



# Appeal Decision

Site visit made on 4 February 2010

**by David Stephenson OBE**  
**BSc(Eng) CEng MICE**

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

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**24 February 2010**

## **Appeal Ref: APP/Y5420/A/09/2114900**

### **513 Green Lanes, London N4 1TA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Pacemanor against the decision of the Council of the London Borough of Haringey.
- The application Ref: HGY/2009/1091, dated 24 June 2009, was approved on 7 August 2009 and planning permission was granted subject to conditions.
- The development permitted is A2 (financial and professional services) uses at ground floor level.
- The conditions in dispute are Nos 1 and 2 which state that:
  1. *Notwithstanding the provision of the Town & Country Planning (Use Classes) Order 1987 the premises shall be used as Class A2 (a & b) (Financial & Professional Services) only and shall not be used for any other purpose including any purpose within Class A2(c) unless approval is obtained to a variation of this condition through the submission of a planning application.*
  2. *The use hereby permitted shall not be operated before 08:00 or after 20:00 hours on Monday to Saturday and before 10:00 or after 17:00 hours on Sundays and Bank Holidays.*
- The reasons given for the conditions are:
  1. *In order to restrict the use of the premises to one compatible with the surrounding area because other uses within the same Use Class or another Use Class are not necessarily considered to be acceptable.*
  2. *This permission is given to facilitate the beneficial use of the premises whilst ensuring that the amenities of adjacent residential properties are not diminished.*

## **Preliminary Matters**

1. The decision notice issued on 7 August 2009 permitted development that was described in the notice as "Removal of condition 2 of planning decision OLD/1979/0372 to permit A2 (financial and professional services) uses at ground floor level" and listed 2 conditions to the consent. It has been confirmed by the Council that the reference in the decision notice is the same as the original permission Ref: HGY/1502/513/1 granted 24 April 1979. Despite the wording of the decision notice I consider that the Council issued a new decision in accordance with s73 of the Town & Country Planning Act 1990 (the Act) permitting A2 (financial and professional services) uses at ground floor level with 2 conditions, as described above in the banner heading. I am dealing with this case as an appeal under s79 of the Act to vary the permission by removing the conditions in dispute.

## **Decision**

2. **I allow the appeal**, and vary the planning permission Ref: HGY/2009/1091 for A2 (financial and professional services) uses at ground floor level at 513 Green Lanes, London N4 1TA granted on 7 August 2009 by the Council of the London Borough of Haringey, by deleting Conditions 1 and 2.

## Main Issues

3. I consider that the main issues in this case are firstly the effect that removing Condition 1 would have on the compatibility of the use of the premises with the surrounding area and secondly whether Condition 2 is reasonable and necessary in the interests of the amenities of adjacent residential properties.

## Reasons

4. When recommending the grant of permission the Council's report is clear, and this is repeated in the Decision Notice, that the removal of the condition in the original 1979 permission would not result in loss of amenity, loss of a commercial unit or adversely affect the vitality of the shopping parade and was not contrary to Policies TCR3 or TCR4 of the Haringey Unitary Development Plan, adopted in 2006 (UDP). These policies both deal with controls on the change of use from Use Class A1 and this does not apply in this case. The justified reasoning to both these policies indicates that A2, and certain other uses, are appropriate uses within town centres.
5. The Council's report referred to concern, from local residents and the Local Authority, regarding the proliferation of betting offices within the immediate locality and the associated adverse impact on local amenity. In order to reflect this concern the report indicated a need to limit the use to Class A2 (a & b) and omit Class A2(c) which includes, but is not exclusive to, betting offices. However, no other evidence on the need for this restriction, or support from any planning policy that deals with betting office use, has been provided by the Council.
6. I have no reason to dispute the analyses of the various uses of premises in the area that have been submitted by interested persons, but permission for use under Class A2, whether with or without Condition 1, would not alter the variety of use classes or the compatibility of that use with the surrounding area in land-use planning terms.
7. The principal objection from interested persons is to the potential use of the premises as a betting office. Although use as a betting office falls within Use Class A2, it is also subject to other controls outside the planning system. Even if there were no restrictions on the use within Class A2 the premises could not be used as a betting office without obtaining a licence or licences under the Gambling Act 2005. DoE Circular 11/95 – *The Use of Conditions in Planning Permissions* advises that a condition which duplicates the effect of other non-planning controls will normally be unnecessary. I observed a number of betting shops in a short distance of the appeal site, and I do not undervalue the concerns that have been raised in this case, but these concerns should properly be addressed by Licensing Authorities when, or if, any licence was applied for. I consider Condition 1 to be unnecessary.
8. Condition 1 would also place restrictions on Class A2 uses preventing any use for other services which are appropriate to provide in a shopping area as allowed for under part (c) of Use Class A2. This has not been justified by any substantive evidence from the Council and I consider it is unreasonable because it is unduly restrictive and overly burdensome to require planning permission for uses within a single use class.
9. I conclude on the first main issue that the removal of Condition 1 would not materially affect the compatibility of the use of the premises with the surrounding area. The condition is unnecessary as any concerns over use of the premises as a betting office could be dealt with under other legislation, and it is unreasonable as it is unduly restrictive.

10. The Council has provided no evidence at all that justifies the reason it has given for imposing Condition 2 which restricts opening hours. There was no such restriction on the 1979 permission, and I consider that uses within Class A2 would not be substantially dissimilar to the use then permitted and should not adversely affect the amenities of adjacent residential properties. Circular 11/95 expects that in considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed, and if it would not, then the condition needs special and precise justification. I consider that there are no sound and clear-cut reasons why this condition should be imposed or retained, or have any variation made to it, and it is therefore not necessary. It could also adversely affect the freedom of owners to operate effectively within Use Class A2 which would be unduly restrictive and it is therefore unreasonable.
11. Much of the objection from interested persons relates to anti-social activities that are alleged to be associated with a betting office, and many are specifically objecting to the issue of a licence which is not a matter for me to deal with. Again these concerns and objections would be better addressed by Licensing Authorities should any application be made for a licence or licences for such an activity. Separate conditions could be imposed on any licence granted were that to be deemed necessary.
12. I conclude on the second issue that Condition 2 is neither reasonable nor necessary to protect the interests of adjacent residential properties.
13. Section 38(6) of the 2004 Planning and Compulsory Purchase Act requires that an appeal is determined in accordance with the development plan unless material considerations indicate otherwise. In this case there is no conflict with the development plan and I consider that the other matters raised do not carry sufficient weight in land-use planning terms to indicate the appeal should be determined otherwise.
14. For the reasons given above, and all other matters raised, I conclude that the appeal should succeed. I will vary the planning permission by deleting both of the disputed conditions.

*David Stephenson*

INSPECTOR