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LA Ref MKB/EDA/2447/38

Your reference

DMP/IB/KUROMA

Our reference

APP/5252/C/76/1450-1

Date

- 9 DEC 77

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 88  
LAND AT 80 HIGH STREET, MARKYATE, HERTFORDSHIRE  
APPEALS BY KUROMA PROPERTIES LIMITED AND MR A H GOULT

1. I am directed by the Secretary of State for the Environment to refer to the report of the Inspector, Mr A A Sloma, BSc(Eng), MICE, FIMunE, Barrister, LMRTPI, who held a local inquiry into your clients' appeals against 2 enforcement notices served by the Dacorum District Council, relating to:-

NOTICE A: the use of land and buildings at 80 High Street, Markyate for industrial purposes,

NOTICE B: the use of the external wall of the curtilage of the dwelling for the display of advertisements.

2. The appeals against notice A were on the grounds set out in section 88(1)(a), (b) and (d), of the Town and Country Planning Act 1971. The appeals against notice B were on grounds (a), (b) and (d), but at the inquiry these grounds were withdrawn and ground (g) was added.

3. A copy of the Inspector's report of the inquiry is annexed to this letter. His conclusions are set out in paragraph 113 and 114 and his recommendations at paragraph 115 of the report. The report has been considered.

#### SUMMARY OF THE DECISION

4. The formal decision is set out in paragraphs 12 and 13 below. The appeals against notice A fail and the notice is being upheld as corrected and varied. Planning permission is not being granted for the development enforced against. Notice B is being quashed.

#### REASONS FOR THE DECISION

##### Notice A:

5. Although the matter was not raised at the inquiry, it is considered that notice A has been too widely drawn in alleging the use of the land and buildings for industrial purposes and that the allegation should have related to the specific purpose for which the land is used. However, the view is taken that your clients were not misled as to what was intended nor were their cases prejudiced and that it is within the Secretary

of State's powers contained in section 88(4)(a) of the 1971 Act to correct the notice so that it relates specifically to the manufacture and sale of furniture.

6. In support of your clients' appeals on ground (b), it was submitted that no breach of planning control has occurred because the appeal premises have had a commercial use from about 1867 and for light industrial purposes from before 1948. There has been a continuous use from before 1948 and a light industrial use from before 1964. The Inspector found as facts which are accepted that from the 19th century until the 1930s, No. 80 comprised a dwelling and shop, the latter and the outbuildings serving as a business for the sale of groceries, milk, corn-chandlery and pork. Shortly before the last war, a Mr Read took over No. 80 and used the shop for the sale of groceries and family provisions, the outbuildings serving as a store for foodstuffs, packaging butter and cheese and bottling milk in connection with the overall use of the premises. Milk in churns and food in bulk were delivered to the outbuildings which contained the proprietor's van and were also used for dairy purposes. This use continued until about 1960 when the packaging use ceased but the milk bottling and dairy and grocery activity continued. This activity ceased about 1967 or 1968 when Mr Read left and there were subsequent periods of vacancy of No. 80 and of unsuccessful attempts to recommence the grocery use only. At this period and until 1972, the outbuildings served no specific business use. For some 6 months during 1972/3 the outbuildings were used for a motor engineer's business and up to that time the rating records describe No. 80 as a shop, house and premises. Your clients took over No. 80 in 1973, converted the shop at the High Street frontage to residential use, repaired and renovated the outbuildings and commenced in them a furniture manufacturing and sales use.

7. The view is taken that until 1967 or 1968 when Mr Read left, the premises at 80 High Street comprised a single planning unit with a mixed use for the purposes of a grocery business, a dairy, and a dwellinghouse, the appeal building itself being used among other things for the garaging of a van used in the business, for the bottling of milk in connection with the dairy business and for the storage and packaging of goods in connection with the shop. In 1973 your client, Mr Goult, converted the shop and house into 2 flats, and the outbuildings were brought into use for the manufacture and sale of kitchen furniture and it is considered that the outbuildings then became a separate planning unit. It is considered that the manufacture and sale of furniture is, as a matter of fact and degree, materially different from the former mixed use of the site and that there has been a material change of use of the appeal building which constituted development requiring planning permission. Such permission was not obtained, resulting in a breach of planning control and as this breach of planning control took place after the beginning of 1964 the appeals against notice A fail on grounds (b) and (d).

#### Notice B

8. Although at the inquiry ground (b) was withdrawn, consideration has been given to the question whether the display or advertisements involved a material change of use of the wall and if so whether the requisite planning permission had been obtained. Section 64 of the 1971 Act provides that planning permission for any development involved in the display of advertisements in accordance with Regulations made under section 63 of the Act is deemed to be granted. The local planning authority has not shown that the advertisements displayed on the external wall of the curtilage of the dwellinghouse are not displayed in accordance with and with the benefit of consent under the Town and Country Planning (Control of Advertisements) Regulations 1969 (as amended). Some at least of the advertisements, shown in the photographs submitted could be displayed with deemed consent under Regulation 14, unless the local planning authority had already taken action under Regulation 16 to secure their discontinuance. Indeed, the various provisions of those Regulations are the appropriate powers to exercise to control the display of advertisements. While it is accepted that section 22(4) of the 1971 Act provides that the display of advertisements on any external part of a building which is not normally used for that purpose involves

development, it has not been shown that such development has taken place without the requisite permission. In the circumstances and as it is open to the authority to exercise the appropriate powers to control the advertisements, enforcement notice B will be quashed.

9. On the planning merits of the appeals on ground (a) against notice A, the Inspector concluded:-

"1. Whilst there are undoubtedly other non-residential activities in the locality contributing to noise and traffic difficulties, the present use of the appeal building has led to objections on these accounts by itself. Neighbours have experienced noise and disturbance by the disputed use.

2. Moreover, the vehicles attracted to the appeal building have led to obstruction and congestion on Pickford Road which is a narrow but busily used highway. They have also added to difficulties in negotiating the nearby substandard junction with High Street.

3. In these circumstances, there is little to warrant setting aside the planning objections. If planning permission falls to be considered, it ought not to be granted."

These conclusions are accepted and for the reasons given by the Inspector it is not proposed to grant planning permission on the application deemed to have been made under the provisions of section 88(7) of the 1971 Act for the development to which the notice, as varied, relates. The appeals accordingly fail on ground (a).

10. As notice B is being quashed the deemed application and the appeals on ground (g) do not fall to be considered.

11. Although ground (f) was not pleaded, this has, nevertheless, been considered in relation to notice A. The requirement to restore the land and buildings to the condition before the development took place is considered to be too wide in its scope and, therefore, too onerous and it is proposed to vary the notice under the Secretary of State's powers contained in section 88(5) of the 1971 Act by the deletion of this requirement. A lesser requirement is being substituted. To that extent any appeals would have succeeded on ground (f).

#### FORMAL DECISION

12. For the reasons given in paragraph 5 to 11 above, the Secretary of State hereby directs that notice A be corrected and varied:-

a. in the fifth recital by the deletion of the words "industrial purposes" and the substitution therefor of the words "the manufacture and sale of furniture",

b. in the requirements by the deletion of the words "industrial purposes and to restore the said land and buildings situated thereon to their condition before the said development took place" and the substitution therefor of the words "the manufacture and sale of furniture and to remove from the land and buildings all machinery, equipment and materials brought on to the land in connection with the said use".

Subject thereto, he upholds the enforcement notice and dismisses the appeals. He refuses to grant planning permission for the development to which the notice, as corrected and varied, relates.

13. For the reasons given in paragraph 8 above, the Secretary of State directs that notice B be quashed.

#### RIGHT OF APPEAL AGAINST THE DECISION

14. This letter is issued as the Secretary of State's determination of the appeals. Leaflet A enclosed for those concerned sets out the right of appeal to the High Court against the decision and the right to inspect the documents attached to the Inspector's report.

I am Gentlemen  
Your obedient Servant

B YEOMANS  
Authorised by the Secretary of State  
to sign in that behalf

ENCS