



Planning Inspectorate
Department of the Environment

Room Tollgate House Houlton Street Bristol BS2 9DJ
 Telex 449321 1404

Direct Line 0272-218
 Switchboard 0272-218811 927
 GTN 1374

B/1110/LM/P

[Handwritten signatures and initials]

Messrs Denton Hall Solicitors 5 Chancery Lane Clifford's Inn LONDON EC4A 1BU	PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL						Your reference
	Ref.					Ack.	PJS/apk Our reference
	C.P.O.	T.C.P.M.	D.P.	D.C.	B.C.	Admin.	File/APP/A1910/A/89/125655/P8 Date
Received 30 APR 1990							27 APR 90
Comments							

Gentlemen

~~TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9~~
 APPEAL BY REED EXECUTIVE PLC
 APPLICATION NO:- 4/0148/89

- 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 from a shop to an employment agency of No 250 Marlowes, Hemel Hempstead. I held a local inquiry into the appeal on 21 March 1990.
- The appeal premises are a ground floor, single shop unit, some 95 sq m in area, presenting a frontage of approximately 5.46 m to the western side of Marlowes and located towards the southern end of that street which constitutes the main shopping centre of Hemel Hempstead. At the inquiry, it was not disputed that such premises would satisfactorily fulfil the locational requirements of the service provided by your clients, but the Council contended that its policies make adequate provision for such uses elsewhere within the centre and that the integrity of a length of primary shopping frontage should be preserved.
- From the evidence that I have heard and read and my inspection, I therefore consider that the main issue which I have to determine in this case is whether the proposal would harmfully threaten the character and vitality of this part of the Marlowes shopping area.
- The Council's objection is founded on policy 90 of the Dacorum District Plan, which was formally adopted in 1984, and which states that planning applications for change of use from shop to non-shop uses in primary shopping frontages will normally be refused. Marlowes is so designated for the entire length of its eastern side between Hillfield Road and Selden Hill and, on the western side between Market Square and Moor End Road. I saw that shops certainly dominate those frontages. A building society branch at the corner of Marlowes and Hillfield Road is the only use within Class A2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 while Class A3 uses are limited to 4 units scattered along the street.
- The Council has also informally adopted, for development control purposes, an interim policy on shopping areas in town centres, which, I was told, is to be included in a draft review of the local plan, to be published for public consultation in April 1990. That document distinguishes between main shopping frontages, where no loss of shops will be permitted at street level and mixed frontages, where a mix of shops and financial and professional services, catering establishments and other uses appropriate to a shopping area will be permitted. Various lengths of Marlowes are designated as mixed frontage under the terms of the

interim policy, including from Nos 197/199-227 which are on its eastern side, opposite the appeal premises. It was said, in evidence, that the purpose of such a modification to the Council's statutory local plan is recognition of the needs of Class A2 uses, together with a perceived shift towards the south of the centre of gravity of commercial activity in Marlowes which will be emphasised by the completion of a new shopping development known as the Marlowes Centre.

6. It was also argued by the Council that the creation of that centre, which rises behind the eastern frontage of Marlowes, emphasises the need to maintain the status of the length of the western side of the street, within which the appeal premises are situated, as a primary or main shopping frontage as a counterbalance to a major new focus of retailing in Hemel Hempstead.

7. I recognise the Council's proper concern to foster the vitality of the shopping area as a whole, but I consider it unfortunate that its interim policy should attempt totally to prohibit non-shopping uses in main frontages, because that would appear to exclude the established principle that every application should be treated on its merits. I must also have regard to the fact that, in terms of Circular 22/84, that policy is only at a very early stage in becoming part of a statutory local plan. The adopted local plan states that such uses will not normally be permitted, but that must allow the possibility of exceptions, provided that the plans objectives are not prejudiced.

8. In my view, national planning policy as expressed in DCPN11, also envisages the possibility that other uses may be acceptable in areas dominated by shops, while Circular 13/87 recognises that the character and vitality of shopping centres depend on many factors, including the number and range of shops and other facilities and that service uses contribute to that vitality. In that respect, it was agreed that ground floor premises in a street with a high pedestrian flow were the desired locational requirements for your clients' business, and, consequently, it must follow that such a use is more likely to attract, rather than repel, passers by to the street where those premises are to be found. Furthermore, although there was some disagreement about the relative aesthetic merits of the likely form of window display, I am satisfied that the inherent display requirements, together with the imposition of an appropriate condition, would avoid any risk of a dead frontage, which is the fear commonly associated with non-retailing uses.

9. On this western side of Marlowes there is continuous shopping frontage between Moor End Road and Bridge Street, a distance of over 300 m of which the appeal premises represents only 5.46 m. Given that and the characteristics of the use to which I have referred, I believe that the proposal would emphasise the vitality of the shopping centre and would not therefore be prejudicial to the objectives of the Council's policies. I understand the Council's concern about precedent, but I must consider this application on its merits and the Council would not be precluded from applying its policies in the future where appropriate.

10. I have considered the representations made by interested persons, which include the suggestion that there are not enough shops in the area, but I do find that view difficult to reconcile with the impending completion of the Marlowes Centre which will provide, I was told, 4 retail stores and 75 other shop units. It was also argued that there are more than enough employment agencies in the district already. However, the question of whether any particular non-retail service is already sufficiently represented in a shopping centre is a matter of commercial judgement and it cannot be material to a planning application. I have also taken account of all the other matters raised in the evidence and representations, but they do not affect my conclusions on the main planning issue.

11. For the above reasons, and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for the change of use from a shop to an employment agency of No 250 Marlowes, Hemel Hempstead in accordance with the terms of the application (No 4/0148/89) dated 20 January 1989 and the plans submitted therewith, subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;
2. a shop window display shall be maintained at ground floor level at all times.

12. The developer's attention is drawn to the enclosed note relating to the requirements of The Buildings (Disabled People) Regulations 1987.

13. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 23 of the Town and Country Planning Act 1971.

I am Gentlemen
Your obedient Servant



P ROSSON BA(Hons) Solicitor
Inspector

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APPEARANCES

FOR THE APPELLANTS

Mr M Spence QC

- Instructed by Denton Hall Burgin and Warrens, 5 Chancery Lane, Clifford's Inn, London, EC4A 1BU.

He called:

Mr M J Whittaker

- Property Director of Reed Executive PLC.

Mr I Macpherson MA FRICS

- Partner, Gerald Eve and Co, Chartered Surveyors.

FOR THE PLANNING AUTHORITY

Mr S Baker

- Solicitor, Dacorum Borough Council

He called:

Mr G J Alexander

- Senior Planning Officer, Dacorum Borough Council.

DOCUMENTS

Document 1 - List of persons present at the inquiry.

Document 2 - Council's notification of the inquiry and list of those to whom it was sent.

Document 3 - Two letters in response.

Document 4 - Performance figures and location plan of ground floor and first floor branches (Appendices MJW 1 and 2 to Mr Whittaker's proof).

Document 5 - Bound bundle of Appendices IM'1' to IM'30' of Mr Macpherson's proof.

Document 6 - Extract from the Dacorum District Plan.

Document 7 - 'Non-Shop Uses in Shopping Frontages'.

Document 8 - Interim Policy on Shopping Areas in Town Centres.

PLANS

Plan A - The application plan.

Plan B - Location plans of unsatisfactorily sited branches (Appendices 'MJW 3 and 4' to Mr Whittaker's proof).

PLANS (CONTINUED)

Plan C - GOAD Plan of Hemel Hempstead shopping centre (Appendix IM'A' to Mr Macpherson's proof).

Plan D - GOAD Plan relating to 6, East Street, Maidstone.

PHOTOGRAPHS

Photo 1 - Four photographs of Reed Employment branches (Appendix 'MJW5' to Mr Whittaker's proof).

Photo 2 - Composite photograph of the western side of Marlowes (Appendix IM'B' to Mr Macpherson's proof).

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To Reed Executive plc
181/183 Victoria Street
London
SW1E 5NE

Gerald Eve
7 Vere Street
London
W1M 0JB

Change of use shop to Employment Agency
at 250 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 20 January 1989 and received with sufficient particulars on 23 January 1989 and shown on the plan(s) accompanying such application.

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

The site is within a designated primary shopping frontage, wherein a change of use from shop to non-shop use will normally be refused. Provision exists within Policy 90 of the Dacorum District Plan for the proposed use to be located elsewhere within the commercial area, which would not result in a loss of designated primary shopping frontage.

Dated 27 day of April 1989

Signed [Signature]

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.