



# The Planning Inspectorate

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AB

Anthony R Hambleton Esq ARICS  
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PAIGNTON  
Devon  
TQ4 6HN

Your Ref:  
ARH/PG  
Our Ref:  
T/APP/A1910/A/98/296840/P7  
Date:

23 SEP 1998

Dear Sir

## TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 78 AND SCHEDULE 6 APPEAL BY MR AYHAN - OFCOCO LIMITED APPLICATION NO:- 4/00092/98/FUL

1. As you know, I have been appointed by the Secretary of State for the Environment, Transport and the Regions to determine the above appeal. This is against the decision of the Dacorum Borough Council to refuse planning permission for the change of use of No 35A High Street, Tring from a retail shop (Class A1) to a hot food takeaway and cafe (Class A3). I conducted a Hearing into the appeal on 16 September 1998. At the Hearing an application was made on behalf of the appellant for an award of costs against the Dacorum Borough Council. This is the subject of a separate letter.

2. The appeal premises comprise a vacant ground floor shop unit lying on the north side of Tring High Street, in the heart of the town centre. To the west is a travel agent and to the east is 'The Bell' public house with an archway leading into its rear car parking area. Immediately behind the site is a single storey outbuilding for which planning permission has been obtained for its conversion to a retail shop and, beyond that, the Dolphin Square shopping centre. This development includes a small supermarket next to a large public car park. The Square has a pedestrian access to High Street via a passageway emerging on to the street just west of the appeal site. On the first floor of the appeal building is a flat, currently occupied.

3. At the start of the Hearing I was able to confirm with the parties that the Council raised no objection to the development in terms of shopping policy, environmental considerations or the nature of the use itself in this particular location, as a principle. With this in mind, and from all that I have heard, seen and read of this matter, I consider the main issue upon which the decision should turn to be whether or not the use of these premises in the manner proposed would unacceptably detract from the prevailing conditions of highway and pedestrian safety and convenience in Tring High Street with the possibility of customer parking thereon.

4. Just before the application the subject of this appeal was considered (and refused) by the Council on 14 May 1998, you submitted to them an amended plan which showed the provision of two car parking spaces on land to the rear of the site, behind 'The Bell' public house car park. Whilst the appellant does not own this land, an appropriate statutory notice was served on the owner. I confirmed at the Hearing that the Council accepted the enlarged site as being the one



to which the application related and that their decision was made on this basis. In these circumstances I shall consider the appeal as relating to a proposal for a site which includes the additional land to the rear whereon two cars could be parked.

5. Whilst the site lies within the Tring Conservation Area, neither the Council nor the appellant consider that fact to be a material consideration in this case in terms of the preservation or enhancement of the Area. There is however a statutory duty contained within the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires me to have regard to such considerations and the special character of such Areas. I shall therefore take account of the location of the site in this context together with the relevant advice contained in Planning Policy Guidance: *Planning and the Historic Environment* (PPG15).

6. The proposed use of the site is as a hot food takeaway shop and a cafe. The proposed floor plan shows a total of 3 tables for customers with some 12 seats. I was able to confirm with you at the Hearing that your client envisages that the split between the takeaway and the cafe elements of the use would be roughly 50/50 in terms of customer numbers and turnover. You expect up to five staff to be engaged in the enterprise, with two or three of those being part-time. Most of the trade your client anticipates would be conducted during the evenings when the streets are quieter and more space would be available in the nearby public car parks. You accept that some control over the hours during which the use could operate would be desirable and appropriate.

7. The statutory development plan comprises the County Structure Plan together with the adopted Local Plan of April 1995. As a general point, a number of policies within these Plans are supportive to a broad range of commercial uses being located within town centres such as Tring. Local Plan policies 34 and 38 are particularly important in this context. The Council have raised no objections to the proposal in terms of shopping policy *per se* and I have afforded weight to these policies in so far as the implementation of this proposal would mean that a long-term vacant shop unit would be brought back into a viable commercial use thus adding life and vitality to the High Street which, at the moment, is not present in this particular location.

8. Of greatest relevance to the main issue in this case is, I consider, Local Plan policy 54. This states that new development proposals will be expected to meet the car parking standards set out in the Environmental Guidelines. The Council have recently decided to adopt the car parking standards promoted by the Technical Chief Officers Association for the County and whilst these are slightly different in some respects to those contained within the Guidelines, I calculate that in this case the alternative requirements of the two standards are about the same. In any event, at the Hearing a figure of 3 customer spaces was advanced by the Council as being the necessary number to comply with either standard and this was accepted.

9. It was also agreed that the standards should be interpreted flexibly and that the staff parking requirement contained in the standard could be met quite satisfactorily in any of the town centre car parks. In other words, and to summarise this point, it is the view of the Council that 3 car parking spaces should be available on-site to satisfy customer needs (whether takeaway or cafe) and that anything less than this would be in breach of Local Plan policy 54. On behalf of the appellant it was argued that even if these spaces were deemed to be an essential requirement, then at least two of them could be provided in a position very close to the site with appropriate signs being displayed to draw customers' attention to them.

10. Since the opening of the Tring by-pass, the A41 (High Street) through Tring has been de-trunked and traffic volumes have decreased considerably. Nevertheless, the street still carries traffic seeking access to the town centre and its environs and it is a bus route. Various traffic calming measures have been carried out and the average speed of the vehicles struck me as being quite low. Just outside the appeal site is a pedestrian crossing with its attendant zig-zag road markings denoting the restricted waiting/stopping zone. I agree with the point made by you that even for the very briefest period it is unlikely (but not impossible) that any driver would park his vehicle within this zone. Within the vicinity of the site, and for some distance in each direction, double-yellow lines are present on each side of the High Street demarking the 'No-waiting at any time' zone. The carriageway itself is quite narrow and if a vehicle were to stop anywhere along its length close to the appeal site, then one lane of the road would be blocked, forcing moving vehicles to wait until the opposing traffic lane was clear and the obstruction could be passed.

11. You take the view that the physical restrictions of the High Street together with the parking/waiting Regulations in place are such powerful deterrents to the stopping of vehicles even for the shortest of times, that it would be most unlikely that customers to the appeal premises would be tempted to park on the road. In practice customers would walk or take public transport or, if in cars, they would be able to use the spaces provided to the rear of the public house. Failing that there are several (free) public car parks nearby which have substantial available capacity during the evenings when demand from the use would be at its greatest.

12. On the main issue, I take the view that a use of this nature is bound to generate a substantial number of customers who would arrive and depart by car. Whilst the cafe customers would almost certainly park their vehicles in one of the nearby car parks as their length of stay in the premises would be such that to park illegally would attract attention and possible enforcement of the Regulations, the same cannot be said for takeaway clients. In such instances, orders for food might well be telephoned ahead and the customer would only have to collect and pay for the food. Whilst this might usually take only a few minutes, delays could occur (for instance during busy/peak periods) and what should have been a wait of perhaps two or three minutes might become substantially more.

13. Customers for the takeaway facility would be directed by signs, you say, to the parking spaces you would provide at the rear of 'The Bell' public house. To my mind there are several problems with this expectation. Firstly, the signs you propose (probably on the shop-window) are unlikely to be readily apparent or even visible at all until *after* the customers have parked their vehicles, especially after dark. Passing motorists would have great difficulty in seeing such signs unless they were illuminated and very large. I do not consider this to be a realistic option. Secondly, the spaces themselves are some distance from the premises involving a walk of almost 100 metres across a busy public house car park or by the much longer route using Church Yard. Human nature being what it is, such an exercise would be likely to prove a strong deterrent.

14. Thirdly, and although I accept that it might theoretically be possible to provide these spaces in the area shown, their general accessibility and availability is questionable. To approach the spaces through 'The Bell' public house car park would be both intimidating and, at times, unlikely to be possible physically. At my site visit I noted that the way in which the vehicles were parked in the public house car park (at lunchtime) effectively blocked off access to the spaces you propose as being available to your client's customers. To approach them via Church Yard would be a tortuous undertaking involving crossing other parking areas. Fourthly, I have considerable

doubts as to whether the spaces in question would remain available at all times. Their location is one within a general parking area used by many businesses. Enforcement would be virtually impossible in terms of non-authorised parking and in reality, they are likely to be subsumed within the general 'available' parking area for the public house and of that of other nearby businesses.

15. Finally, the spaces are in an unlit area away from the general area of light and activity closer to the High Street. They would be very unattractive for security reasons to certain people. For all of these reasons, I conclude that the parking spaces you propose are most unlikely to be used by customers collecting food and that, in practice, some illegal parking in High Street would be highly probable. For the same reasons, I conclude that the proposal would constitute a form of development in breach of Local Plan policy 54 as the spaces are not, in practical terms, 'on-site'.

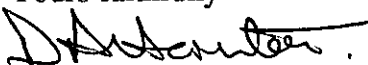
16. Having reached that conclusion, I shall consider the implications of such an eventuality. I agree with you that the physical constraints of the High Street would, in themselves, act in some measure as a deterrent to casual, short term parking activity. Nevertheless, such a prospect cannot be discounted, in my opinion, and in the absence of any practical and attractive alternatives, the risk that a degree of illegal parking would take place is a high one. I have noted your representations in relation to the comparability of the proposed use with the use of the cash machines which are situated close to the site and the fact that the Council have permitted them. That may be so but precedent is an issue which cannot be overriding in this context as to allow this appeal on that basis would only serve to make matters even worse than they are now.

17. I consider that in practice this use would be certain to encourage cars to wait in the High Street whilst takeaway customers visited the appeal premises. The road is quite narrow and such activity would be bound to seriously impede traffic flows. It is also possible that parking would take place on the pavements or within the safeguarded area of the pedestrian crossing. These practices would be so harmful to the interests of pedestrian safety that, I conclude, the development should not take place for these reasons. In my estimation, uses of this nature are bound to attract some instances of dangerous and inconsiderate parking from time to time. The prospect of being prosecuted is an insufficient deterrent and people are often prepared to take that risk, particularly when the weather is inclement and during the evening. To encourage such activity, as I believe this use would do, would in my judgement be unacceptable in the circumstances of this case. I reach this conclusion having regard to the characteristics of the High Street as I have already described them and the serious risks to highway safety and the impediment to the free flow of traffic which I consider would arise if this scheme went ahead.

18. I have taken all the other matters raised by the parties fully into account. These include the various references to Government policy and the other planning decisions reached both in Tring and elsewhere. Nothing however is as cogent as my conclusions above and the reasons for them.

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

Yours faithfully



D A HARMSTON JP FRICS DipTP MRTPI  
Inspector

**APPEARANCES, DOCUMENTS AND PLAN**

**FOR THE APPELLANT**

Mr A R Hambleton ARICS - Agent for the Appellant of 14 Brunel Road,  
Broadsands, Paignton, Devon TQ4 6HN

**FOR DACORUM BOROUGH COUNCIL**

Miss F M A Moloney - Senior Planning Officer,  
BA(Hons) DUPI MRTPI Dacorum Borough Council

Mr G A Speller BEng(Hons) - Senior Engineer, Highways Agency,  
Dacorum Borough Council

**DOCUMENTS**

Document 1 - List of persons present at the Hearing

Document 2 - Letter of notification of the Hearing, with  
circulation list

Document 3 - Extracts from the Highways Act 1980, the Highway  
Code and other Regulations regarding parking and  
waiting controls, zebra crossings etc

**PLAN**

Plan A - Plan of the planning application curtilage to  
'The Bell' public house



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Your Ref:  
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Our Ref:  
T/APP/A1910/A/98/296840/P7  
Date:

23 SEP 1998

**TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND SCHEDULE 6  
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)  
APPEAL BY MR AYHAN - OFCOCO LIMITED  
APPLICATION FOR COSTS BY MR AYHAN - OFCOCO LIMITED**

1. I refer to your application for an award of costs against the Dacorum Borough Council made at the Hearing on 16 September 1998. The Hearing was in connection with an appeal relating to an application for the change of use of No 35A High Street, Tring from a retail shop (Class A1) to a hot food takeaway and cafe (Class A3). A copy of my decision letter is enclosed.
2. In support of your application, you referred to Annex 3 to Circular 8/93 and paragraphs 7 and 8 thereto. In your view the decision of the Council to refuse the application was unreasonable for four main reasons. Firstly, the decision was contrary to the terms of a policy contained within the adopted Local Plan. Secondly, the requirements of the policy in relation to the provision of car parking spaces could be satisfied quite satisfactorily with the availability of spaces near to the appeal site which the appellant had demonstrated that he could supply.
3. Thirdly, public car parking spaces exist in Tring town centre which are available for the use. Fourthly, other developments (such as the installation of cash machines in banks) have been carried out within the vicinity of the appeal site with planning permission. A precedent has therefore been set for uses which are likely to attract waiting vehicles on the public highway and the Council acted unreasonably in refusing permission for the appeal development.
4. In the light of the above, the appellant has been forced to pursue his proposals to appeal. The decision was so unreasonable in the terms of paragraph 8 to Annex 3 of Circular 8/93 that he has incurred the unnecessary expenses of the proceedings. The Council have conceded that, in hindsight, at least one of the planning permissions they have granted in Tring High Street in recent years was a mistake. Such inconsistency is no fault of the appellant and his position should not have been prejudiced as a result. The highway objection to the proposal was raised by the Council very late in the day - about two weeks before the application was refused. Up until then the appellant had been confident of its success and the Council had acted unreasonably in bringing forward an issue which had hitherto gone unmentioned.
5. In response, the Council stated that the decision to refuse the appeal application was fully in accord with the relevant policies of the adopted Local Plan. Policy 54 thereto requires all



new development to provide for its own parking requirements on site, in accordance with the relevant standards. Even if the two spaces which the appellant has claimed are available for the use were provided on the site itself, the standard would still not be met. For these reasons there is an obvious breach of the policy contained within this proposal. The availability of spaces in the public car parks in Tring is not a factor which would satisfy the policy.

6. Whilst the Council accept that the permissions granted for cash dispensers in Tring High Street were regrettable, at least one of these decisions was taken some time ago under a different policy background. The consultation arrangements in dealing with planning applications has also changed recently with the creation of the Highways Agency within the Council. Should the proposed cash dispensers be applied for now, it is highly unlikely that permission for them would be granted. As to the matter of precedent generally, other appeal decisions demonstrate that the Council have acted perfectly reasonably in this case in refusing the application. The 'late' objection to the application on car parking grounds was perfectly reasonable as was demonstrated by the fact that the appellant had sufficient time to attempt to address the issue.

7. I have dealt with this application for costs in accordance with Circular 8/93. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expenditure unnecessarily.

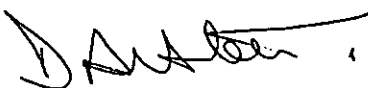
8. I consider that the Council have acted reasonably in refusing planning permission in this case. The adopted Local Plan at policy 54 clearly seeks new development to comply with the relevant car parking standard and this was not achieved either numerically or on site. The fact that space may exist in nearby public car parks does not satisfy the policy and, against this background, the Council cannot be held to have acted unreasonably in refusing the application.

9. The issue of precedent is not binding. The fact that permission has been given in the past for a different form of development on another site cannot mean that the Council has acted unreasonably in refusing this application especially when circumstances have changed in the meantime. The manner in which the application was dealt with prior to the Council's decision is not a matter in respect of which an award of costs would be appropriate.

10. In any event, the fact that there was adequate time to respond to the Council's objections on car parking grounds suggests that they did not behave unreasonably in the way you described. Had you required more time to consider their objections more fully, it was open to you to have requested a deferment to the Committee's consideration and decision. Taking all these matters into account, I conclude that your application for an award of costs is not justified.

11. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Mr Ayhan (Ofcoco Limited) for an award of costs against Dacorum Borough Council.

Yours faithfully



D A HARMSTON JP FRICS DipTP MRTPI  
Inspector



# PLANNING

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Herts HP1 1HH

MR A R HAMBLETON  
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Applicant:  
MR AYHAN  
OFCOCO LTD  
UNIT 5 59/61 SUTHERLAND ROAD  
WALTHAMSTOW  
E17 6BC

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/00092/98/FUL

35A, HIGH STREET, TRING, HERTS, HP235AA  
CHANGE OF USE FROM A1 RETAIL TO A3 SALE OF HOT TAKE AWAY FOOD  
AND CAFE

Your application for full planning permission dated 16 January 1998 and received on 27 February 1998 has been **REFUSED**, for the reasons set out overleaf.

Director of Planning

Date of Decision: 14 May 1998



**REASONS FOR REFUSAL APPLICABLE TO APPLICATION: 4/00092/98/FUL**

Date of Decision: 14 May 1998

1. There is no provision for vehicle parking within the site to meet standards adopted by the local planning authority. Vehicles parking or stopping on the High Street adjacent to the site would compromise the safety of pedestrians using the existing crossing and the free and safe flow of traffic.

*[Handwritten signature]*