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27 OCT 1980

Council Ref: 409/4/0065/80

4/0616/80E

Messrs Swift Cars
 49 Townsend
 HEMEL HEMPSTEAD
 Herts

On reference
 T/APP/5252/G/80/1597/G4
 and T/APP/5252/A/80/4017/G4
 Date

24 OCT 1980

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND 36 AND SCHEDULE 9
 LAND AND BUILDINGS AT THE REAR OF 19 MARLOWES, HEMEL HEMPSTEAD

1. I refer to the appeals, which I have been appointed to determine, against an enforcement notice served by the Dacorum District Council, and against a refusal of planning permission by that Council, concerning the above-mentioned land and buildings. I held an inquiry into the appeals on Tuesday 30 September 1980.

2. a. The date of the notice is 2 April 1980.

b. The breach of planning control alleged in the notice is the making of a material change of use to a use for the purpose of an office and radio communications centre and all other purposes in connection with operating a private hire motor vehicle business.

c. The requirements of the notice are to discontinue the use of the said land and building for the purpose of an office and radio communications centre and for all other purposes in connection with a private hire motor vehicle business.

d. The period for compliance with the notice is one month.

e. The appeal was made on grounds 88(1)(a).

3. The development for which planning permission was refused is the use of a building as a private car hire office.

4. The evidence was not taken on oath.

SUMMARY OF THE DECISION

5. The enforcement notice is being upheld and planning permission is not being granted.

THE SITE AND SURROUNDINGS

6. The western side of Marlowes at the northern end of Hemel Hempstead town centre is in shopping use with residential accommodation over. The appeal site

is a building measuring some 23 ft x 20 ft x 9 ft 6 ins at the rear of No 19 Marlowes and is in use as an office in connection with a private car hire (taxi) business. Within the building there is a radio communications transmitter/receiver and washing and toilet facilities. There is also a bed in a partitioned room.

7. The appeal building fronts a passageway serving the rear of ground floor commercial premises and upper floor dwellings between Nos 7-29 Marlowes. Access to this passageway is obtained through an alley between Nos 19 and 21 Marlowes.

8. There are double yellow line carriageway markings along the section of highway fronting No 19 but further to the south on-street parking is permitted subject to limited period parking between 0830-1830.

THE CASE FOR MESSRS SWIFT CARS

9. You were at one time interested in the property No 17 Alexandra Road, just to the east of Marlowes, and in fact you made a planning application, which was approved, for a change of use of that property to use as an office in connection with a private car hire business. In the event someone else stepped in and bought No 17 but the foregoing illustrates that you were aware of the need for planning permission in respect of your present use of the appeal premises. You nevertheless commenced the present use and one of the objects of the present appeal is to bring about a test case because you believe that the Dacorum District Council apply planning control more rigidly in respect of your type of business than they would if for example, an application were made in respect of a use as a grocer's shop.

10. You accept that a Stop Notice in respect of your use was served on 3 April 1980 which became effective on 14 April 1980. Successful action was taken against you in the Magistrates Court by the council but you are nevertheless continuing the use.

11. You operate 9 cars and you give a service which extends over 24 hours a day 7 days a week. This you believe to be a necessary service and one for which there is a demand in Hemel Hempstead. If a permission were granted which limited the hours of opening of your business you could not accept an earlier closing time than 0230.

12. You do not accept that your activities result in an undue loss of amenity for local residents and you point to the fact that, near to No 19, there is an Indian Restaurant within the parade of shops which stays open until midnight and also a Chinese Take-Away which is open until the same hour. There is an estate agent who is open until 1800 on 7 days of the week and a Launderette also open 7 days a week until 2000. Marlowes is a main thoroughfare with a 'bus stop outside No 19. You are willing to do all that is reasonable to live in peace with your neighbours but a suggestion that you should close at 1800 is unreasonable. One of the objectors who operates a newsagents business commences at 0530 and there may well be those who would find objection in this.

13. As regards on-street parking there are double yellow lines outside No 19 which prohibit parking on this particular section of Marlowes. Further to the south on-street parking is permitted and you have as much right to avail yourself of this space as any other member of the public. Also there are car parks within the vicinity of your premises albeit not within the 50 yard distance you mentioned in your ground of appeal.

THE CASE FOR THE COUNCIL

14. On the approved County Development Plan the appeal building lies within an area allocated primarily for residential purposes with shopping development on the Marlowes frontage. The site was unaffected by the proposals of the Town Centre Map adopted by the Local Planning Authority in 1975.

15. It is accepted that the use of a number of premises in this part of Marlowes and the volume of vehicular and pedestrian movements result in a loss of residential amenity in the locality. This is recognised in the Development Plan by the superimposition "shopping frontage" on the residential allocation. Nevertheless that reduction in amenity is mainly limited to the front elevation of residential premises whereas the appeal premises are at the rear of such accommodation and result in activity and noise where residents might reasonably expect relative quiet and privacy.

16. The use objected to has been in operation since January 1980 and thus local residents have had an opportunity to judge the impact for themselves. There are letters from local residents and the occupiers of business premises which detail the loss of amenity resulting from the appellants' business activity. Additionally the branch manager of NSS Newsagents Retail Ltd with premises at No 21 Marlowes lives over those premises and has done so since April 1979. He found no problems until the appellants' business use began in January 1980 but subsequent to this date the resulting noise and disturbance at all hours of the night has been such that he has had to move out of a bedroom which overlooked the appeal premises. In order to operate the newsagents business he has to get up at 0445 in order to open the shop at 0530. He therefore goes to bed at about 2130 but he finds that he is able to get little sleep due to the noise of drivers arriving and leaving at all hours of the night and the noise from communications radios in the cars which are parked outside Nos 19-21 Marlowes, despite the double yellow lines. He has been woken several times because members of the public think the parked taxis are his. At one time there was a gate on the street frontage of the alley between Nos 19-21 which gave some security as regards the rear access serving Nos 7-29 but, as the taxi drivers walked through they let it slam such that the noise became intolerable and the gate was removed. The alley is now used as a urinal by late night drunks. He is certain that customers of the appellants do call at the premises and he would instance those who come from the local disco which closes at 0200. This latter fact is doubtless why the appellants do not wish to close until 0230. Whenever he has remonstrated with Mr Sturgess, the owner of the taxi business he has suffered abuse and bad language. The only way in which the taxi business would possibly be acceptable to him would be if it ceased business at 1800. On the evidence of past performance he is unable to accept whatever assurances the appellants may give regarding the future conduct of their business. Another local business occupier who also lives over her premises at No 17A Marlowes confirms what has been said above.

17. Turning now to the matter of parking of the appellants cars, they do not have the use of public car parks within the 50 yard distance suggested. The nearest car park is at Alexandra Road some 100 yds away in a straight line but nearer to 200 yds via footpath and road. This is a temporary car park, the future use of which has not yet been determined. Other car parks within the vicinity are private in association with the Dacorum College and Civic Centre.

18. It may well be possible theoretically for a taxi office to operate without the need for clients or drivers to visit that office but it seems unlikely in

practice and is not the case with the appeal premises according to witnesses. The result is a demand upon the limited on-street parking facilities which was primarily intended for shop customers along this part of Marlowes.

INSPECTOR'S CONCLUSIONS

19. In considering the point you make concerning a "test case" the first principle of development control is that every application shall be treated on its merits and thus, although a consistency of decision is desirable, it is rarely that the particular circumstances leading to one decision will be identical with another. It is factual however that different considerations are applicable to different forms of development and this is certainly true of the example you quote, ie an application for a normal shopping use with presumably normal shopping hours of opening which contrasts with your taxi office use which is operated 24 hours a day over 7 days a week. It cannot be expected that the peace and quiet normally associated with a residential estate will be enjoyed by occupiers who live over a shopping parade fronting a main thoroughfare and where, which is by no means unusual, there are restaurants or the like which stay open until midnight. On the other hand such occupiers have the right to expect that they will not suffer noise and disturbance throughout the whole of the night and at weekends, particularly when this occurs at the rear of the premises close to bedrooms. I accept the evidence of witnesses that your activities have caused an unreasonable loss of amenity as regards noise and disturbance and there are no planning conditions which would be acceptable to you on business grounds which would make the development acceptable.

20. As regards the lack of parking space under your own control I accept of course that you have the same right as any other member of the public to use that on-street parking space which is available but it would be unfortunate if, as I believe the case to be, that you should appropriate the "lions share" of a facility which was intended primarily for shoppers. I have taken into account the other matters raised but they are insufficient to outweigh the considerations leading to my decisions.

21. I have looked at the requirements of the enforcement notice which are the minimum to secure compliance and I have also looked at the period for compliance which, although somewhat short is justified by the loss of amenity which has already been suffered by local residents over a 9 month period.

FORMAL DECISION

22. For the above reasons and in exercise of the powers transferred to me I hereby dismiss your appeal and uphold the enforcement notice. I also refuse to grant planning permission on the application deemed to have been made under Section 88(7) of the 1971 Act and further, I dismiss your appeal under Section 36 of the same Act.

RIGHT OF APPEAL AGAINST THE DECISION

23. This letter is issued as a determination of the appeals before me. Particulars of the rights of appeal to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

T. Cleaver

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Inspector.

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