

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

Other Ref. No.

DACORUM

THE DISTRICT COUNCIL OF .....
IN THE COUNTY OF HERTFORD .....

To Council for Voluntary Service, 48 High Street, HEMEL HEMPSTEAD, Herts.

Messrs. Brown & Merry, 145 Marlowes, HEMEL HEMPSTEAD, Herts.

Use of upper floors as stock and fitting rooms
at 7 Marlowes, Hemel Hempstead.

Brief description and location of proposed development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated 23rd December, 1977, and received with sufficient particulars on 3rd January, 1978, and shown on the plan(s) accompanying such application..

The reasons for the Council's decision to refuse permission for the development are:--

- 1. The proposed development would result in the loss of a satisfactory residential unit.
2. The proposed use would introduce further commercial use into the upper floors of these properties to the detriment of the amenity of the occupiers of neighbouring residential properties.

Dated 16th day of February, 1978.

Signed [Signature]
Designation Director of Technical Services.

## NOTE

- (1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.
- (2) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Whitehall, London, S.W.1.) The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
- (3) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.

A/17/4.10

noted at DCC 26/10



## Department of the Environment

Room 13/20

Toligate House Houkton Street Bristol BS2 9DJ

Telex 449321

Direct line 0272-218870

Switchboard 0272-218811

Messrs Brown and Merry  
41 High Street  
TRING  
Herts  
HP23 5AB

Your reference

PHK/FW/Planning Dept

Our reference

T/APP/5252/A/78/05066/G6

Date

12 OCT 1978

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9  
APPEAL BY THE COUNCIL FOR VOLUNTARY SERVICE  
APPLICATION NO: 4/0001/78

1. I refer to this appeal, which I have been appointed to determine, against the decision of the Dacorum District Council to refuse planning permission for the use of upper floors as stock and fitting rooms at 7 Marlowes, Hemel Hempstead. I have considered the written representations made by you and by the council and also those made by interested persons. I inspected the premises on 2 October 1978.
2. From my inspection of the appeal premises and the surrounding area, and the representations made, I am of the opinion that the decision turns on the questions of the suitability of the premises for use as a residential unit, whether the loss of such a unit would be justified, and what effect the proposed use would be likely to have on the residential amenities of occupants of neighbouring properties.
3. The appeal premises consist of kitchen, bathroom, lavatory and 2 living rooms on the first floor, all in good condition, and 2 bedrooms on the second floor reached via a steep staircase, in one of which maintenance work appeared necessary in the vicinity of a dormer window. There is a separate front door access to the stairway leading to the upper floors, and the first floor rear room has a doorway leading to a wooden staircase from the small rear garden. The latter has a small area of grass and is open, as opposed to the gardens to each side which are largely built over. A wooded and grassed area lies beyond the fence at the rear of the garden.
4. The ground floor shop unit has a centrally placed door with windows to each side. I observed that there were 3 fitting cubicles towards the rear of the shop, which contained racks of clothing, shoes, jewellery and other second-hand items for sale. There were also one or two racks of clothing in the first floor front room. The ground floor had storage for cleaning equipment and a small staff room and lavatory. I noted that times of opening were confined to limited hours on 3 days per week.
5. At the present scale of business it seems to me that the use of the upper floors for stock storage - and indeed for fitting rooms if the 3 cubicles in the shop are considered insufficient - would not have a significantly detrimental effect on the residential amenities of occupants of residential properties. However, the preponderance of upper floor uses along Marlowes in this locality appears to be residential and in my opinion the upper floor accommodation at No. 7 is suitable for residential use. There is undoubtedly more modern accommodation available in the more recently developed parts of the town, but this particular unit is well placed and convenient for the centre and I find no reason to disagree with the view of the council concerning the retention of this unit of residential accommodation as part of the housing stock in the town.

6. I have considered all the other matters raised, including an earlier office use of the premises, the appeal decision concerning 33 Marlowes, the charitable aims of your client and the demand for the service it offers in these premises, but in my opinion they are not strong enough to outweigh the considerations that have led me to my decision.

7. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

I am Gentlemen  
Your obedient Servant



A. H. GIBB, MBIM  
Inspector

Under the provisions of section 245 of the Town and Country Planning Act 1971 a person who is aggrieved by the decision given in the accompanying letter may challenge its validity by an application made to the High Court within 6 weeks from the date when the decision is given. (This procedure applies both to decisions of the Secretary of State and to decisions given by an Inspector to whom an appeal has been transferred under paragraph 1(1) of Schedule 9 to the Town and Country Planning Act 1971.)

The grounds upon which an application may be made to the Court are:-

1. that the decision is not within the powers of the Act (that is the Secretary of State or Inspector, as the case may be, has exceeded his powers); or
2. that any of the relevant requirements have not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

"The relevant requirements" are defined in section 245 of the Act: they are the requirements of that Act and the Tribunals and Inquiries Act 1971 or any enactment replaced thereby, and the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts. These include the Town and Country Planning (Inquiries Procedure) Rules 1974 (SI 1974 No. 419), which relate to the procedure on cases dealt with by the Secretary of State, and the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1974 (SI 1974 No. 420), which relate to the procedure on appeals transferred to Inspectors.

A person who thinks he may have grounds for challenging the decision should seek legal advice before taking any action.

APPEAL BY THE COUNCIL FOR VOLUNTARY SERVICE UNDER SECTION 36  
TOWN AND COUNTRY PLANNING ACTS 1971-77 AGAINST THE DECISION  
OF THE DACORUM DISTRICT COUNCIL TO REFUSE PLANNING PERMISSION  
FOR THE CHANGE OF USE FROM RESIDENTIAL TO RETAIL (STOCK &  
FITTING ROOMS) OF UPPER FLOORS AT 7 MARLOWES, HEMEL HEMPSTEAD,  
HERTFORDSHIRE.

---

WRITTEN REPRESENTATIONS OF DACORUM DISTRICT COUNCIL

---

LOCAL PLANNING AUTHORITY'S REFERENCE : 4/0001/78  
DEPARTMENT OF THE ENVIRONMENT'S REFERENCE: APP/5252/A/78/05066

---

1. APPEAL SITE

The premises the subject of the present appeal form the first floor of the 3-storey building known as No. 7 Marlowes. The relationship of the building to adjoining and nearby uses is shown on the attached plan. The frontage to the east of Marlowes is allocated for shopping purposes within a residential area on the approved County Development Plan.

2. PLANNING APPLICATIONS

The application the subject of the present appeal was submitted in January 1978 and permission was refused in February 1978 for the following reasons:-

1. The proposed development would result in the loss of a satisfactory residential unit.
2. The proposed use would introduce further commercial use into the upper floors of these properties to the detriment of the amenity of the occupiers of neighbouring residential properties.

There had previously been 2 applications relating to No. 7 Marlowes, namely :-

- (i) The conversion of the roof space to form 2 bedrooms - permitted in 1953 and,
- (ii) The use of the first and second floors as offices for the Hemel Hempstead Conservative Association - permitted in 1956. This use would appear to have ceased in 1963 following which the upper floors reverted to residential use without the grant of permission.

3. GROUND OF APPEAL.

Replying to these in the same order :-

- (i) This statement is not disputed, although it is unrelated to the planning merits involved
- (ii) Many shops have become available in recent years. Details of financial terms are not known to the Local Planning Authority, but it is not considered that it would be appropriate to take this into account.
- (iii) Whilst the ground floor frontage is in retail or office use it can be seen from the land use plan that the upper floors are predominantly in residential use.

Office use of upper floors occurs only at 5 Marlowes (employment agency) and 23/5 Marlowes (bank). A temporary planning permission was granted recently on appeal at No. 33 Marlowes (estate agency). In terms of residential amenities it is contended that residential use is likely to be a more satisfactory neighbour for nearby properties in terms of noise, disturbance and upkeep of gardens.

- (iv) Both in terms of opinion and fact the Local Planning Authority would question the basis of the appeal decision specified.

A further appeal has been lodged in respect of the refusal of a subsequent application for office use of the upper floors of No. 11 Marlowes and on this occasion the Local Planning Authority has sought a public inquiry. Many properties, particularly in the older parts of towns and villages in the District and, indeed, more generally in the country, possess some disadvantages. It is not considered however that the disadvantages of No. 33 Marlowes justified the type of comment made by the inspector in this decision, which should not, as yet, be taken as a precedent. It is relevant to note that one of the main factors apparently weighing heavily with the inspector was his finding that the flat above No. 33 Marlowes was constructed for occupation with the ground floor flat and had access via a private stairway through the shop premises. This is not so, neither does it apply to No. 7 nor most of the parade properties fronting Marlowes which were constructed with independent access.

- (v) Whilst the factual statement in this paragraph is correct, the conclusions drawn from it are not accepted. Circumstances have changed in the intervening 22 years between the two decisions which are being compared. Hemel Hempstead today lies in an area where there is considerable housing pressure yet in the interests of the physical environment of the area and in accordance with regional strategy the allocation of land for new housing development is considerably limited. The loss of residential accommodation within existing towns can only lead to increased pressure on their periphery to the possible detriment of the green belt and/or housing situation in the area. In 1956 the Town was being expanded rapidly under the provisions of the New Towns Act.

4. SUMMARY -

In the light of housing pressure in the area the local planning authority considers that the retention of existing residential accommodation is justified. It is also considered that adequate provision has been made for shopping facilities in the town and that other alternatives should be pursued by the appellants which would not result in the loss of satisfactory residential accommodation. This could take the form of limited extension to the property or finding other larger premises.

T.4/JJJ/

22nd August, 1978

Office use of upper floors occurs only at 5 Marlowes (employment agency) and 23/5 Marlowes (bank). A temporary planning permission was granted recently on appeal at No. 33 Marlowes (estate agency). In terms of residential amenities it is contended that residential use is likely to be a more satisfactory neighbour for nearby properties in terms of noise, disturbance and upkeep of gardens.

- (iv) Both in terms of opinion and fact the Local Planning Authority would question the basis of the appeal decision specified.

A further appeal has been lodged in respect of the refusal of a subsequent application for office use of the upper floors of No. 11 Marlowes and on this occasion the Local Planning Authority has sought a public inquiry. Many properties, particularly in the older parts of towns and villages in the District and, indeed, more generally in the country, possess some disadvantages. It is not considered however that the disadvantages of No. 33 Marlowes justified the type of comment made by the inspector in this decision, which should not, as yet, be taken as a precedent. It is relevant to note that one of the main factors apparently weighing heavily with the inspector was his finding that the flat above No. 33 Marlowes was constructed for occupation with the ground floor flat and had access via a private stairway through the shop premises. This is not so, neither does it apply to No. 7 nor most of the parade properties fronting Marlowes which were constructed with independent access.

- (v) Whilst the factual statement in this paragraph is correct, the conclusions drawn from it are not accepted. Circumstances have changed in the intervening 22 years between the two decisions which are being compared. Hemel Hempstead today lies in an area where there is considerable housing pressure yet in the interests of the physical environment of the area and in accordance with regional strategy the allocation of land for new housing development is considerably limited. The loss of residential accommodation within existing towns can only lead to increased pressure on their periphery to the possible detriment of the green belt and/or housing situation in the area. In 1956 the Town was being expanded rapidly under the provisions of the New Towns Act.

4. SUMMARY -

In the light of housing pressure in the area the local planning authority considers that the retention of existing residential accommodation is justified. It is also considered that adequate provision has been made for shopping facilities in the town and that other alternatives should be pursued by the appellants which would not result in the loss of satisfactory residential accommodation. This could take the form of limited extension to the property or finding other larger premises.

T.4/JJJ/

22nd August, 1978



APPEAL BY THE COUNCIL FOR VOLUNTARY SERVICE UNDER SECTION 36  
TOWN AND COUNTRY PLANNING ACTS 1971-77 AGAINST THE DECISION  
OF THE DACORUM DISTRICT COUNCIL TO REFUSE PLANNING PERMISSION  
FOR THE CHANGE OF USE FROM RESIDENTIAL TO RETAIL (STOCK &  
FITTING ROOMS) OF UPPER FLOORS AT 7 MARLOWES, HEMEL HEMPSTEAD,  
HERTFORDSHIRE.

---

WRITTEN REPRESENTATIONS OF DACORUM DISTRICT COUNCIL

---

LOCAL PLANNING AUTHORITY'S REFERENCE : 4/0001/78  
DEPARTMENT OF THE ENVIRONMENT'S REFERENCE: APP/5252/A/78/05066

---

1. APPEAL SITE

The premises the subject of the present appeal form the first floor of the 3-storey building known as No. 7 Marlowes. The relationship of the building to adjoining and nearby uses is shown on the attached plan. The frontage to the east of Marlowes is allocated for shopping purposes within a residential area on the approved County Development Plan.

2. PLANNING APPLICATIONS

The application the subject of the present appeal was submitted in January 1978 and permission was refused in February 1978 for the following reasons:-

1. The proposed development would result in the loss of a satisfactory residential unit.
2. The proposed use would introduce further commercial use into the upper floors of these properties to the detriment of the amenity of the occupiers of neighbouring residential properties.

There had previously been 2 applications relating to No. 7 Marlowes, namely :-

- (i) The conversion of the roof space to form 2 bedrooms - permitted in 1953 and,
- (ii) The use of the first and second floors as offices for the Hemel Hempstead Conservative Association - permitted in 1956. This use would appear to have ceased in 1963 following which the upper floors reverted to residential use without the grant of permission.

3.  GROUNDS OF APPEAL.

Replying to these in the same order :-

- (i) This statement is not disputed, although it is unrelated to the planning merits involved
- (ii) Many shops have become available in recent years. Details of financial terms are not known to the Local Planning Authority, but it is not considered that it would be appropriate to take this into account.
- (iii) Whilst the ground floor frontage is in retail or office use it can be seen from the land use plan that the upper floors are predominantly in residential use.