

Subject: Enforcement appeal decision relating to 173 Elm Grove

Report by: Claire Upton-Brown, City Development Manager

Ward affected: St Thomas

Key decision (over £250k): No

1. Purpose of report

To advise the Committee of the outcome of the appeal.

2. Recommendations

That the report is noted.

3. Background

Planning permission was refused in February 2012 for a change of use from shop (Class A1) to cafe (Class A3). The reason for refusal related to the use for purposes within Class A3 exceeding the threshold for such uses within the Albert Road and Elm Grove District Centre. As this application had been retrospective and the unauthorised use continued an enforcement notice was served in November 2012.

The grounds of appeal related to whether planning permission should be granted for the use of the premises as a café within Class A3. In considering the appeal the Inspector agreed that “the A3 use of this unit is ... harmful in itself since it undermines the Council’s aims set out in a recently adopted development plan”. However the Inspector identified a number of “further material considerations in this particular case”. The Inspector opined that “the nature of the business, although undoubtedly within the A3 use class, is very much towards the “coffee shop” end of the A3 spectrum” and that “the food element is straightforward, based on microwave heating, a hot beverages machine and simple hobs. There is no fume extraction equipment, and no apparent or suggested need for such equipment”. The inspector also noted “the advertised opening times were 07.30 hrs to 18.00 hrs on Mondays and until 18.30 on other days except Sunday when the business remains closed” such that the use appears “very much consistent with the day time activity of this lively, local, cosmopolitan shopping centre”. The Inspector highlighted the lack of objection and support from Councillor Hancock as the local MP and concluded that he saw “no material conflict with Policy PCS23 or tangible harm to the aims of PCS8 beyond that inherent in the numerical conflict”.

The Inspector considered "that the outcome of upholding this enforcement notice would be more punitive than remedial in its effect" and came to the "very finely balanced overall conclusion that exceptionally and subject to conditions ... permission should be granted".

The appeal was allowed and planning permission granted subject to conditions limiting the opening hours, precluding the preparation food requiring a fume extraction system and restricting customers from using the rear yard.

4. Reasons for recommendations

For information to the Planning Committee

5. Equality impact assessment (EIA)

None.

6. Head of legal services' comments

The report is for information only.

7. Head of finance's comments

The report is for information only.

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Signed by:

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Enforcement file 12/00109/ENF	Planning Services
Inspector's decision notice APP/Z1775/C/12/2189181	Planning Services