is of course my duty to consider the present case on its own particular merits and this I have done. But the other appeal decisions are a material consideration.

43. I recognise that the representations made about all of these cases were of general assistance to the inquiry, in that for example they indicated the sorts of considerations that have been found by other parties in other cases to be relevant – or not relevant – to the determination of ground (b) and (c) appeals relating to Class A1 and A3 and other uses. They also illustrated the great range of different sorts and conditions of food and drink and related establishments that now exist up and down the country. But, for a number of reasons, I found all of these cases to be of very limited direct assistance.

44. With regard to the other cases all that has been put to me is the appeal decision letters and the respective representations made about them by the main parties in the present appeal. I make no complaint about this but inevitably the letters contain much less information about the appeals concerned than I have available to me in connection with the current appeal. Inevitably too the parties in the present appeal can only speak second hand, usually, about the other cases. To be more specific, the Costa case decision has very little information about the percentages of sales consumed on site and off site, information that is of considerable relevance in the present case. Again in respect of the Costa case the decision letter deals very briefly with the reasoning behind the Inspector's view that the primary purpose of the premises was the sale of cold food and hot and cold drinks for consumption on and off the premises together with dry goods and so on. The letter refers to paragraph 17 of Circular 13/87 but that is of limited assistance. The letter says nothing about the significance, if any, of where food items purchased are consumed, in the context of the wording of use Classes A1 and A3, a matter that featured extensively in the representations made to me about the present case. The letter also gives no specific reasons to back up the view that the presence of tables and chairs in some numbers did not constitute a café use. The significance of seating facilities was another matter of considerable debate in the case before me. The parties who received that decision in 1998 evidently found it satisfactory. But without their background knowledge, and four year later, I am left uncertain about very important matters. In the circumstances I can attach little weight, in determining the present appeal, to the Inspector's findings, even though I have the benefit, in that particular case, of an unaccompanied visit. I have similar problems in considering the other cases put to me by both sides.

45. There is a further substantial problem: assessing the extent to which the circumstances of the other cases put to me match those of the case before me for decision and therefore the extent to which conclusions reached in the other cases may be applicable to the case before me. The Cornerstones case illustrates this problem. It appears from the decision letter that a significant majority of the customers at that establishment were take-away customers. That is substantially different from the situation in the case before me. At Cornerstones there was seating for 20; at the appeal site the figure is nearly 70. It is very difficult to judge the significance of these differences in the context of the present appeal. I have found similar difficulties in considering the other decisions put to me, including the case submitted by the Council, relating to 146 Gloucester Road, SW 7, where there is also a High Court judgement. These considerations make it difficult for me, when making my decision, to attach much weight to the other appeal decisions.

Other matters

46. The Appellant put to the inquiry that the majority of the 650 or so outlets operated by Starbucks, Costa Brothers, Coffee Republic and Caffe Nero throughout the country trade as Class A1 uses and that that situation has been accepted by local planning authorities. It was said that these outlets were all very similar. The Appellant said that it was very undesirable for the same uses to be treated differently by different Councils. It was also put that in the case of Caffe Nero the Class A1 status of the outlets had been accepted by Councils all over the country and that on the few occasions when local planning authorities had queried the A1 use they had subsequently accepted it.

47. I appreciate the Appellant's general point. However I have almost no information about the mass of sites brought into the debate or about the extent to which the use class status of them has been a sensitive issue meriting attention by local planning authorities. I note too the Appellant's evidence that the company's offer remains essentially the same in all locations but that the size and character of individual towns or business centres determines the proportion of sales consumed on or off the premises. This raises the possibility that there could be material differences in the character of the use of different Caffe Nero outlets. In all these circumstances I attach little weight to these representations in support of the (b) and (c) appeals.

48. It was put for the Appellant that the Caffe Nero concept had not been invented in 1987 but that if it had been modern coffee shops would have been recognised as a Class A1 use because they had no harmful amenity or environmental effects. That speculation may or may not be right but it is not relevant to the present appeal. The UCO remains unchanged as far as food and drink establishments are concerned.

Overall Findings

49. Finally I turn to the main matter, that is the overall planning use of the premises at the date of the notice. Here I weigh all of the matters set out separately above.

50. The Appellant submits that the main purpose of this Caffe Nero outlet is the sale of coffee and its drinking, whether on the premises or off. I note that but it does not take things far enough.

51. I have no doubt that one main purpose of the use of the premises can be identified. Coffee and snacks are consumed on the premises on such a scale and in such a manner as to constitute, as a matter of fact and degree, a primary use of the land, not ancillary to any other activity. Well over half of the customers of the enterprise consume drink and food there. More than 60 % of the floorspace is devoted to seating accommodation. A range of drinks and snacks are available to be consumed on site. The layout and furnishings of the place have the character and appearance of some sort of café use. When put together these considerations point to the existence of a primary A3 use at the premises, a use for the sale of food or drink for consumption on the premises.

52. However that is not the only activity at the appeal site. There is also a very significant retail sales activity. This is largely in the form of the sale of take-away coffees and snacks, but there is also a limited sale of "dry goods" not for immediate consumption. Over 40 % of the customers of the unit use it in this way as a conventional shop. The shop use is

manifested on the ground floor of the premises by the display cabinets showing food and drink items that may be purchased for consumption on or off the premises and by the small display of "dry" goods such as packs of ground coffee for sale.

53. The A3 café - style use and the retail activity are clearly distinct in planning terms. The A3 use has customers on the premises, and some of them in good weather on the pavement outside as well, using almost all of the floorspace, for significant periods. Because of these characteristics the use has the potential to impact on local amenity and the local environment. By contrast the customers who use the premises as a shop use only a small part of the premises and are in and out much more rapidly.

54. The café use and the shop activity are also interlinked to some extent – they both use some parts of the ground floor, the coffee making and food handling serves both eat-in and take-away customers and most of the menu can be enjoyed by both.

55. I have given careful consideration to the question whether the shop activity represents a separate primary use of the land, and thus is part of a mixed use, or is an ancillary or incidental to the primary A3 use. I consider the shopping activity, involving over 40 % of the total customers, to be too substantial to be a mere incidental to the café use. I accept the principle that an ancillary activity can be quite large yet still subservient to, or parasitic on, a single main purpose. I also accept the principle that where there is mixed use with two primary uses the two uses can be of substantially different sizes. It seems to me that in this case the premises are used by one occupier who carries on two distinct activities and that it is really impossible to say whether the shop use is ancillary to the café use or not. In the circumstances I find, as a matter of fact and degree, that the current use of the site is a mixed use for the sale of food and drink for consumption on the premises, a use falling within Class A3 of the UCO, and for the retail sale of goods, a use within Class A1 of the UCO.

56. Regarding the appeal on ground (c) I find, as a matter of fact and degree, that the change of use of the premises from a hairdressers shop to the mixed use that I have just described, has involved a material change of use of the premises, for which express planning permission is required and has not been obtained. The ground (c) appeal would fail for that reason. With regard to the appeal on ground (b) I find as a fact that the change of use alleged in the notice has not occurred. In that circumstance it is open to me to consider correcting the notice to allege a material change of use to the mixed use that I have found to exist. However it is considered by both the Appellant and the Council that the notice cannot be corrected in that way by me because it would cause injustice to the Appellant. I accept that point, for the reasons the Appellant gives. As I cannot correct the allegation in the notice the appeal against the notice as a whole must succeed and I shall quash it.

Conclusions

57. For the reasons given above and having regard to all other matters raised, I consider that the appeal should succeed. Accordingly the enforcement notice will be quashed.

THE APPEAL AGAINST THE NOTICE ON GROUND (f)

58. As the notice is to be quashed the appeal on ground (f) does not fall to be considered.

drink and that little food is sold. Wine bars and public houses that do not serve food are selling drink only and no one would deny that they fall within Class A3. A use can be within Class A3 even if it is materially different from a restaurant or public house – if it falls within the orbit of Class A3. It matters not that there is no primary cooking – the UCO says nothing of cooking.

26. In a situation where a use might be a restaurant or might be a sandwich bar where some customers eat on the premises it is relevant to consider, inter alia, whether the use has the tell-tale signs of a restaurant, such as primary cooking, fumes, waiters, laid tables and so on. But these are not necessary features of an A3 use. A use can be for the consumption of food on the premises without any of these elements. Likewise a use does not have to create environmental or amenity problems to fall within A3.

27. The question that must be considered is whether the predominant use is for the consumption of food or drink on the premises. In assessing that the best test is the activity the use generates. It is customer movement that has the impact on the environment. The joint survey shows clearly that a good majority of customers consume their purchases on the premises. That is a powerful if not compelling indicator that the use is A3.

28. The layout of the premises, the large number of seats and the survey evidence of considerable use of those seats again is a strong indicator of A3 use, albeit not decisive on its own.

29. The appeal decisions relied upon by the Appellant do not support the appeal. For example, in both the Costa case and the Cornerstones case the Inspector's views as to what constitutes the primary purpose and the primary use of those premises cannot be right – as the Inspectors do not consider the vital question as to whether the use for the sale of coffee is a use for consumption on or off the premises . Those decisions as a whole may not be wrong but the reasoning within them as to the primary use must be incorrect.

30. Overall, the use of the premises is as a café, falling within Class A3, and the appeals on (b) and (c) should fail. If the Inspector does not agree that the predominant use is A3 he must consider whether or not the use is mixed – it cannot be A1. If he concludes it is a mixed use then the Council accept that the allegation in the notice cannot be corrected without causing injustice to the Appellant. In those circumstances the Inspector should make clear that the appeal on ground (c) would have failed.

Reasons

The Use Classes Order

31. I first give some consideration to the terms of the UCO in relation to this case. Class A3 requires that uses falling within it involve the consumption of food or drink on the premises concerned or of hot food off the premises. In the case of the appeal use about 57 % of customers consumed their purchases on the premises. That is a substantial proportion of the total of customers and it represents a large number of people using the premises in that way. In my view this situation points strongly to the presence on the site of a primary use falling within Class A3. The Appellant emphasises that the main purchase is (hot) coffee. But that must be a "drink" as far as the wording of the UCO is concerned. As the Council point out many public houses do not serve food and the sale of drink by such a public house is usually regarded as a use falling within Class A3.

FORMAL DECISION

59. In exercise of the powers transferred to me, I allow the appeal and direct that the enforcement notice be quashed.

INFORMATION

60. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.



INSPECTOR

APPEARANCES

For the Appellant

Mr James Findlay	- Of Counsel, instructed by Caffe Nero plc
He called:	
Mr B Price MICA	- Financial Director, Caffe Nero plc
Mr P Ellis DipTP MRTPI	- Consultant Chartered Town Planner

For the Council

Mr Richard Langham	- Of Counsel, instructed by the Borough Solicitor
He called:	
Mr A Beamish BA DipTP MRTPI	- Principal Enforcement Officer

Interested Person

Mr P Eversden	- 40 Abinger Road London W4 1EX
	Chiswick Protection Group

DOCUMENTS

Document 1 – List of persons present at the inquiry

Document 2 – Notice of inquiry and circulation list

Document 3 – Note of closing submissions for the Appellant

Document 4 – Note of closing submissions for the Council

Document 5 – Proof of evidence and Appendices – Mr Price

Document 6 – Proof of evidence and Appendices – Mr Ellis

Document 7 – Proof of evidence and Appendices – Mr Beamish

Document 8 – Copy of letter to the Appellant, put in for the Council

PLAN

Plan A – Enforcement notice plan

D/L LIBRARY

Appeal Decision

Inquiry held and site visit made on 30 November 2004

by David C Pinner BSc DipTP MRTPI

an Inspector appointed by the First Secretary of State

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CASE OFFICER COPY
UNDER CLOCK
Tel.

Date 16 DEC 2004

Appeal Ref: APP/L1765/C/04/1147130
107 High Street, Winchester, SO23 9AH

- 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 Caffe Nero Group PLC against an enforcement notice issued by Winchester City Council.
- The Council's reference is 03/00179.
- The notice was issued on 3 March 2004.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from use for the retail sale of goods other than hot food (falling with Class A1 of Part B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) to use for the sale of food and drink for consumption on the premises (falling within Class A3 of Part B above).
- The requirements of the notice are:
  - i) Cease the use of the land for the sale of food and drink for consumption on the premises [Class A3 of Part B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended], and
  - ii) Remove all fixtures, fittings and furnishings necessary for the preparation, presentation and consumption of food and drink on the premises.
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preamble

1. Normally in a case where ground (b) is pleaded, I would deal with that matter first because success on that ground would often lead to the enforcement notice being quashed. In this case, the ground (b) appeal is made on the basis that the alleged change of use has not taken place but that a different change of use has. This is claimed to be a mixed use comprising elements of uses that would individually fall within classes A1 and A3 described in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order). For convenience, I will refer to this as A1/A3 use, this being the convention adopted at the inquiry. The parties accepted that, if I agree that the use is A1/A3, the enforcement notice could be corrected without prejudice to either party, and that planning permission would be required for change of use to the mixed A1/A3 use. Therefore, whatever my conclusions on the ground (b) appeal, I have to consider the

planning merits of the case. I have therefore decided to deal with the appeal on ground (a) first.

Background

2. The appellant company operates nearly 200 speciality coffee shops throughout the country and is one of the three main companies involved in this business. The other two are Costa Coffee and Starbucks. Between them, they operate 900 coffee shops in all parts of the country. In 1997 Caffe Nero had only 5 establishments, Costa had about 30 and Starbucks had yet to enter the UK market.

3. The greatest part of Caffe Nero's business is selling speciality coffee both for consumption on and off the premises. This accounts for some 60% of the Company's turnover. Other hot and cold drinks account for 10% of turnover, sandwiches account for 15% and other cold food accounts for the remaining 15%. A small proportion of the food sold is reheated on the premises but none of it is cooked there. Tables and chairs are provided for those who wish to consume their purchases on the premises but there is no waiter service, cutlery is not provided and the tables are small. The average cost of a purchase is £2.80, usually including a hot drink costing around £1.80. There is a discount for customers wishing to consume their purchases elsewhere.

4. One of the main characteristics of the coffee shops operated by the appellant is that the range of products and the type of operation is basically the same in all of its establishments wherever in the country they are located. They operate primarily during the daytime to coincide with the times that other shops and businesses are open. They require a location with high pedestrian flows, thus many of their shops are in core shopping areas. The nature of the use is such that some planning authorities have accepted that it is an A1 retail use since shops selling sandwiches and hot drinks to take away are included in that Use Class. The existence of a few tables and chairs to allow customers to consume their purchases on the premises and some incidental sales of reheated food has been held not to take the use out of Class A1. In other cases, it has been held that the use is a mixed use comprising elements of Class A3 food and drink use and elements of Class A1 retail shop use – it is a matter of fact and degree, having regard to the circumstances of the particular case.

5. The rapid growth in the number of coffee shops since 1997 post-dates the Use Classes Order and the advice contained in Planning Policy Guidance Note 6 *Town Centres and Retail Developments* (PPG6). Many local plan shopping and town centre policies are based on the advice in PPG6 and so the niche market exploited by the coffee shop chains and their special requirements for prime retail locations and other places where there are high pedestrian flows have rarely been specifically addressed in local planning policies.

Main issue

6. The main issue is the effect of the coffee shop use on the viability and vitality of Winchester's Primary Shopping Area, having regard to relevant policy for the protection of its primary retail function.

Planning Policy

7. The site lies within the part of Winchester town centre which is identified as the Primary Shopping Area (PSA) in the Winchester District Local Plan. Policy W12 of the Local Plan aims to protect the retail function of the PSA and says that proposals that would result in a

net loss of retail floorspace will not normally be permitted. The use of the ground floor of a building in the PSA for a use falling within Use Class A3 will not normally be permitted unless the scheme would benefit, or at least maintain, the vitality, viability and retail attractiveness of the PSA. The explanatory text identifies factors such as pedestrian flows, customer draw and opening hours as being relevant to the assessment of the impact of a proposed use. Account will also be taken of the generally exceptional need for such a location. There is a further proviso that retail use would remain the predominant use within the immediate retail frontages. The explanatory text says that the retail frontages 25 metres either side of the site will be taken into account. Proposals that would result in more than 20% of the frontage being in non-retail use would not normally be permitted.

Reasons

8. The Council's only objection to the scheme is that they consider it to conflict with policy W12. At the inquiry, the Council's planning witness conceded that, if I were to conclude that the operation constituted a mixed A1/A3 use, it would be acceptable. It seems strange to me that the acceptability of the use as currently operating is dependant only on how I label it. Nevertheless, for the sake of argument, I have considered the use as being one to which policy W12 applies.

9. Evidence provided by the appellant demonstrates that the use attracts a significant flow of customers throughout the day. That is consistent with my own observations of the premises before and after the inquiry and during the lunchtime adjournment. Although there is no baseline figure to establish the number of customers drawn by the previous use of the premises as a fashion shop, in absolute terms there is no denying that the present use generates a lot of customer activity. I would be very surprised if any wholly A1 use occupying the same floorspace would attract so many more customers that it would be in a different league to the appealed use. Indeed, I consider it to be very likely that many A1 uses would attract significantly fewer customers. Pedestrian activity in this part of High Street may or may not be increased as a result of the presence of the coffee shop, but there is certainly no evidence to suggest that it has been reduced. I very much doubt that that would be the case. Survey evidence reveals that a significant number of customers have been attracted to the town centre by the presence of the coffee shop, so it has proved to be a draw in its own right.

10. The 25 metre either side assessment referred to in the explanation to policy W12 is not part of the policy itself. The Council's witness could not say whether this means of assessing the impact on the retail frontage has any scientific basis. I doubt that it has and I therefore regard it as being of limited value. Taken literally, it would preclude the use of any premises for non-A1 purposes if they happened to be towards the end of a run of shops. In my view, such a restriction would be difficult to justify simply as a matter of principle.

11. In this case, the Council has included the National Westminster Bank within the retail frontage. However, from its design, I would suggest that this particular building has never been part of the retail frontage and it should not, therefore, be taken into account in applying provision (a) of the policy, which relates specifically to the immediate retail frontage.

12. Without getting too bogged down in maths, only this property and the adjoining Alliance and Leicester Bank are not wholly in A1 use at ground floor level in a long run of buildings lying between the National Westminster Bank and the Abbey National Bank at

119-120 High Street. In my view, even if I were to conclude that the appeal premises no longer have a retail frontage, retail use remains the predominant use of the immediate retail frontage.

13. With regard to the reference in the explanatory text to the exceptional need for such a location (i.e. within the PSA) the Council interpreted this as meaning that there has to be an exceptional need for the use in such a location rather than that the use has an exceptional need to be in the PSA. They argue that there is no need for the use because there are already several A3 uses within the PSA, including some not at ground floor level.

14. My interpretation of the explanatory text is that it is the use that must have an exceptional need to be within the PSA. In that regard, I accept that, with a low spend per customer, a use such as this has to operate in a high turnover environment. It is not an evening or night time use and needs to be located within an area of high daytime activity, such as the PSA. It needs to be highly visible to potential customers and I think that a ground floor location is therefore essential to the success of the business.

15. Drawing these considerations together, it is my conclusion on the main issue that the current use of the appeal premises has no adverse effect on the vitality or viability of the PSA; it maintains pedestrian flows, it is a use which needs to be located at ground floor level within the PSA; it complements the retail function of the PSA and draws people into it, thereby increasing its attractiveness. The retail frontage remains predominantly retail. In all of these respects, irrespective of whether the use is categorised as A3 or a mixed A1/A3 use, I conclude that the present use of the premises accords with the provisions of Local Plan Policy W12 and is therefore acceptable.

16. In view of my conclusion on the appeal on ground (a), there is no need for me to consider the other grounds of appeal. For the record, however, I take the view that the 20% retail sales element of the use is significant in its own right and, had I considered it necessary to address the point in detail in this decision, I would have concluded that, as a matter of fact and degree, the premises are in mixed use. As the A1 element occupies the front of the premises, I would also have concluded that they retain a retail frontage. Although these matters are academic and are not part of my formal decision, they reinforce my conclusion that the appeal should succeed.

Conditions

17. In applying Policy W12, I have considered the particular circumstances of the appellant's use of the premises, irrespective of whether or not that use fits into any Use Class. The effects of the use on the retail function, vitality and viability of the PSA are likely to be unique to the current operator and for that reason I consider that the conditions suggested by the appellant are essential. In effect, these conditions restrict the use to the present use and make the permission personal to the appellant company. Thus, if they were to vacate the premises, the authorised use would revert to the previous A1 use. I have adapted suggested condition 2 to allow for cold food to be served within the premises and I have described the development as a reflection of the way the use is currently undertaken. As I have not found it necessary to reach a formal conclusion on the nature of the use, I have included a condition limiting the use to that for which I have granted planning permission.

Conclusions

18. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Formal Decision

19. I allow the appeal, and direct that the enforcement notice be quashed. 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 107 High Street, Winchester as a coffee bar serving coffee, other hot and cold drinks, sandwiches and similar light refreshments for consumption on or off the premises as shown on the plan attached to the notice, subject to the following conditions:

    1) the permission hereby granted shall enure only for the benefit of Caffe Nero PLC and its wholly owned subsidiaries;

    2) 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;

    3) 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;

    4) the premises shall remain closed from 20:00hrs to 07:00hrs and no alcoholic drinks shall be displayed or served on the premises.



INSPECTOR

APPENDIX 4

Appeal Decision

Inquiry held on 22 August 2006

Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

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

Date 11 SEP 2006

Appeal Ref: APP/G2245/A/05/1189586
112 High Street, Sevenoaks, TN13 1UZ

- 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 Sevenoaks District Council.
- The application Ref SE/05/00096/FUL, dated 12 January 2005, was refused by notice dated 29 March 2005.
- The development proposed is the retention of use as mixed A1/A3 shop.

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

Procedural Matters

1. At the inquiry an application for costs was made by the Appellant Company against the Council. This application is the subject of a separate decision.

Main Issue

2. In this appeal I consider the main issue is whether the proposal would undermine the retail function of the town centre.

Planning Policy

3. The development plan for the area includes the Kent and Medway Structure Plan adopted in 2006 and the Sevenoaks District Local Plan adopted in 2000. Policy EP14 of the structure plan sets out, among other things, the strategic hierarchy of retail and service centres in Kent in which Sevenoaks is designated as a 'Principal Town Centre'. Policy SS5 of the structure plan supports development which assists town centres to be prosperous and vibrant and goes on to say that within the core, priority should attach to retail, service and leisure uses. The following local plan policies were referred to on the notice of refusal. Policy ST1A defines the Sevenoaks Town Centre by reference to the proposals map. Policy ST2 says, among other things, that within the primary frontage as defined on the proposals map only ground floor uses within Class A1 will be permitted. Policy S1 sets out a presumption for proposals within town centres which, among other things, enhance the retail function and expand and diversify opportunities for service and leisure uses appropriate and complimentary to the retail use, provided they do not displace Class A1 uses from primary shopping frontages. Policy S6 sets out criteria with which proposals for restaurant and hot food take-away businesses must comply which include the premises not being located in a primary retail frontage in an existing town centre.

4. I have also been referred to national planning guidance in Planning Policy Statement 1 'Delivering Sustainable Development' (PPS1) and Planning Policy Statement 6 'Planning for Town Centres' (PPS6).

5. Since the application was considered by the Council, the Town and Country Planning (Use Classes) Order 1987 has been amended and, among other things, the former Class A3 'Food and Drink' has been disaggregated into 3 classes. Circular 3/2005 'Changes of Use of Buildings and Land' provides guidance amounting to an interpretation of the Use Classes Order, as amended. Coffee shops and sandwich bars are considered in the Circular under Class A1 but with provisos in each case that the primary purpose of sandwich bars has to be taken into account and that coffee shops should be considered on a case by case basis.

Reasoning

6. The appeal premises occupy a prominent position within Sevenoaks Town Centre. They are within the 'primary shopping frontage' as defined on the proposals map and are located in the middle of the High Street facing the central pedestrian core of the town centre. The appeal site forms part of a terrace of buildings occupied by a variety of commercial uses. 112 High Street is within the Conservation Area that covers the majority of the town centre. There is no dispute between the Parties that the visual appearance of the appeal premises does not harm the character and appearance of the Conservation Area.

7. No.112 was a retail outlet with a Class A1 use which had closed prior to the Appellant Company becoming involved. The Appellant Company commenced business in December 2004 before the current shop front, which comprises folding windows on the front elevation, was granted planning permission. Planning permission for the shop front was granted in January 2005 and the Appellant Company was also engaged in correspondence with the Council about, among other things, the necessity for a planning application in respect of the coffee shop use. In January 2005 the application was made for the retention of a mixed Class A1/A3 use that is the subject of this appeal.

8. At the time of the inquiry the use of the appeal premises by the Appellant Company had been in operation for over 18 months and, because of this period of time, the Appellant Company was able to produce information relating to its business. This information showed, among other things, that between 3,000 and 4,000 customers used the coffee shop every week; approximately 80% of the business comprised eating and drinking on the premises and the remaining 20% was takeaway; and coffee sales, both for consumption on and off the premises, comprised about 60% of the value of sales. In addition, the Appellant Company undertook pedestrian flow counts and carried out surveys of its customers and nearby shop managers. The figures relating to the business and those in the surveys and counts were not challenged by the Council.

9. A considerable amount of inquiry time was taken up with exploring the different characteristics of Class A1 and Class A3 uses in relation to sandwich bars/coffee shops. There was also a suggestion by the Council that the appeal premises comprised a Class A5 use. In my opinion, in this case, attempting to label the uses of the appeal premises is not particularly helpful and instead it is more appropriate to look at what is actually happening. I do not believe that the premises can be classified under Class A5 as they are not, for example, premises where the existing primary use is the sale of hot food to take away. It seems to me clear from Circular 03/2005 that coffee is not considered to be 'hot food' for

the purposes of the Use Classes Order. From the evidence presented by the Appellant Company relating to its sales and its method of operation, it seems to me that the Class A3 use is predominant given that it forms 80% of the business and takes up the majority of the floor space. However, I was told by the Appellant Company, and I have no reason to doubt what I was told, that the 20% Class A1 use was considered to be significant in commercial terms so as to justify retention of the unit for that purpose only. I therefore consider as a matter of fact and degree that the use of the appeal premises is as described in the application, that is, a mixed Class A1/A3. I am therefore of the opinion that policy S6 which relates to restaurants and hot-food takeaways is not relevant in this appeal.

10. 20% of the current use of Caffe Nero is Class A1 use. Whilst in percentage terms this use is considerably less than the Class A3 use, in numerical terms it represents a high number of customers, some 600-800 per week. From the Customer Count Surveys it appears that this number of customers compares favourably with nearby retail (Class A1) units. It therefore seems to me that the retail function of the unit is vibrant and it cannot be said that the current use has resulted in the displacement of the retail function from this primary shopping frontage.

11. The surveys undertaken by the Appellant Company show, among other things, that the present use generates a considerable amount of activity in this part of the High Street. Many customers stated that coming to the coffee shop was their main reason for visiting the High Street. The question whether this was their sole reason for visiting the High Street was not asked, but given the findings of the survey I consider I can reasonably assume that customers to Caffe Nero also visit other shops/services in the town centre. This is particularly likely as the town centre is compact and the appeal premises are in close proximity to the Blighs Meadow development which is described in the Sevenoaks Retails Study prepared for the Council by GVA Grimley in May 2005 as the 'new focal point in the heart of Sevenoaks'.

12. In the Retail Study, Sevenoaks itself is considered to be a vital and viable town centre. It is accepted that shops and services in town centres feed off each other and a use such as the appeal site which generates a large number of customers would, in my opinion, not undermine the retail function of the primary shopping area. This view is also borne out by the Retail Study which says that, in general, coffee shops in town centres are important to attract shoppers and encourage longer stays. When asked to comment on the Caffe Nero use GVA Grimley took the view that 'the proposed use would be unlikely to detract from the current health of the centre'. The evidence I read and heard in the inquiry gave me no reason to disagree with this view.

13. From the street the appearance of the appeal premises is one of a restaurant because of the location of sofas and tables and chairs close to the front of the unit. However, I believe that most people know about establishments such as Caffe Nero and, whatever its appearance, their function as purveyors of coffee and food for consumption on or off the premises is well known. In this respect I do not consider that the appearance of the appeal premises has any adverse impact on its retail function.

14. I therefore conclude that, although the mixed Class A1/A3 does not fully accord with the relevant development plan policies to which I have been referred, the mixed use of the appeal premises would not have an adverse effect on the retail function of the town centre.

Other Matters

15. The Council was concerned that if the appeal was allowed it would set a precedent for other similar applications which it would find difficult to refuse and the cumulative effect of which would result in considerable harm to the retail function of the town centre. I have not been provided with any information as to the likelihood of any similar applications and I take into account that the vacancy rate of units in the town centre is low and that GVA Grimley have advised that 'there is currently a good range of convenience and comparison goods provision in the town centre, there is not, however, a huge choice of coffee shops'. In any event, the mere fact that allowing one appeal may lead to further planning applications is not of itself a reason for refusing planning permission. Each application has to be treated on its own merits.

16. I was referred to a number of decisions relating to other appeals made by the Appellant Company and other similar businesses. These decisions, although in different towns and having different circumstances so far as, for example, location and local policies are concerned, raised similar issues with regard to the vitality and viability of shopping centres. In this respect, I have taken them into account in this appeal.

Conditions

17. Three conditions were suggested and agreed by the Parties. These conditions relate to, for example, the use of the premises as a coffee bar with no primary cooking on the premises and its hours of opening. In reaching the conclusion on the main issue I have taken into account the particular circumstances of this Appellant Company and its business. As the proposed conditions relate to matters that are fundamental to this particular proposal I consider that they are essential. The proposed conditions also meet the tests set out in Circular 11/95 'The Use of Conditions in Planning Permissions'.

Conclusions

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

Formal Decision

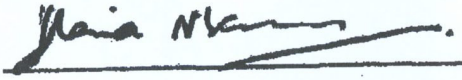
19. I allow the appeal, and grant planning permission for the retention of use as mixed A1/A3 shop at 112 High Street, Sevenoaks, TN13 1UZ in accordance with the terms of the application, Ref SE/05/00096/FUL, dated 12 January 2005 and the plans submitted with it, subject to the following conditions:

    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 2000 hours to 0700 hours and no alcoholic drinks shall be displayed or served on the premises.

INSPECTOR



APPENDIX 5

APPEARANCES

FOR THE APPELLANT COMPANY

Mr J Findlay, of Counsel	Instructed by Brian Madge Ltd, Chartered Town Planner
He called	
Mr B Price	Finance Director, Caffe Nero Group plc
Mr SCT Arnold MA(Cantab) (MA)TP MRTPI MRICS	Managing Partner, The Development Planning Partnership, 21 The Crescent, Bedford, MK40 2RT

FOR THE LOCAL PLANNING AUTHORITY

Mr J Leach	Principal Solicitor, Sevenoaks District Council
He called	
Mr S Copping BA(Hons) DipTP MRTPI	Director, WS Planning, 15 Bell Street, Reigate, RH2 7AD

INTERESTED PERSONS

Cllr P Fleming	Sevenoaks District Council

DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1	-	Letter from Mrs C Beaumont
Document 2	-	Letter from Mr A O'Dowd
Document 3	-	Pedestrian counts, submitted by the Appellant Company
Document 4	-	Extracts from the structure plan, submitted by the Appellant Company
Document 5	-	Copy of planning permission Ref.SE/00/00660/CONVAR and accompanying documents, submitted by the Council

APPENDIX 6

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

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.