



Appeal Decision

Site visit made on 4 February 2013

by **B.S.Rogers BA(Hons), DipTP, MRTPI**

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

Decision date: 7 February 2013

Appeal Ref: APP/C2708/C/12/2177675
78 High Street, Skipton, BD23 1JJ

- 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 Mrs Tracy Thiery against an enforcement notice issued by Craven District Council.
 - The Council's reference is: 1134/11.
 - The notice was issued on 3 May 2012.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the ground floor of the building on the land from a Class A1 (retail) use to a mixed Class A1/A3 (retail/café) use.
 - The requirement of the notice is to stop using the ground floor of the building on the land for a mixed Class A1/A3 (retail/café) use.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (b)

2. This ground of appeal is that the breach of control alleged in the notice has not occurred as a matter of fact. The planning merits of the alleged use are not matters which I am able to consider under this ground; those would have been matters for a ground (a) appeal, had it been made.
3. Planning permission was granted on 26 July 2007 for the change of use of the first floor of the appeal premises to a café. Planning permission was also granted on 2 July 2009 for the use of the forecourt to Sheep Street as an outdoor seating area associated with the first floor café use. It is my understanding that the authorised use of the ground floor remains as A1 retail. The ground floor of the premises is split into 2 levels and each level has an entrance door and a shop front, one to Sheep Street and one to High Street.
4. I turn first to the café element of the use. On both shop fronts, the business is described as "Tea Rooms". Two tables with associated seating occupy most of the upper level of the ground floor; these are in café use and the appellant states that they are generally used by people who have difficulty gaining access to the first floor café. The shop counters, on which there are glass display cases containing cakes and other confectionary, are on the lower level, together with a coffee machine and a cold drinks dispenser. All of these appear to be in use, at least in part, in connection with the café.

5. To my mind, there is no prominent indication of a primary retail use. At the time of my visit, and in the Council's photographs, there was a small window display in each shop window; this included speciality teas and scones for sale. I also saw 3 displays of speciality teas for sale, 2 at the upper level and 1 at the lower. Included in the small signs on each door, and on the sandwich board advertisement on the Sheep Street forecourt, was an indication that takeaway food is available in addition to food and drink served on the premises. On the shop counter was a bundle of takeaway menus and the blackboard behind the counter showed a takeaway menu. The appellant has explained the lack of a conventional takeaway counter with stocks of readily assembled food, in that all the takeaway food is individually prepared in the kitchen. She also takes orders for takeaways, some of which she delivers in close walking distance.
6. Unfortunately, I have not been provided with any information as to what proportion of the business on the ground floor, by value, is generated by the A1 retail use. That might have provided an indication as to whether the A1 use remains as the primary use. Therefore, from what I have seen and read, my view is that both the A1 and A3 uses exist side by side on the ground floor. Accordingly, the breach of control alleged in the notice has occurred as a matter of fact and the appeal on ground (b) fails.

The appeal on ground (f)

7. The appellant has given no indication as to why the steps required to comply with the notice might be considered excessive. To my mind, the steps do no more than simply address the breach. It would be a matter of fact and degree as to whether the A1 retail use of the ground floor was increased sufficiently for the A3 café use to be considered an incidental use and the appellant might wish to discuss this with the local planning authority. The appeal on ground (f) fails.

B.S. Rogers

Inspector