

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM BOROUGH COUNCIL

To Winston Lee-Young and K F Tang
Canton Express
42 Allendale
Hemel Hempstead
Hertfordshire

Change of use shop to shop for the sale of hot food -
Take away
at 3 The Heights, Hemel Hempstead, Hertfordshire

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 27th January 1986 and received with sufficient particulars on 29th January 1986 and shown on the plan(s) accompanying such application.

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

The proposal would result in an excess of non-shop uses in this parade which would be likely to prejudice the commercial vitality of neighbourhood shopping centre.

Dated 13th day of March 1988

Signed *W. B. ...*

Chief Planning Officer

NOTE

1. 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 s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). 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.
2. 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 Borough 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.
3. 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 s.169 of the Town and Country Planning Act 1971.

**Department of the Environment and
Department of Transport**

Common Services

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Mr E E Lemon
Brook Cottage
Bank Mill Lane
BERKHAMSTED
Herts
HP4 2NS

Your reference

Our reference

T/APP/A1910/A/86/49644/P3

Date -9 SEP 86

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY WINSTON LEE-YOUNG AND K F TANG
APPLICATION NO:- 4/0137/86

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal against the decision of the Dacorum Borough Council to refuse planning permission for the change of use to a shop for the sale of hot food take-away of Shop No. 3, The Heights, Highfield, Hemel Hempstead. I have considered the written representations made by you and by the council and also those made by other interested persons. I inspected the site on 5 August 1986.
2. From my consideration of the written representations and my visit to the appeal premises and their surroundings, the principal issues in this case are in my opinion whether the proposal would be likely to adversely affect the attraction and convenience of this neighbourhood shopping centre for local people or give rise to serious damage to the amenity of those who live nearby.
3. The appeal premises are a ground floor shop forming part of a small parade of shops serving a modern residential neighbourhood in the northern part of Hemel Hempstead. The shops occupy the ground floor of a 3 storey building, the upper floors being flats, facing onto the eastern side of a square otherwise surrounded by residential buildings. The shops have a pedestrian concourse in front, partially covered by a canopy, and a car park entered from Saturn Way, which passes through the square. Further car parking space and gardens occupy the remainder of the square.
4. The parade, of 7 shops, appears to have been built as a part of the development of the area and of a co-ordinated provision of shopping and community facilities in the new town. At the time of my visit all of the shops in the parade, with the exception of the appeal premises, were occupied, all but one with retail uses that might be expected in such a location, uses primarily serving the local area, and appeared to be quite busy. The exception in so far as it is the only non-retail use in the strictest sense is the launderette, which might also be expected in a large residential area. I can accept the council's view that in a modern planned residential area such as this, where there is less likely to be the overprovision of shops that is often the legacy of the past in older residential areas, there are grounds for resisting changes of shops to uses that will not maintain the role of a centre in providing the day-to-day requirements of the local community. I appreciate nevertheless that a butchers shop has not proved commercially viable in the premises and I also note the considerable measure of support there is for the proposal from local people for a hot food take-away. It would appear that in terms of the value of the proposed use in relation to other retail uses it could not

be said that in this instance the value of the shopping centre to local people would be seriously diminished.

5. A hot food take-way does, however, commonly have features not normally associated with other shops, particularly those to be found in small local shopping centres. For this reason they are normally subject to special consideration. One feature is the smells that can be associated with cooking. However appetising these might be they can be a nuisance to those who live nearby and are constantly exposed to them. In this instance no objection has been raised on this account and it seems that adequate ventilation measures could be taken. A further feature is that hot food take-aways commonly attract much of their trade in the evenings, when other shops are likely to be closed, and for this reason the level of activity in the vicinity is low. Much of the trade, particularly at this time, is also likely to be car borne and the nature of the trade, with people waiting to be served, or for their orders to be prepared, or consuming their purchases can lead to a congregation of people and vehicles. A location close to people's homes, because of the noise and disturbance to which this can give rise at times when people are seeking to enjoy the tranquility of their homes or to sleep, must be looked at particularly carefully when such a use is proposed.

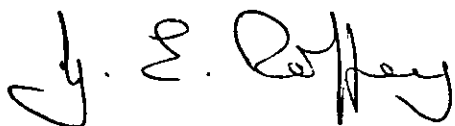
6. Your clients, it would appear, wish to operate similar hours to other hot food take-aways in the town, remaining open until at least 11.30 pm. It has been noted that there are few if any other take-aways serving this part of the town, and this could be an encouragement to custom from beyond the immediate neighbourhood and to customers in cars. While the off-licence in the parade is open until 10 pm, from my visit I have no doubt that the additional activity in the square that would be likely to arise from the proposal would be very noticeable to those living around the square in very close proximity to the premises and to the car park and potentially a source of considerable disturbance. A large number of local people, by letter and in a petition, have drawn attention to this same concern.

7. I have considered if the worst aspects of the loss of local residential amenity that would be likely to arise from these causes might be overcome if opening in the evening, when the problem would be likely to be at its greatest, were restricted by condition. I have, however, concluded that from the nature of the business the evening trade would be a necessary part of the business and that a condition that provided an adequate safeguard for the residents would take away too great a part of the benefit of a permission, as far as your clients would be concerned. My view is that, having regard to their surroundings, the premises are unsuitable for a use of the sort proposed.

8. I have taken into account all other matters raised in the representations and have had regard to the advice of Circular 14/85, but find in there nothing to lead me to any other conclusion.

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

I am Sir
Your obedient Servant



G E ROFFEY MSc(Econ) DipTP MRTPI
Inspector

Department of the Environment
2 Marsham Street
LONDON SW1P 3EB

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 maybe, 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.