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Department of the Environment
Becket House Lambeth Palace Road London SE1 7ER

Telephone 01-923 7855 ext 373

4/617-76
Tem. HB. 7935 }

Messrs Poulter & Francis
Chartered Surveyors
57 Marlowes
HEMEL HEMPSTEAD
Herts HP1 1LE

Your reference
BF/JMM/4019
Our reference
T/APP/5252/L/76/7963/G6
Date

21 FEB 77

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY G H LINTON & CO LTD
APPLICATION NO TEM HB 7935

1. I refer to this appeal, which I have been appointed to determine, against the decision of the Dacorum District Council, to grant planning permission subject to conditions for the continued use of premises at No 4 Herbert Street, Hemel Hempstead, for wholesale packing, distribution and office. I have considered the written representations made by you and by the council and also that made by another interested body. I inspected the site on 31 January 1977.
2. The condition in dispute is No 1 which provides that the permission shall expire on 31 December 1977.
3. From my inspection of the site and surroundings and the representations made it is my opinion that the determining issue in this case is whether continuation of the present use of the appeal premises beyond 31 December 1977 would prejudice any future proposal for the area.
4. The appeal premises are located within an area allocated primarily for residential purposes in the County Development Plan and there is no indication that it is intended to alter this in the foreseeable future. Furthermore, the site is within a designated General Improvement Area where the pattern of development is overwhelmingly residential in character and appearance and the nearest other non-conforming use is the woodworking business at No 50 St Mary's Road about 200 yds to the east. Therefore, whilst I acknowledge the comparative innocuousness and modest scale of the activities conducted in the appeal building I am of the opinion they are nonetheless in material breach of the Development Plan and cannot be permitted to continue indefinitely.
5. Despite the changes which have occurred since 1962 and the understandably slow rate of progress, I have no reason to suppose the council's redevelopment plans for this area are other than well founded and likely to be completed in due course. And this view appears to be shared by a majority of local householders who continue to improve their properties and their environment. In this connection I have also noted the recent external decoration of the appeal building which illustrates your clients' concern to enhance the appearance of this neighbourhood, but I do not consider this makes the present use of these premises any more acceptable as a permanent, or indeed as a long-term, feature of this area.

6. Whether or not the appeal premises will revert to a "corner-shop" eventually is a matter on which opinions differ, but I am in no doubt that this would be a more appropriate use of the existing building on the appeal site. And whilst this may be determined by what has been described as "market forces", it is my opinion that these forces and the destiny of this building should be unaffected by a planning permission which could be regarded as tacit acceptance of the present use. Nevertheless, there is no evidence that the council, or anyone else, have firm plans for an alternative use of the appeal building and its site in the immediate or short term future, and I am therefore unconvinced that a continuation of the present use for a limited but longer period than is now the case would prejudice future proposals for this area, particularly as the use does not involve any constructional work. I have, of course, considered all the other matters raised in the written representations but conclude that these are outweighed by the considerations that have led me to my decision.

7. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and substitute the following condition for that imposed in the planning permission No TEM HB 7935 dated 2 August 1976:-

The use hereby permitted shall cease on or before 31 December 1980.

I am Gentlemen
Your obedient Servant



H C STOW
Inspector

Department of the Environment
2 Marsham Street
LONDON SW1P 3EB

Under the provisions of section 245 of the Town and Country Planning Act 1971 a person who is aggrieved by the decision given in the accompanying letter may challenge its validity by an application made to the High Court within 6 weeks from the date when the decision is given. (This procedure applies both to decisions of the Secretary of State and to decisions given by an Inspector to whom an appeal has been transferred under paragraph 1(1) of Schedule 9 to the Town and Country Planning Act 1971).

The grounds upon which an application may be made to the Court are:-

1. that the decision is not within the powers of the Act (that is the Secretary of State or Inspector, as the case may be, has exceeded his powers); or
2. that 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 245 of the Act: they are the requirements of that Act and the Tribunals and Inquiries Act 1971 or any 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. These include the Town and Country Planning (Inquiries Procedure) Rules 1974 (SI 1974 No 419), which relate to the procedure on cases dealt with by the Secretary of State, and the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1974 (SI 1974 No 420), which relate to the procedure on appeals transferred to Inspectors.

A person who thinks he may have grounds for challenging the decision should seek legal advice before taking any action.

APPEAL BY G.H.LINTON & COMPANY AGAINST THE IMPOSITION OF A CONDITION ON A PLANNING PERMISSION GRANTED BY THE DACORUM DISTRICT COUNCIL AT 4 HERBERT STREET, HEMEL HEMPSTEAD, HERTFORDSHIRE.

WRITTEN REPRESENTATIONS OF DACORUM DISTRICT COUNCIL.

1. THE APPEAL

On 2nd August 1976, the Dacorum District Council granted planning permission for the use of the appeal site for wholesale packing, distribution and office, subject to a condition viz:-

"This permission shall expire on the 31st December 1977" - and the reason for this condition:-

"So as not to prejudice any future proposals for the area".

The appeal has been lodged against this condition.

2. THE SITE AND SURROUNDINGS

The appeal site comprises a two-storey building and single storey outbuildings situated on the inside of a right-angled bend in Herbert Street, Hemel Hempstead. The property adjoins two storey terraced houses to the east and a former public house, recently converted into a house, to the south. On the north-side of Herbert Street are situated mainly two-storey terraced and semi-detached houses whilst to the west is an area of cleared land at present unused.

Plan 1 shows the location and land use in the immediate vicinity.

The appeal site lies about ^{200 yards} 1/4 miles east of High Street, the former principle shopping street in Hemel Hempstead prior to its development as a new town, in an area of primarily Victorian development.

3. DEVELOPMENT PLANS

On the County Development Plan, approved by the Secretary of State for the Environment in 1971, the appeal site is situated within an area allocated for "primarily residential" purposes. This remains unchanged in the 'Hertfordshire 1981' proposals, a non-statutory view of the Development Plan approved by the Hertfordshire County Council in September 1972 pending the submission and approval of structure and local plans. The Structure Plan for Hertfordshire has been submitted to the Secretary of State and is at present at 'Examination in Public' stage.

4. PLANNING HISTORY OF THE APPEAL SITE

It is understood that prior to the appellant acquiring the appeal premises in 1962, the land and buildings were used as a retail shop, together with a bakehouse and living accommodation. There followed a series of temporary planning permissions granted to the appellant as set out in Appendix A.

5. THE CASE FOR THE LOCAL PLANNING AUTHORITY

5.1. Subsequent to the designation of Hemel Hempstead as a new town, a Master Plan for its development was prepared by the former Development Corporation upon which the appeal site was shown as being within an area of "high density residential development" and it was upon this basis that the 1962 permission was granted.

5.2. In the early 1960's the Hertfordshire County Council prepared its first review of the County Development Plan which was submitted to the former Minister of Housing and Local Government in December 1963 and subsequently approved (with certain modifications) in 1971 (see paragraph 3 before). During this period, the former Master Plan was still used as a basis for development control.

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5.3. The Housing Act 1969 introduced provisions for designating General Improvement Areas and the former Hemel Hempstead Borough Council appointed consultant architects to prepare an overall scheme for the St.Mary's area, bounded by George Street, Allandale, Randall Park, Cherry Bounce and a line east of properties fronting High Street. The consultant architects' scheme was the subject of formal consultations and public participation exercises, and the Improvement Area Plan was approved by the Borough Council in November 1972. Plan 2 shows

5.3.1. The area in 1969 prior to its adoption as a General Improvement area;

5.3.2. The Consultant Architects' proposals in 1972;

5.3.3. The scheme as it is progressing in 1976 incorporating various approved modifications and indicating the intended course of future re-development of existing cleared sites.

5.4. From Plan 2, the location of the appeal site can clearly be seen in relation to the Improvement Area proposals. The adjacent property to the south, No.2 Herbert Street was until 1975 a public house, 'The Hop Garland' which has recently been converted into a private dwelling with the benefit of a planning permission.

5.5. It is understood that the appellant's business comprises the impregnation of tissues with cleaning fluids for industrial and commercial purposes, the packaging of these articles and ancillary storage and administration areas. This is considered to be an industrial use which could fall within the definition of 'light industrial' as defined in the Town and Country Planning (Use Classes) Order 1972.

5.6. In the Consultant Architects' report on the Improvement Area scheme, it was considered that the then public house 'The Hop Garland', and the appeal site were "buildings of important townscape value". In addition, the area around the public house was described thus:-

5.6.1. The character and central placing of this group at the intersection the principal east-west and north-south pedestrian routes, would, we suggest, commend it as the new 'heart' of the St.Mary's Improvement Area. Since the local population will be increased by perhaps 50%, it could well 'carry' more of its own local shops such as a newsagent, tobacconist and general store. The sense of space would be increased by extending paved areas; and adequate provision should also be made for car parking.

5.6.2. Most of this land (north of Austins Place) is owned by the Commission for the New Towns and we agree with their earlier proposals that this is indeed a good site for Old Persons' dwellings. Furthermore.... it would be next to the envisaged hub of the area with one or two corner shops and the pub close at hand.

5.6.3. This (Herbert Street) is a pleasant street but with poor access at each end. At the top, the eastern end of the street is terminated by a fine pair of houses. The lower and western end will be defined by the proposed development around the 'Hop Garland'... We propose that in two places the long south side... should be broken up with groups of trees and access points to back-land car parking spaces... With the closure of St.Mary's Road, the western end of the street would be continued through to George Street.

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5.7. It can therefore be seen from Plans 1 and 2 and from the comments of the consultant architects' report that the appeal site is a very important building in the context of the whole improvement area scheme. Since the 1972 report, there have been a number of modifications which to a greater extent are shown on Plan 2 by comparing the 1972 proposals with the 1976 proposals. Inasmuch as it affects the appeal site, it should be noted that the following modifications have been made viz:-

- 5.7.1. The adjoining public house has been converted into a dwelling;
- 5.7.2. The highway link between the junction of Herbert Street/St.Mary's Road to George Street has been deleted and substituted by a pedestrian link; Herbert Street would terminate adjacent to the appeal site;
- 5.7.3. The suggested shop opposite the appeal site would not be constructed;
- 5.7.4. St.Mary's Road would be continued to be used for vehicular traffic from the east (Allandale)
- 5.7.5. The former Borough Council's proposed relief road east of High Street will not proceed, and has been replaced with a series of link roads to serve existing and proposed residential and existing commercial premises in High Street and the Austins Place/St.Mary's Road area.

5.8. The Improvement Area proposals are in essence a continuous process since the effectiveness of such a scheme is dependent upon a great deal of public co-operation. A considerable area of property in the locality is owned by this authority or the Commission for the New Towns and both authorities have been active in the last four years in implementing these proposals as quickly and effectively as practicable. Much of the work to date has been in providing replacement sewers and certain road improvements, but some building work has and is at present taking place. In addition the Commission for the New Towns have carried out improvements to 37 houses within the area and provided off-street parking facilities.

5.9. It is maintained that the local authority is actively implementing its Improvement Area proposals upon a sound basis plan against which development control decisions are to be made. The appellant's industrial use, whilst seemingly innocuous at present, is located at the very core of the area and in the long term is not considered to be a suitable use for permanent retention. With the future residential development of the present vacant land to the north-west of the appeal site together with other development nearby, the local planning authority could have hoped that the appeal site could revert to its original retail use and whilst this is primarily a question of market forces, the survival of the appellant's present use on a series of temporary permissions is the most appropriate way in which the local planning authority could achieve this aim.

5.10. It may well be considered that the local planning authority has been generous in granting the existing permission until the end of 1977 since it could reasonably be argued that the Improvement Area proposals are sufficiently advanced to justify the removal of the existing temporary use. It is interesting to note that the local planning authority has received a letter from the owners of the appeal premises, the Commission for the New Towns, in response to the lodging of this appeal stating:-

"... in view of the expected transfer of assets on 1st April 1978, it could not recommend a renewal of a temporary planning approval beyond 31st December 1977."

5.11. The appellant's contention "... that the reason given by the Council for the short term approval now has no substance and no factual basis..." is clearly in itself false and in fact there is more justification for imposing a very strict control over the future use of this important property than in 1962. Indeed perhaps this use should now be terminated.

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6. CONCLUSIONS

The local planning authority has a sound policy basis on which to make development control decisions in the area which includes the appeal site and it has not acted unreasonably in allowing the appellant to continue his industrial use to date. Since the appeal site is strategically situated in respect of the development of the area, the local planning authority is more than justified in seeking to review the situation in December 1977.

The Secretary of State is therefore respectfully requested to dismiss this appeal.