



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0272-218448
Switchboard 0272-218811
Fax No 0272-218769
GTN 1374

[Handwritten signatures and initials]

1. Messrs Neves
Solicitors & Commissioners for Oaths
8 George Street West
LUTON
Beds LU1 2DA
2. Martin Ledger Associates
Prospect Planning
Chartered Planners & Surveyors
12 Prospect Place
WELWYN
Herts AL6 9EN

Your Reference
1. RT/SLR/GURBUZ
2. L29/00992/B
Our Reference
1. T/APP/C/92/A1910/616680/P6 &
2. T/APP/C/92/A1910/616668/P6
Council Reference
1. 4/0445/92EN &
2. 4/0446/92EN
Date 23 JUN 1992

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY NURI GURBUZ & OMER BASBAYDAR
LAND AND BUILDINGS AT NOS 94 & 98 LONDON ROAD APSLEY HEMEL HEMPSTEAD HERTS

1. I have been appointed by the Secretary of State for the Environment to determine the above appeals, which are against 2 enforcement notices issued by the Dacorum Borough Council concerning the above mentioned land and buildings. I have considered the written representations made by you, the Council, and also those received from other interested persons. I inspected the site and surroundings on 9 June 1992. Although these appeals have been submitted separately, they concern the use of 2 very closely related buildings, and give rise to the same issues; I have therefore decided that it would be appropriate in this case to combine the decisions in a single letter.

Notice 1

2. a. The date of the notice is 7 February 1992
- b. The breach of planning control alleged in the notice is failure to comply with condition No (4) subject to which planning permission was granted
- c. The permission (No 4/0374/90) was issued on 10 May 1990 and was for the change of use of ground floor shop at No 98 London Road Apsley Hemel Hempstead to take away food shop
- d. The condition which is alleged not to have been complied with is as follows:-

"(4) The premises shall not be open for trade outside the hours of 0830 to 2300 Mondays to Saturdays and 1100 to 2230 on Sundays"

- e. It is alleged that the condition has not been complied with in that the hours stated in the condition are being exceeded
- f. The requirements of the notice are to cease trading outside the permitted hours
- g. The period for compliance with the notice is 28 days
- h. The appeal is proceeding on ground (a) of S.174(2) of the 1990 Act as amended by the Planning and Compensation 1991 Act, that is to say that the condition concerned ought to be discharged.

Notice 2

- 3. a. The date of the notice is 7 February 1992
- b. The breach of planning control alleged in the notice is failure to comply with the condition subject to which planning permission was granted
- c. The permission (No 4/0509/89) was issued on 8 June 1989 and was for modification of condition to planning permission 4/2260/88 (change of use ground floor shop to hot food take away) at No 94 London Road Apsley Hemel Hempstead
- d. The condition which is alleged not to have been complied with is as follows:-

"The premises shall not be open for trade outside the hours of 0830 to 2300 Mondays to Saturdays and 1100 to 2230 on Sundays"
- e. It is alleged that the condition has not been complied with in that the hours stated in the condition are being exceeded
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- 4. The Councils' reasons for instituting enforcement action in both cases are expressed in the following terms :-

"General Policy and Principles (PPG 1) states that it is the purpose of the planning system to regulate the use of land in the public interest. This includes assessing whether development would affect the locality generally and unacceptably affect amenities that ought in the public interest be protected.

In addition to being a neighbourhood shopping area Apsley is also a residential area. Occupants of flats in the vicinity of the premises are entitled to expect reasonable residential amenity and for this reason a condition was imposed on the planning permission for change of use restricting the hours of opening. The opening of the premises beyond the

permitted evening closing times has resulted in noise, disturbance and nuisance from pedestrian customers and vehicles visiting the premises. This has adversely affected the amenities of local residents and thus causes harm to interests of acknowledged importance."

5. Against this background I am of the opinion that the main issue to determine in both appeals on the question of merit is, bearing in mind the aims of relevant planning policies, the impact of a continued use of the premises concerned beyond the hours presently specified on the amenities of others.

6. The planning policy framework here can be found essentially in the approved Hertfordshire Structure Plan (1986), and the adopted Dacorum District Plan (1984). Taken together these documents constitute the statutory development plan for this locality. In addition more recent plans have reached an advanced stage of preparation, notably the Proposed Alterations to the Structure Plan (1991) and the Dacorum Borough Draft Local Plan, currently on deposit. The provisions of these publications should also be taken into account in this instance as material considerations, worthy of some weight.

7. All of these documents provide guidance about environmental matters, and counsel that development should not be allowed to take place if unsatisfactory consequences would occur. More particularly, Policy 8 in the Draft Local Plan indicates that certain criteria should normally be met so as to ensure that any development which is agreed achieves an acceptable quality. Accordingly these objectives deserve to be accorded considerable attention on this occasion; permission should not therefore be forthcoming if the relevant tests would not be met.

8. The appeal premises form part of a group of older 2 storey properties on the eastern side of London Road within a larger frontage which has been designated by the Council as a local centre. No 94 trades as "Dixy Fried Chicken", whilst No 98 is the "Efeler Kebab House". No 96 between the two is a butchers shop on the ground floor. No 92 to the south of Mr Basbaydar's property is a hairdressers. Elsewhere nearby there is a mix of other shopping and like activities, mostly located on the eastern side of London Road. Opposite on the western side of London Road at this point there are business premises, including Brown Bros and a garage/car sales site (Marlowe's Garage).

9. In support of the appeals particular reference is made to the busy nature of this vicinity, and to the variety of uses which exist. Whilst acknowledging these points, the local planning authority nevertheless draw attention to the presence of residential accommodation nearby, both in the form of flats over some of the shops, and freestanding properties. The authority's statement identifies the location of these dwelling units by reference to a map and also other sources, notably the Electoral Register. During my site inspection I confirmed for myself from external examination the generally accurate content of these submissions. I also noted then that No 102, just to the north of the appeal group, is presently vacant and advertised for sale as a "Shop with flat above". Many of the individuals involved who already live and work hereabouts have also made their views known in their own letters, or by signing a petition. So there is ample evidence to conclude that this is far from simply a shopping street; it is also a residential area of some significance.

10. Within local centres it is the Councils' policy to seek to maintain vitality and viability for retail purposes, but also to safeguard the residential environment. I see no reason to disagree with these aims. The existing permissions relating to Nos 94 & 98 for use as hot food take away outlets take account of this situation by requiring that activities cease by 2300 hours each day, and by 2230 hours on Sundays. There is no dispute that these hours are not being respected at present. Indeed the available information suggests that on occasions at least 1 or other if not both of these shops has stayed open much later than these times. Again on the evidence available the result has been to cause considerable disturbance to others living nearby.

11. I do not consider this to be an acceptable or satisfactory situation. It seems to me that in the context of this particular locality a requirement to cease trading by the times presently indicated should be regarded as entirely reasonable, and a fair compromise between potentially opposing interests. To agree to any later opening hours - such as until midnight as suggested in the representations - would not appear to me to be appropriate because of the noise and disturbance at anti social and unneighbourly times which in all probability would thereby ensue. As such criteria D and F in Policy 8 of the Draft Borough Local Plan would not be met.

12. In reaching these conclusions I note that the nearest residential properties to the appeal premises are in fact very close by, such as at No 92A, No 96A, and No 219. London Road at this point is not very wide, nor are the pavements along each side. Furthermore there is no set back on the 1st floor of the buildings themselves. Consequently the occupants of these dwellings would be unlikely to benefit from much if any protection from external sources of nuisance by virtue of distance. Moreover the cumulative adverse impact of 2 similar hot food take away outlets, if both were able to stay open later at night, would be likely to be aggravated because they would be positioned so close together. So these are additional important factors which indicate to my mind that neither appeal should succeed. Nor in my opinion are there any grounds to treat either appellant differently or more favourably than the other on this occasion.

13. I appreciate that the A41 at this point is heavily trafficked. However the Kings Langley By Pass is now being built. In due course therefore vehicular flows along this particular section of London Road should as I see it be reduced, thereby making this area a more pleasant place in which to reside. In this context it would not be sensible nor appropriate to allow the continuation of the uses now in debate as requested. To do so would only serve to undermine a wholly desirable improvement in the quality of life of those who wish to reside in this part of the Borough, which should not be countenanced.

14. To sum up on the ground (a) appeals I consider that neither of the uses should be allowed to trade at later hours, because to do so would be inconsistent with fundamental policy aims, and would be likely to result in an unacceptably adverse effect on the amenities which people living hereabouts could reasonably expect to be able to enjoy. I consider these objections to be sufficiently serious as to constitute demonstrable harm to interests of acknowledged importance. In these circumstances the enforcement notices should therefore be upheld. Hence both appeals fail. By the same token the deemed applications for planning permission which also arise, to continue the uses in question without compliance with the conditions, should similarly be resisted.

15. I have taken into account all other matters raised, including references to government policies (especially about economic matters and small businesses), the representations made by the Hertfordshire Constabulary and the Apsley Community Association, other decisions elsewhere which have been drawn to my attention, and the petition in support of Mr Gurbuz's appeal, but none in my judgement alter the reasoning which gives rise to my conclusion.

FORMAL DECISION

16. For all the above reasons, and in exercise of the powers transferred to me, I hereby determine these appeals as follows:-

Notice 1 - the appeal by Mr Nuri Gurbuz under reference
T/APP/C/92/A1910/616680/P6

17. I dismiss the appeal, uphold the enforcement notice, and decline to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

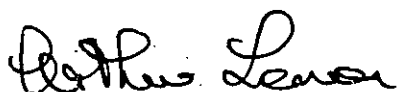
Notice 2 - the appeal by Mr Omer Basbaydar under reference
T/APP/C/92/A1910/616668/P6

18. I dismiss the appeal, uphold the enforcement notice, and decline to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

RIGHTS OF APPEAL AGAINST THE DECISION

19. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant



ARTHUR LEMON
BA(Hons) DipTP MRTPI
Inspector

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DEPARTMENT OF THE ENVIRONMENT
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RIGHT TO CHALLENGE THE DECISION

a) On an enforcement appeal except any decision to grant planning permission on the deemed application under section 177(5) of the Act

An appeal against the decision given in the accompanying letter on the enforcement notice appeal may be made to the High Court on a point of law under the provisions of Section 289 of the Town and Country Planning Act 1990. Any appeal must be made within 28 days of the date of receipt of this letter (unless the period is extended by the Court).

b) On a decision to grant planning permission on the deemed application under section 177(5) of the Act, or where there is a related appeal under section 78 of the Act

Section 288 of the Town and Country Planning Act 1990 provides that a person who is aggrieved by the decision, given in the accompanying letter, to grant permission on the deemed application, or by the decision on the appeal made under section 78 of the Act, may challenge its validity by an application to the High Court within six weeks from the date of this letter. The grounds upon which an application may be made to the Court under Section 288 are that:-

1. the decision is not within the powers of the Act (that is, the Secretary of State has exceeded his powers); or
2. 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 288 of the Act: they are the requirements of that Act, the Tribunals and Inquiries Act 1971 (or any other 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. This includes the Town and Country Planning (Inquiries Procedure) Rules 1988 (SI. 1988 No 944), the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987 (SI. 1987 No 701), the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981 (SI. 1981 No 1743), and the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 (SI. 1981 No 1742).

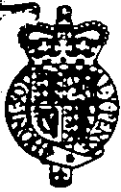
A person who thinks he may have grounds for challenging the decision should first seek legal advice.

INSPECTION OF DOCUMENTS

(only for appeals decided following a local inquiry)

Under the provisions of rule 17(3) of the Town and Country Planning (Inquiries Procedure) Rules 1988, and rule 16(4) of the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981, any person entitled to be notified of the

decision given in the accompanying letter may apply to the Secretary of State in writing within 6 weeks of the notification to him of the decision, or the supply to him of the Inspector's report, whichever is the later, for an opportunity of inspecting any documents, photographs and plans appended to the report. Such documents etc are listed in an appendix to the report. Any application under this provision should be sent to the address on the decision letter, quoting the Department's reference number shown on the decision letter and stating the proposed date and time (in normal office hours) for the inspection. At least 3 days' notice should be given, if possible.



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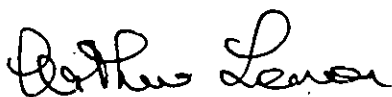
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