

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM BOROUGH COUNCIL

To
UBR
Hounslow
Middlesex

Richard Unwin
83 Appleby Lodge
Wilmslow Road
Manchester 14

..... Use of shop exclusively for sale of hot food
and modification of Condition re opening hours
.....
at 9 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 28.2.86 and received with sufficient particulars on 3.3.86 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 undesirable loss of a retail unit within a Principal Shopping Area and would, if permitted, prejudice the continued viability of other retail outlets in this parade.
2. There is no provision for vehicle parking within the site to meet the standards adopted by the local planning authority.
3. The proposal would give rise to conditions during unsocial hours detrimental to the occupiers of residential properties in the vicinity.

Dated 15th day of May 1986

Signed.....

Chief Planning Officer

SEE NOTES OVERLEAF

P/D. 15

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.



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CHIEF EXECUTIVE
OFFICER

25 MAR 1987

File No. CPO 25/3

Your reference

RU08/DACORUM DISTRICT COUNCIL

Our reference

Ref T/APP/A1910/A/86/058521/P5

C.P.O.	Date	D.C.	B.C.	Admin.	File
		24 MAR 87			

Received

25 MAR 1987

Comments

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY UBR (UB RESTAURANTS LIMITED)
APPLICATION NO: 4/0282/86

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. The appeal is against the decision of the Dacorum District Council to refuse planning permission for the use of shop exclusively for the sale of hot food, and modifications of opening hours, at 9 Marlowes, Hemel Hempstead.

2. At present the shop subject of the appeal is being used as a delicatessen, ie a Class 1 shop under the terms of the Town and Country Planning (Use Classes) Order 1972, but it also has permission for the sale of hot food between the hours of 0900-1800 on weekdays only. Although apparently modified in accordance with the council's wishes, your client's application is still not really clear. The first part of the proposal appears to accept that planning permission would be required for the exclusive use of the premises for the sale of hot food, as the council maintain, but in your grounds of appeal you still seem to be unwilling to accept this, although the existing permission for the sale of hot food is for a joint use. In relation to the application as made, it seems to me that the present hours of operation of the hot food take-away facility of the existing business are immaterial as you are applying for a change of use and not a variation of the condition in respect of the existing use. The use being proposed has been requested from 0900-2330 hours daily, including Sundays and all public holidays, and I will therefore determine the appeal on this basis, and treat it as a straight-forward application for a change of use to a shop for the sale of hot food.

3. From my unaccompanied visit to the site and inspection of the surroundings on 22 December 1986, and from my consideration of the written representations made by you and the local planning authority, I am of the opinion that the decision in this appeal rests primarily on whether the proposed change of use would result in the undesirable loss of a shop for Class 1 retail use in one of the principal shopping areas of Hemel Hempstead, whether the proposed use during the opening hours requested would affect the residential amenities of persons living nearby, and whether the lack of off-street parking at the appeal premises would cause interference with the free-flow of traffic in Marlowes.

4. In considering the first issue, I am of the view that there would be little objection to the particular use being proposed (sale of pizzas exclusively for consumption off the premises). The premises are not in a primary shopping frontage although they are within one of the designated Principal Shopping Areas of the town.

In such areas non-shop uses are normally acceptable under Policy 90 of the Dacorum District Plan provided that the criteria given in paragraph 3 of the Council's Non-shop Uses in Shopping Frontages Policy Document dated February 1983 are met. In this instance it seems to me that the only criteria which would not be complied with is No 3 in that there is a rather high proportion of shops in non-retail use in the particular frontage already.

5. You maintain that it is not reasonable to regard the parade of shops at the northern end of Marlowes as "the particular frontage" for this purpose, but I do not agree as there is a long gap to the main shopping area to the south, and the parade is only loosely linked to the High Street shopping area in the old town. At present there are only 7 shops occupied by retailers out of a total of 19 units (2 shops are vacant and one appears to be in unauthorised office use pending an appeal), but I am not entirely convinced that it would be in the public interest to refuse your clients' proposal primarily for this reason, given the relationship of the parade to the main shopping area and High Street. Persons using the main shopping area of the town to the south would be unlikely to walk north as far as this parade unless they happened to be en route to their home or the old town, or wished to visit a particular shop, office or restaurant. Those shopping in the High Street might be equally reluctant to walk south beyond the junction of Queensway/Marlowes except for a specific purpose. The most important consideration is therefore to keep all the units occupied by a type of shop/service that could play a part in attracting persons to the shopping parade, and the future of this particular shopping frontage may be primarily for specialist retail purposes, convenience shopping or for any of the uses directly serving the public listed in Table 2 of the council's Shopping Document to which I have referred above. I am thus of the view that the advice in Circular 14/85 regarding the provisions of the Development Plan being only one of the material considerations in determining an application is especially relevant in this instance, and that there is good reason for making an exception to the council's shopping policy in this instance, so long as there are no other reasons that make it necessary to refuse permission.

6. The council are also concerned, quite rightly in my view even though many of the flats above the shops are no longer in use as such, about the effect the proposed use might have on the residential amenities of persons still living in the area, especially above the shops. I note that the accommodation above the shop subject of this appeal is occupied, although you state that the tenant has no objection to the proposal, and the flats above the vacant shops nearby also appear to be in residential use, as are 4 other nearer the ends of the parade. However, there is already a hot food take-away shop and a restaurant operating near the southern end of the parade - without any restriction by way of planning conditions on their hours of opening - and I do not consider another take-away shop closing by 2330 hours daily should, under circumstances normally pertaining have an unacceptably harmful effect of the peace and quiet of the flats in this particular location. It must be borne in mind that there is considerable existing traffic and general activity in what is a main thoroughfare in the town centre, and one that is normally (as the council state) busy at most times of the day and evening, with communal and entertainment facilities, often open until late, nearby. The activity within a hot food take-away shop itself might be a nuisance to persons living upstairs or nearby, but I consider this problem could be overcome by suitable sound insulation and filtered ventilation system if conditions were imposed requiring this in the event of permission being granted.

7. With regard to the possible effects on traffic movement in Marlowes, the council have obviously accepted that this is not an issue during the working day as they have already allowed a hot food take-away use in the appeal premises at such times. Parking is of course permitted in front of some of the shops in the parade, including the appeal premises, for short periods during weekdays, and without restriction at other times. Outside normal shopping and office hours there is also off-street parking space quite close by in the vicinity of the Civic Centre. As the council point out in their statement, a hot food take-away use only involves short term parking and is unlike a restaurant where customers are

likely to take some time over a meal and thus occupy parking spaces for lengthy periods, especially in the evenings. I therefore do not consider the likely effects from added traffic generated by the proposed use should cause undue congestion during the evening when I would have thought most trade likely, although I note that the appellants state trade during the day would be heavier, notwithstanding their request for the business to be allowed to operate until 2330 hours daily. My conclusion about the effect on traffic congestion of course rests on there being no facilities for hot food to be consumed on the premises, and a planning condition to that effect would be necessary if permission were granted.

8. I have noted the refusal of permission, after an appeal in January 1986, for a restaurant with a take-away food facility at No 33 (which now appears externally to be in use as an estate agents' office but is subject of the outstanding appeal I have referred to above, as is the vacant shop at No 15 for the same use). However, a restaurant use is somewhat different to that before me, and in all the circumstances, I do not consider the proposed use would be so harmful, in any of the ways suggested by the council, as to justify refusing planning permission, subject to various conditions to regulate it. I appreciate that there are already a number of hot food take-away facilities in the immediate area, as pointed out on behalf of an interested person, but it is a matter for the commercial judgement of the appellants whether the demand for the proposed service would be sufficient to make it financially viable in this position.

9. I have examined all the other matters raised in the written representations, including whether I should require the proposed business to close earlier, and/or not open on Sundays, as well as imposing the other conditions I have mentioned, in order to reduce any possible adverse effects on nearby residents even further, but the council have not suggested different opening hours to those requested - no doubt because there is no opening hours restriction on the existing hot food take-away facility at No 31 - and there is nothing else of sufficient substance to outweigh those considerations that have led me to my decision that planning permission should be granted for the proposed development.

10. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for change of use of shop for the exclusive sale of hot-food at 9 Marlowes, Hemel Hempstead in accordance with the terms of the application (No 4/0282/86) dated 28 February 1986 and the plans submitted therewith, subject to the following conditions:

1. the development hereby permitted shall be begun not later than 5 years from the date of this letter;
2. no facilities for the consumption of food in or in front of the shop shall be provided;
3. the use hereby permitted shall not be carried on before 0900 hours each day, nor after 2330 hours;
4. before the use hereby permitted commences a filtered air extraction system, as shall be agreed with the local planning authority, shall be installed; and
5. before the use hereby permitted commences the premises shall be suitably sound insulated, as shall be agreed with the local planning authority.

11. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

12. The developer's attention is also drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970.

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

I am Sir

Your obedient Servant

A handwritten signature in black ink, appearing to read 'J M Daniel', with a stylized, cursive script.

J M DANIEL DFC FBIM
Inspector