



# The Planning Inspectorate

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Your Ref:  
N97.2021.HM

Our Ref:

T/APP/A1910/A/97/284928/P2

PLANNING DEPARTMENT  
DACORUM BOROUGH COUNCIL

Date: 27 JAN 1998

Ref.	Ack.
D.P.	Adm.
D.C.	File
B.C.	

28 JAN 1998

Comments

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6  
APPEAL BY MR E VARIS  
APPLICATION NO: 4/00356/97/RET

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the Dacorum Borough Council to refuse planning permission for the variation of condition 02 of 4/0753/96 to allow opening from 8.00am to 1.00am on Monday to Thursday, to 2.00am on Friday and Saturday and 12.00 midnight on Sunday at 118 High Street, Berkhamsted. I have considered the written representations made by you and by the Council. I have also considered the representation of the Berkhamsted Citizens Association made directly to the Council, and those made to the Council at the application stage, which have been forwarded to me. I inspected the site on 5 January 1998.

2. The application relates to the variation of condition 2 attached to planning permission ref: 4/0753/96 dated 16 August 1996, for the change of use from retail to hot food takeaway. The appeal is, therefore, in respect of an application made under Section 73 of the Town and Country Planning Act 1990. The condition in dispute provides that:

The use hereby permitted shall only operate from the premises between the hours of 8.00am and 11.00pm

The reason for the condition is given as:

To safeguard residential amenities.

3. Despite the terms of the application, you now state that the intention is to extend the hours to midnight Mondays to Thursdays, to 0100 hours on the mornings following Fridays and Saturdays, with no change to the hours on Sundays. In my view, these changes do not materially alter the nature of the application before me and I shall determine the appeal on the basis of the revised hours.

4. The Development Plan for the area comprises the Hertfordshire County Structure Plan Review incorporating Approved Alterations 1991 and the Dacorum Borough Local Plan 1995. The appeal property is located in the Berkhamsted Town Centre within a designated Mixed Frontage as specified by policy 39 of the Local Plan. Policy 8 of that Plan contains criteria with which all development is expected to comply. Of particular relevance to this appeal is criterion (d) which seeks to avoid harm to the surrounding neighbourhood and adjoining properties through noise and disturbance.
5. Against this background, from my inspection of the site and its surroundings and from the written representations made I consider there is one main issue in this appeal. This is whether the extended opening hours described in paragraph 3 of this letter would affect the living conditions of occupiers of neighbouring residential properties, with particular reference to noise and disturbance.
6. Berkhamsted Town Centre has a linear form, stretching from east to west, with the majority of shops fronting High Street. The appeal premises comprises a ground floor unit within a small parade, close to the junction with Castle Street and towards the eastern end of the centre. Within the vicinity, I found the concentration of commercial uses to be less than in the heart of the centre, with a mixture of shops, offices and residential uses present. In relation to your client's premises, there are residential properties above some of the shops in the parade, on the opposite side of High Street, and immediately to the west at No.120 High Street and on the east side of Castle Street. Those to the west are only separated from the appeal premises by the vehicular access to the rear garage/parking court. Although there is a Chinese restaurant immediately above, I consider that your client's premises has a close physical relationship with neighbouring residential properties.
7. At the time of my visit, I found the town centre to be popular and bustling with day-time activity. High Street is a busy road, although I saw that traffic calming measures have been implemented which keep traffic speeds low. As the evening advances, however, it seems to me that the area would become progressively quieter. I consider that this would be particularly so within the vicinity of the appeal premises, where I saw very few other evening uses. In addition, the Council have indicated that since the bypass, the A41, was opened in 1993, High Street carries predominantly local traffic. Flows on this road are, therefore, likely to be much lighter in the late evening.
8. I believe that the extension of opening hours as proposed would result in a noticeable increase in activity at a time when ambient noise levels in the area are reducing. In my view, noise from the arrival and departure of customers on foot and in vehicles would be particularly intrusive. Parking would be likely to take place on the roadside, either in High Street or in Castle Street. In my view, noise from customer activity, such as the revving of engines, the slamming of car doors and people talking, all of which are outside the Appellant's control, would result in unacceptable disturbance for neighbouring residential occupiers, at a time when a reasonable degree of peace and quiet might be expected.
9. The Council have identified a threshold of 2300 hours to coincide with the closing times of public houses, after which time noise generated by commercial activities would be likely to be more noticeable and disturbing. This corresponds with the time when people are normally sleeping, as advised by paragraph 12 of Planning Policy Guidance 24 *Planning and Noise*. In my opinion, the existing condition is both necessary and reasonable in view of the

close proximity of the appeal site to residential properties, in order to maintain a balance between commercial and residential interests.

10. On the main issue, I conclude that the proposed extended opening hours would result in noise and disturbance which would cause unacceptable harm to the living conditions of occupiers of neighbouring residential properties. The proposal would thus conflict with policy 8 (d) of the Local Plan. In view of the harm which I have identified, I consider that no useful purpose would be served by granting a temporary permission and I, therefore, intend to dismiss the appeal.

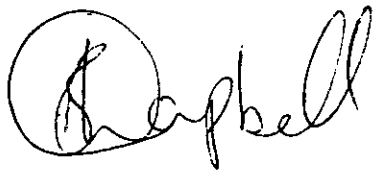
11. In reaching my decision I have noted your comment that the use has been operating to the times originally sought in the application for the past 4/5 years without complaint. The planning permission for the use, however, was not granted until 16 August 1996. Moreover, the Council have indicated that objections were received at that time. Although no comments have been received from neighbouring occupiers in connection with the current application, perceptions could change once permission was granted.

12. The appeal premises lies within the Berkhamsted Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when considering proposals for development in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area. In my opinion, there would be no appreciable impact on the conservation area as a result of the extended opening hours and its character and appearance would thus be preserved.

13. I have carefully considered the other appeal decisions to which you and the Council have referred. None of these relate to Berkhamsted Town Centre, and I have considered this appeal on its own merits having regard to the particular locational characteristics of the premises. I have taken into account all other matters raised in the written representations, including your extensive references to Planning Policy Guidance and Circular advice. I have, however, found nothing in these nor in any of the other matters raised to outweigh the considerations that have led to my decision.

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'B M Campbell', enclosed within a circular ink stamp.

B M Campbell BA(Hons) MRTPI  
Inspector



# PLANNING

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Applicant:  
MR VARIS

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/00356/97/RET  
VARIATION OF CONDITION 2 (HOURS OF OPENING) ATTACHED TO PLANNING  
PERMISSION 4/0753/96 FL (CHANGE OF USE FROM RETAIL TO HOT FOOD  
TAKEAWAY.)  
118 HIGH STREET, BERKHAMSTED, HERTS, HP4 2BL

Your application for retention of development already carried out dated 28 February 1997 and received on 10 March 1997 has been **REFUSED**, for the reasons set out overleaf.

Director of Planning  
Dacorum Borough Council  
Civic Centre  
Marlowes  
Hemel Hempstead  
Herts  
HP1 1HH

Date of Decision: 6 May 1997

**REASONS FOR REFUSAL APPLICABLE TO APPLICATION: 4/00356/97/RET**

Date of Decision: 6 May 1997

**The proposed extension of opening hours is likely to result in an unacceptable loss of amenity to nearby residential properties.**