



The Planning Inspectorate

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Whitecroft Estates
Whitecroft
39 White Horse Lane
LONDON COLNEY
Hertfordshire
AL2 1JP

Your Ref: C J Matthews

Our Ref:
T/APP/A1910/A/95/247254/P8

Date: 12 APR 1995

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78 AND SCHEDULE 6
APPEAL BY J M PATEL
APPLICATION NUMBER: 4/0548/94

1. I have been appointed by the Secretary of State for the Environment to determine the above-mentioned appeal. This appeal is against the decision of the Dacorum Borough Council to refuse planning permission for change of use to hot food takeaway of part of ground floor shop at 43 St John's Road, Boxmoor, Hemel Hempstead, Hertfordshire. I have considered the written representations made by you and by the Council and also those made by interested persons. I have also considered those representations made directly by interested persons to the Council which have been forwarded to me. I inspected the site on 23 March 1995.

2. The property comprises a small lock-up shop, being part of the ground floor of a detached Victorian villa which has at some time been converted to provide two shops at ground floor level and a flat above, access to the flat being from the rear. The appeal premises are L shaped, comprising the front shop which would provide the servery and waiting area, and the rear portion which extends behind the adjoining small unit which is separately occupied and would remain as a barber's shop. The premises are located in a mixed residential/commercial area comprising a number of retail shops including a convenience store and an off-license nearby which open beyond normal shop hours. There is also a fish and chip shop approximately 90m to the west, the Boxmoor Service Station/Garage opposite and a number of public houses further east along St John's Road.

3. From my inspection of the appeal site and surrounding area and consideration of the representations, I am of the opinion that the principal issue in this case is whether the proposed change of use would be likely to have an unacceptable effect upon the amenities of nearby residents or lead to an increase in on-street parking to the detriment of highway safety.

4. Policy 18 of the adopted Dacorum District Plan (1984) requires that new development should pay particular regard to a number of matters, including privacy and amenity, and that in the consideration of applications the District Council will have regard to the physical characteristics of the site, the location and design of adjacent development, traffic considerations and the creation of a satisfactory environment. Policy 19 requires all proposals to include provision for car parking based upon the Council's adopted guidelines.



5. The Dacorum Borough Local Plan was placed on Deposit in July 1991, was the subject of a Local Plan Inquiry in 1992, and was subsequently modified. However, the Plan has been further modified, and has recently been the subject of a second Public Local Inquiry. The Plan is therefore well advanced towards statutory adoption and it is necessary for me to accord its policies considerable weight in the determination of this appeal. Policy 7 refers to the creation of land use divisions in towns and large villages. Within residential areas the introduction or intensification of incompatible non-residential uses will be resisted, whilst in town centres and local centres a mix of uses will be permitted including housing, shopping and catering establishments. Policy 8 entitled "Quality of Development" states, inter-alia, that development will not be permitted unless it avoids harm to the surrounding neighbourhood and adjoining properties through, for example, noise, disturbance or pollution and provides sufficient parking space and space for servicing.

6. Policy 10 sets out environmental guidelines, whilst Policy 34 refers to uses in town centres and local centres wherein a broad range of uses is encouraged. Shopping will be the prime component in each centre, but this should not prevent provision for other appropriate uses which would normally include catering establishments, residential and indoor leisure. Policy 40 deals specifically with shopping areas in local centres. It provides a detailed list of those properties covered by the policy, which includes the subject shopping area of St John's Road. Policy 49 is particularly relevant to this appeal and refers to development and traffic. It suggests that development must be compatible in general highway planning, design and capacity terms with the current and future operation of the defined road hierarchy. The acceptability of all development proposals will be assessed specifically in highway and traffic terms including consideration of a total of six criteria set out in the policy. The first of these refers to the volume, type and timing of through traffic in a street and its environmental impact, whilst the second refers to the likely volume of traffic to be generated by the development proposed. There is also reference to the amount of existing on-street parking, the width of the street to accommodate such traffic with on-street parking and road traffic accident records and safety policy.

7. I note from the Council's Register of Electors that there are residential properties to the east at No's 37 to 39 and further west along St John's Road. There is also a flat above the subject property. However, as you point out the road is a busy local distributor with continuous traffic flows into the evenings generated by the activities nearby, including those referred to above and, additionally, by the Boxmoor Social Club nearby and the Dacorum Sports Centre which remains open until 2230 hours, seven days a week. The petrol filling station opposite also remains open until 2100 hours, whilst the fish and chip shop further along St John's Road apparently trades late on a number of nights, remaining open according to your evidence until midnight on Saturdays. Additionally there are four public houses within the vicinity indicated on the extract from the Ordnance Survey sheet which you have provided. There is also a pedestrian crossing with noise alarm outside the appeal premises. It seems likely, therefore, that ambient noise levels within the area would remain relatively high well into the evening. Subject, therefore, to an hours of opening condition I do not consider that use of these premises as proposed would bring about an unacceptable increase in noise disturbance to the residents of nearby property. Furthermore, I am satisfied upon the basis of your submissions that adequate provision could be made for the extraction of cooking smells based upon a fan-driven output above the ridge height of the nearest adjoining buildings.

8. The current occupier of the shop suggests that many of her customers arrive by car during the daytime when St John's Road is busier than during the evening period when the proposed use would operate. I have also noted your

parking survey and the fact that parking restrictions on much of the adjacent highway do not operate after 1830 hours with the exception of that portion of St John's Road which is subject to the pedestrian crossing restrictions and that to the east around the junction with Fishery Passage and Anchor Lane. As your survey shows, however, there is potential parking space for over 70 cars within 100m of the appeal site after 1830 hours. Although the proposed use would create a shortfall of on-site provision when measured against adopted standards, the advice in PPG 13 and that in Paragraph 3.17 of the Hertfordshire Car Parking Standards (February 1994) advises that a flexible approach to the provision of car parking should be adopted to ensure that parking requirements in general are kept to the operational minimum. In the subject case, given the fact that the use will operate in the evenings only when both parking demand in the immediate area and traffic flows are likely to be less than in the daytime, I consider that consent can exceptionally be granted in this case.

9. In arriving at this conclusion I have noted the appeal decisions referred to by the Council. However, both of those cases related to uses which would have operated during normal office hours when the availability of on-street parking is restricted.

10. I do not consider it reasonable to impose a temporary condition given the necessity for the installation of expensive extraction equipment and my detailed conclusions upon the main issues detailed above. I have imposed an hours of opening condition restricted to evenings only as requested by you, given the basis of your representations. I have amended the hours of operation slightly to reflect those of the nearby public houses.

11. I have had regard to the other matters raised in the representations, but none is of sufficient strength to outweigh the considerations which have led to my decision.

12. For the above reasons, and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for change of use to hot food takeaway of part of ground floor shop at 43 St John's Road, Boxmoor, Hemel Hempstead, Hertfordshire in accordance with the terms of the application (No 4/0548/94) dated 21 April 1994 and the plans submitted therewith, subject to the following conditions:-

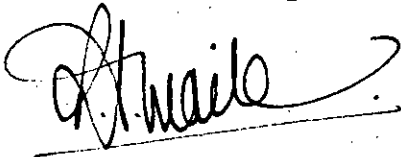
1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter.
2. the premises shall not be open for the service of meals before 1830 hours nor after 2300 hours Monday to Saturday, nor before 1900 hours nor after 2230 hours on any Sunday or Bank Holiday, and the use shall not operate on Christmas Day.
3. details of a ventilation system which shall include measures to alleviate fumes and odours shall be submitted to the Local Planning Authority for approval prior to the commencement of development, and such system shall be installed and thereafter permanently maintained during the continuation of the use hereby permitted.
4. the permission hereby granted relates solely to the evening use of the ground floor of No 43 St John's Road as outlined in red on the submitted plan.
5. details of arrangements for the storage of refuse (including means of enclosure) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

6. a scheme for the protection of the upstairs flat from noise arising from the use hereby permitted shall be submitted to and approved in writing by the Local Planning Authority and all works which form part of the scheme shall be completed prior to the commencement of the use.

13. 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 consent, agreement or approval is refused, or granted conditionally, or if the Authority fail to give notice of their decision within the prescribed period. The developer's attention is drawn to the enclosed note relating to the requirements of the Building Regulations 1991 with respect to access for disabled people.

14. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

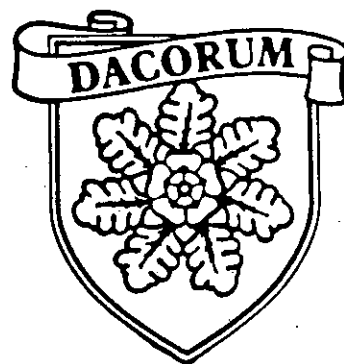
Yours faithfully

A handwritten signature in dark ink, appearing to read 'R J Maile', is written over a horizontal line.

R J Maile BSc FRICS.
Inspector

TOWN AND COUNTRY PLANNING ACT 1990

DACORUM BOROUGH COUNCIL



Application Ref No. 4/0548/94

J M Patel
c/o Whitecroft Estates
39 White Horse Lane
London Colney
Herts

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Whitecroft
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London Colney
Herts

DEVELOPMENT ADDRESS AND DESCRIPTION

43 St Johns Road, Hemel Hempstead, Herts

CHANGE OF USE OF PART GROUND FLOOR TO HOT FOOD TAKE-AWAY

Your application for *full planning permission* dated 21.04.1994 and received on 25.04.1994 has been **REFUSED**, for the reasons set out on the attached sheet(s).

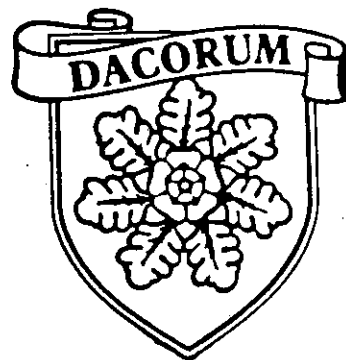
Director of Planning

Date of Decision: 14.07.1994

(ENC Reasons and Notes)

REASONS FOR REFUSAL
OF APPLICATION: 4/0548/94

Date of Decision: 14.07.1994



The policies of the Dacorum Borough Local Plan Deposit Draft and Proposed Modifications aim to ensure that development is compatible in highway, parking and environmental terms. The proposed take-away use in this location is unacceptable because:-

- (a) there is inadequate customer parking in an area already subject to pressure for on-street parking, and where the pattern of traffic attracted to the proposed use is likely to cause a highway danger to road users and pedestrians;
- (b) there will be serious harm to the residential amenity of the locality of reason of noise smell and disturbance as a result of the use and customer activities.