The planning system and coffee shops: *greater flexibility and opportunity?*

Background

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The planning system has always had difficulty in keeping up with retail trends and social evolution. It was not until 2005 that it formally recognised 'internet cafés', more than ten years after the first one had opened in London. In the meantime, technology had of course moved on and amongst other things, the availability of wi-fi meant the concept was already outdated.

Similarly, the planning system has yet to fully understand coffee shops. We continue to see considerable differences and inconsistent approaches taken by local planning authorities when confronted with proposals to introduce coffee shops in their town centres. Although a significant majority welcome them, others still appear suspicious and resist coffee shops in primary shopping areas because of conflict with their rigid policies.

A café or a shop?

The Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order for short), lies at the heart of this inconsistency. This allocates different land uses or property types to a Use Class, according to the kind of activity taking place in the property. Operators of coffee shops will primarily be concerned with the following Use Classes:

- Use Class A1 Shops
- Use Class A3 Restaurants and Cafés

Retailers selling food and drink for consumption away from the premises fall under Use Class A1 Shops, but where food or drink is consumed within the premises, they are classified under Use Class A3 Restaurants and Cafés.

Coffee shops generally contain a mix of both A1 and A3 activities and do not easily fit within the uses categorised in the Use Classes Order. Accordingly, the classification of a particular coffee shop is to be assessed on a 'case by case' basis, taking account of factors such as the:

- Number of seats in the premises
- Proportion of 'eat in' and 'take away' trade
- Range of food that will be available and the extent of cooking activity
- Opening hours
- Length of time your customers are likely to stay
- Branding and external appearance

This 'case by case' approach requires councils to make a subjective judgement about your particular premises and exactly what goes on inside them.

Why does it matter?

You could be easily forgiven for asking why this technical classification really matters. But firstly, it will determine whether or not you need planning permission. Permission is not needed for a change of use within the same Use Class, but where a new use falls in a different category, planning permission may be required, even if there is no physical works or development.

Secondly, and perhaps more importantly, the Use Class you fall in (or are considered to fall in by the local planning authority) will influence the likelihood of actually getting planning permission, particularly in prime pitches. Although A1 Shop uses are welcomed, planning policies generally seek to limit the proportion of non retail uses (including A3 Restaurant and Café premises) within the primary shopping frontages.

There is great local variation in the form particular policies may take. Some may set a threshold and define a proportion of non retail uses that will be allowed, but others go much further and present an embargo on new 'non retail' uses in prime pitches: if your use doesn't fall strictly under Use Class A1 Shops, you're not allowed in.

The combination of subjectivity over the Use Class of coffee shops and the variety of local policies is a continued cause of inconsistency and uncertainty for operators. We have seen cases where councils have taken very odd decisions. For example, in Bishops Stortford, the Council allowed Costa Coffee to open on the high street, having accepted the benefits of the coffee shop despite its embargo policy. But it then refused permission for Caffè Nero on the opposite side of the road not long afterwards. The same authority allowed Caffè Nero in the town of Hertford... and then went on to refuse permission for Starbucks a short distance away. Similarly, in Rugby, the Council had granted planning permission for Costa Coffee (including outside seating area) in its primary shopping area because it attracted customers, but then refused permission for Caffè Nero, even though surveys showed that it attracted similar numbers, and certainly more than any other shop in the vicinity.

Even for the big chains, coping with the inconsistent planning systems of local councils is not necessarily straightforward.

The issues and arguments

Whilst the objective of these embargo policies (to secure the health of the town centre) may be honourable, they can be blunt tools unable to cope with uses such as coffee shops that don't sit neatly within the Use Classes Order. Moreover, their blind application can prove entirely counterproductive.

Local councils are often suspicious of coffee shops and question the value they bring to the high street. They can be regarded as 'parasites' that distract people away from the shops. A concentration of coffee shops can lead to concerns over the dilution of a centre's shopping function. However, even where there may be a conflict with a particular policy, local planning authorities are required under the Planning Acts to take other factors into account that might still justify the grant of planning permission.

At DPP, we have undertaken a significant amount of research into the role of coffee shops in the high street through our work on behalf of Caffè Nero across the country. This has highlighted some key benefits. Not least it has shown that people regard shopping as a leisure activity; they don't just want to go shopping, they also want coffee shops and other leisure offers in their high streets. Moreover, people want them situated amongst the main retailers and not tucked out of the way in secondary locations. Importantly, it has been demonstrated that coffee shops attract visitors in their own right. When we asked their customers, 68% had specifically planned to visit Caffè Nero that particular day, and 57% visited the coffee shop more than once a week. This shows that coffee shops generate repeat trips to town centres, and 23% of customers surveyed, confirmed that they visited the town centre more often since Caffè Nero had opened. This shows that Caffè Nero actually generates footfall, and positively contributes to the town centre. These themes have also been reflected in survey work presented at planning appeals by the other main operators.

Armed with this kind of research, we have found that the Secretary of State has adopted a pragmatic approach when considering appeals concerning coffee shops in primary locations, and has been persuaded of the benefits that they can bring. Although applications may fail to satisfy the detailed wording of the protective polices adopted by local councils, it has been consistently recognised by appeal inspectors that they do much to support town centres. There is certainly no evidence to suggest they have ever caused harm.

Future policy

There are signs that this more positive approach may start to trickle through in emerging planning policies being prepared by the government. These appear to offer help to coffee shop operators, and it is slowly being recognised that the blind application of an outdated 'protectionist' approach to primary shopping frontages often proves counterproductive, and even damaging to town centres.

Draft national guidance in PPS4 Planning for Prosperous Economies (published in May 2009) tentatively offered a more holistic view. Emerging policy seems to recognise that successful town centres need a good mix of shops and services, and authorities should proactively use the planning process to support the diversification of uses in the town centre. Behavioural changes such as combined leisure and shopping trips are also acknowledged, and authorities are encouraged to adopt more flexible policies. They should also support economic growth and be more responsive to the needs of business. We have been promised by the Government that the national policy covering town centres will be published in its final form by the end of this year.

This introduction of greater flexibility will be increasingly important, although it may take some time to work its way down to policy at a local level. Town centres are facing a variety of challenges, including the effect of internet shopping as well as the current squeeze on consumer spending. If they are to remain vibrant places, local planning authorities must be prepared to think more creatively. If flexibility does indeed filter down to local policies, we may see a more encouraging climate for coffee shops (and other 'non retail' operators). New planning policies may be introduced that are perhaps better able to cope with changing business formats.

We have recently seen this more positive approach in practice, most notably in Epping. When Caffè Nero opened their premises in Epping town centre in 2006, the District Council took enforcement action because the 'non retail' use tipped the balance of their threshold policy. Their policy would not allow more than 30% of the premises in the main shopping frontage to be occupied by uses other than shops, and the introduction of Caffè Nero changed this balance from 29.9% to 31.3%. The Council's enforcement action was upheld on appeal, and also at a High Court challenge. In a rather dramatic change of heart, the Council finally recognised that Caffè Nero did actually benefit their town centre, particularly in these credit crunch times, and invited a new planning application after the High Court challenge. Their application was finally approved at the beginning of October, nearly three years after they opened.

So there is an opportunity for coffee shop owners at the moment to secure stronger trading pitches. With rising vacancies in prime locations, greater potential to secure premises on more preferential terms, and councils willing to take a more flexible approach, it is well worth pushing the boundaries of apparently difficult planning policies. For those operators looking to expand or relocate from existing premises, there may be prime opportunities. And with less competition from national players, there is greater scope for smaller businesses and independents to obtain prime locations and improve their performance.