



# The Planning Inspectorate

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Your Reference:

SBJ/GJW/H28

Council Reference:

A/0664/94EN

Our Reference:

AT/APF/C 94/A1910/633886

Date:

05 JAN 1995

PLANNING DEPARTMENT					
DACORUM BOROUGH COUNCIL					
Ref.					
DCP	T.C.P.M.	D.P.	D.C.	B.C.	
Received 6 JAN 1995					
Comments					

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6  
PLANNING AND COMPENSATION ACT 1991  
APPEAL BY MR C GARRAWAY  
LAND AND BUILDINGS AT HEADLOCK WORKS, EBBERNS ROAD, HEMEL  
HEMPSTEAD

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeal against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land and buildings. I held an inquiry into the appeal on 8 November 1994. The evidence of Mr Garraway and Mr Latchford was taken on oath.

## THE NOTICE

2. (1) The notice was issued on 7 April 1994.
- (2) The breaches of planning control alleged in the notice are as follows:-

Breach A:- the failure to comply with condition number (2) [sic] subject to which planning permission (No 4/1271/83) was granted on 24 November 1983 for "change of use of part of ground floor from industrial to wholesale distribution of plumbing materials".

(i) The condition in question is as follows: "the use hereby permitted shall be restricted to the storage and wholesale distribution of plumbing goods and materials and for no other purpose whatsoever (including any other purpose within Class X of the Town and Country Planning (Use Classes) Order 1972)".

(ii) The notice alleges that this condition has not been complied with fully in that "that part of the ground floor of the premises, shown edged blue on the



attached plan marked "A", is being used for wholesale and retail sale of plumbing goods and bathroom fittings."

Breach B:- "In respect of the part of the first floor of the premises shown edged green on the attached plan marked "A" it appears to the Council that there is a breach of planning control in that the use has changed from wholesale distribution of decorating materials to use as a showroom for the display of types of plumbing goods and bathroom fittings in respect of which sales are conducted on the ground floor of the premises."

Breach C:- "In respect of the remainder of the first floor of the premises it appears to the Council that there is a breach of planning control in that the use has changed from industrial use to use as a showroom for the display of types of plumbing materials and bathroom fittings in respect of which sales are conducted on the ground floor of the premises."

(3) The requirements of the notice are:-

(i) Cease using the part of the ground floor of the premises shown edged blue on the attached plan marked "A" for retail sales except on Mondays to Fridays (other than public holidays) between the hours of 8 am and 6 pm.

(ii) Cease using the whole of the first floor of the premises for use as a showroom for the display of types of plumbing goods and bathroom fittings in respect of which sales are conducted on the ground floor of the premises except on Mondays to Fridays (other than public holidays) between the hours of 8 am and 6 pm."

(4) The period for compliance with these requirements is two months.

#### GROUNDS OF APPEAL

3. Your client's appeal is proceeding on grounds (a) (b) (c) (d) (f) and (g) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991.

#### Site and Surroundings

4. The appeal premises, Headlock Works, are an industrial building in a row of similar buildings constructed in the 1960s on the west side of Ebberns Road, which is a cul-de-sac within the built-up area of Hemel Hempstead. Along the east side of the road, including opposite the appeal site, are residential properties, most of which have small front gardens and no garages.

5. On the ground floor of the appeal building is a small

section, at the rear, occupied by "JAC Cutting Services". The remainder of this floor is occupied by your client. There is a "trade counter" and a much larger area used for storage of all kinds of plumbing and heating materials, equipment and supplies. Upstairs, on the first floor, is a showroom displaying mainly bathroom suites, two small offices, a kitchen, toilets and further storage areas. All this floor is used by your client, although I understand that JAC Cutting Services also make some use of the kitchen and toilets. The small second floor is unoccupied.

6. There is a hard-surfaced forecourt at the front of the building, and vehicular access along the northern side to the land at the back, where excavations have been carried out for the foundations of a three storey extension to the premises, for which permission was granted in 1978.

#### Relevant Planning History

7. After the original planning permission for the building (1964), and the permission for the extension (1978), two further permissions were granted in 1983. One of these related to the area referred to in the current enforcement notice as "shown edged blue". This is the area on the ground floor of the premises now used as the "trade counter" together with a small part of the adjoining storage space. The planning permission document gives the description "Change of use from Industrial to the wholesale distribution of plumbing materials".

8. The other 1983 permission related to a small area on the first floor, "shown edged green" on the current enforcement notice, and was for "Change of use from Industrial to the Wholesale Distribution of Decorating Materials".

9. In 1986 permission was given for an additional covered storage area on the south side of the original building. In 1988 permission was rejected on appeal for a two-storey rear extension.

10. The council has made various attempts to ensure the provision of the parking schemes which were required by conditions attached to certain of the permissions granted. To date, there is no formally arranged parking scheme at the site. On 18 October 1993 the council took, or purported to take, enforcement action, in respect of the same or similar matters to those dealt with in the notice which is the subject of this appeal. That 1993 notice was withdrawn on the date the present notice was issued.

#### The Planning Unit, and Corrections to the Notice

11. I invited comments from the parties about the extent of the relevant planning unit in this case. From the information available and my own observations, I am in no doubt that at the

date of issue of the notice the whole of the area on the ground and first floor of the premises, occupied by your client, formed one planning unit. It was occupied by him for what is essentially one business and use, which I would describe as the storage, wholesale distribution and sale, and retail sale, of plumbing, heating and bathroom goods, fittings and materials. In my judgement the allegations of material change of use in the enforcement notice should refer to this main use of the unit, and not isolate the "showroom" aspect, which is merely one part of an overall, main use. However no confusion was caused, and the notice can be corrected without causing injustice to either party.

12. Although the notice deals with different parts of the same unit separately, this has not caused any disadvantage to the recipient of the notice, and no correction of that aspect of the notice is necessary. I will correct the obvious clerical error in relation to the number of the condition of the 1983 permission alleged to have been breached.

#### Appeal on ground (b)

13. Although there was some discussion about the exact nature and extent of the "sales" which take place within the planning unit, it was not disputed that at least some "retail sales" occur. It does not matter, for this purpose, that some parts of the unit are, for example, actually used for various ancillary purposes. Since, as a matter of fact, the use alleged was taking place within the unit on the date of issue of the notice, the appeal on ground (b) must fail.

#### Appeal on ground (c)

14. The main submission on this ground of appeal was that retail sales were authorised, in respect of the "blue area", by the 1983 permission. I was referred to Oakimber v Elmbridge Borough Council 1992 JPL 48, and Staffordshire Moorlands DC v Cartrwright 1992 JPL 138. In this instance I do not think there is any significant ambiguity in the planning permission which would make an examination of the general background to the original application, the correspondence, or even the planning register, necessary or appropriate. The description of the development, in the permission, has already been quoted. The permission document also states that the development is "... proposed by you in your application...". The application form says that the proposed development is "Change of use of part of factory for storage and sale of plumbing materials". In response to a request on another part of the application form for information about the "...function of the proposed building/use...." the reply is "Wholesale plumbing and heating materials".

15. In my judgement, there is nothing in the actual planning permission, which incorporates by reference the application

itself, which indicates that the permission could be for "retail", in addition to "wholesale", purposes. Where the permission is acceptably clear on a matter it is not appropriate to look further. For that reason I attach little weight to the mention of "retail" in other documents.

16. It was agreed that planning permission was not in fact required for a change from industrial use to use for purposes within what was then Class X of the Use Classes Order. It does not follow, in my view, that one should assume that the permission was for something "extra", such as retail sales.

17. In a separate argument it was suggested that the condition alleged to have been breached is invalid. In brief, I accept that the original committee report in connection with the 1983 permission does not explain the condition. Nevertheless from the information available to me, I think it proper to conclude that the condition had a planning purpose, that it fairly and reasonably related to the permitted development, and that it was not unreasonable. I consider the condition valid.

18. Some customers at the site, such as DIY enthusiasts, are certainly providing "retail" business. Some are obviously commercial tradesmen. From what I was told, other visitors to the premises fall somewhere in an intermediate category, and, depending on the precise circumstances, could be classed as either "retail" or "wholesale" customers. These are, for example, people who employ a builder, but who visit the site to make a personal choice of items such as baths and basins. The actual purchase is made by the builder, or, sometimes, directly by the customer.

19. Whatever the balance between these various types of customer, I am satisfied, firstly, that the business can be properly described in the terms set out in paragraph 11 above, and, secondly, that this is a use different in character from that described in any planning permission relating to the premises, whether that be a permission granted on an application, or arising by virtue of the General Development Order. A material change of use has occurred for which permission was required but not obtained. In relation to the "blue area" there was, in addition, a breach of the condition attached to the 1983 permission. The appeal on ground (c) fails.

#### Appeal on ground (d)

20. This ground of appeal relates only to the "blue area". There is no dispute that your client first occupied this area in April 1983. His evidence, which was not challenged by the council, was that from this time about 1 in 5 customers on a Saturday, and 1 in 6 on a weekday, were "retail". From the information I have, it is my judgement that this proportion of retail customers would have been significant enough to make the use of the "blue area" different in character from the use for which permission was granted, and also bring about a breach of

the condition attached to the permission.

21. Over the subsequent years, your client gradually acquired possession of more of the ground floor of the premises, and in 1990 took over the first floor as well. It seems likely to me that the character of the use of the planning unit, as it extended, altered somewhat. Nevertheless, I believe there can be little doubt that throughout the relevant period of 10 years, prior to 18 October 1993, the condition had not been complied with. The appeal on ground (d), in respect of the "blue area" only, succeeds.

#### The Ground (a) Appeal and the Deemed Application

22. The enforcement notice contains quite separate allegations of breach of planning control, in respect of the ground floor "blue area", and in respect of two parts of the first floor. As the ground (d) appeal has succeeded in respect of the "blue area", the deemed application, strictly speaking, relates only to the matters alleged to constitute the breach of planning control in relation to the two parts of the first floor. Those matters consist of a material change of use to the use described in paragraph 11. In assessing the effect of this change of use on the locality, it is important to bear in mind that the use of the "blue area", which is part of the same planning unit, will be able to continue in any event. Furthermore, for reasons not explained at the inquiry, the council decided to exclude altogether from the scope of the notice the much larger part of the ground floor outside the "blue area".

23. It is also necessary to bear in mind that the council has decided to accept the use, as it now is, of the whole planning unit, from Mondays to Fridays. The council's concern focusses on the retail element only of the use, as it occurs on a Saturday morning.

24. With that background, it is my opinion that the main issue is whether the additional vehicular activity that arises, as a result of the use of the first floor showroom as a part of the business, and in respect of the retail sales aspect only, on a Saturday, is such as to cause material harm to the amenity of residents.

25. I was referred to relevant parts of the development plan and the emerging Local Plan. In summary, the general thrust of the policies is that an "extension" or alteration of a business such as this one may be permitted subject to an assessment of its effect on the environment, which would include the effect on neighbouring properties.

26. Surveys of the vehicles visiting the site on a weekday and on a Saturday morning were carried out by the council, on behalf of the appellant, and by a local resident. Although, as might be expected, there are differences between the results, the general impression given by all the surveys, taken together, is that the

amount of traffic generated by the site on a Saturday morning is not significantly different from the amount generated on a weekday morning. This is an amount of vehicular traffic which, as far as weekdays are concerned, the council considers is acceptable.

27. It is apparent from the survey information that a greater proportion of the site traffic on a Saturday is made up of private cars, rather than vans or lorries. Having regard to the comments made by residents at the inquiry, I think it likely therefore that a greater proportion of those going to the site on a Saturday are private persons, rather than those in business.

28. I can well understand the concerns of local residents who say they are disturbed on a Saturday morning by vehicular movements. However, as explained, not all the customers who go to the site will in fact be "retail" customers. Furthermore, because of my conclusion in relation to ground (d), and the form of the enforcement notice, any retail trade arising out of the operation of the ground floor of the premises would continue, even if the notice were upheld. Bearing in mind also that there is a significant amount of traffic in the road on a Saturday which is not caused by any part of the appeal site, it seems to me that the extra activity, which this notice could prevent, is quite limited.

29. The only survey evidence I had about the use of the forecourt of the site for parking indicated that there was usually adequate space, although I accept a resident's evidence that some people park in the road even when there is space on the site.

30. On the question of parking provision, I have had regard to Planning Policy Guidance Note 13, the actual survey evidence about availability of parking spaces at the site, and the fact that the council decided that the similar weekday situation could be accepted. In the light of those factors, and the very limited extent of the extra activity, over and above what could occur in any event, I do not consider that the shortfall of parking provision compared with council standards, is critical. I appreciate that an earlier appeal for an extension to the building was rejected because of inadequate car parking provision. However, in this instance there is new government guidance, and specific survey information, to take into account.

31. My overall conclusion is that the additional vehicular activity that arises, as a result of the use of the first floor showroom as a part of the business, and in respect of the retail sales aspect only, on a Saturday, is not such as to cause material harm to the amenity of residents.

32. As discussed at the inquiry, it is necessary to impose conditions to ensure that the nature of the business could not be altered in such a way as to aggravate the effects of traffic on the amenity of residents. Such conditions can be imposed not only in relation to the first floor, but also in relation to the

other parts of the building controlled by your client. In my judgement it is appropriate to do so, in the light of my findings that the ground and first floor are parts of one planning unit, and used by the same business. The appellant has personally operated the business on this site for many years, and the character and acceptability of the use depend, to some extent, on his continued involvement. Both the principal parties were therefore firmly of the opinion that a personal condition would be appropriate in this case, and I agree with that view. Whilst I would accept that this use is "sui generis" and not one to which the Use Classes Order would apply, it is still necessary to include a condition to ensure that there is not a switch to a trade in a completely different type of goods, for example low value items, which might give rise to different traffic patterns. There is a reasonable prospect of your client obtaining sufficient control over the open areas around the building to justify a condition requiring parking spaces to be marked out on the forecourt. Finally, and again in the interest of the amenity of residents, a condition will control the opening hours of the business as a whole, throughout the week.

#### Other Matters

33. I have considered all the other matters raised at the inquiry and in writing, but they are not sufficient to outweigh the reasons which have led to my decision.

34. As the appeal succeeds in relation to part of the site on ground (d), and in relation to the remainder of the site on ground (a), the appeals on grounds (f) and (g) do not need to be considered.

#### FORMAL DECISION

35. For the above reasons, and in exercise of the powers transferred to me, I direct that the notice be corrected as follows:-

- (1) in paragraph 3.1 by deleting the words "Condition (2)" and substituting the words "Condition (1)";
- (2) in paragraphs 3.2 and 3.3 by deleting the words "use as a showroom for the display of types of plumbing materials and bathroom fittings in respect of which sales are conducted on the ground floor of the premises", wherever they occur, and substituting the words, "use for the storage, wholesale distribution and sale, and retail sale, of plumbing, heating and bathroom goods, fittings and materials".

Subject to those corrections, I allow your client's appeal and direct that the enforcement notice be quashed. I hereby grant planning permission on the application deemed to have been made under S177(5) of the amended Act for the development already



carried out, namely the use of the first floor of the building at Headlock Works, Ebberns Road, Hemel Hempstead, as shown on the plans attached to the notice and described in the notice, for the storage, wholesale distribution and sale, and retail sale of plumbing, heating and bathroom goods, fittings and materials, subject to the following conditions:-

1. No part of the ground or first floor of the building on the land shall be open for business, (in connection with the storage, wholesale distribution and sale, and retail sale of plumbing, heating and bathroom goods, fittings and materials), except during the hours 0800 - 1800 Mondays to Fridays, and 0800 - 1230 on Saturdays. It shall not be open for this business at any time on Sundays or Bank Holidays.
2. The permission hereby granted is for the storage, wholesale distribution and sale, and retail sale of plumbing, heating and bathroom goods, fittings and materials, and no other goods, fittings or materials shall be sold from the premises without the prior approval in writing of the local planning authority.
3. The use hereby permitted shall be carried on only by Mr C Garraway and shall be for a limited period being the period during which the premises are occupied by Mr C Garraway.
4. When the premises cease to be occupied by Mr C Garraway the use hereby permitted shall cease and all materials and equipment brought onto the premises in connection with the use shall be removed.
5. Within three months of the date of this letter the forecourt of the premises shall be clearly marked out with not less than 7 car parking spaces, and if this work is not done within that time the use hereby permitted shall cease.
36. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to 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.
37. The developer's attention is drawn to the enclosed note relating to the requirements of the Buildings Regulations 1991 with respect to access for disabled people.
38. This decision does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

RIGHTS OF APPEAL AGAINST DECISION

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

Yours faithfully

*R L Muers*

R L Muers BA DipSocAdmin DipSocWk Solicitor  
Inspector

APPEARANCES

T\APP\C/94/A1910/633886

FOR THE APPELLANT

Mr A Newcombe

of Counsel, instructed by Mr S James, of  
Development, Land and Planning  
Consultants Ltd

who called:

Mr C Garraway

Appellant

Mr S C Paget Fulcher BSc

of Thorburn Coloquoun

MICE MIHT CEng Transportation

Mr S James MRTPI FPCS

of Development, Land and Planning  
Consultants Ltd

FOR THE LOCAL PLANNING AUTHORITY

Mr P Brown

of Counsel, instructed by the Director  
of Law and Administration, Dacorum BC

who called:

Mr J E Knapp MRTPI

Principal Planning Officer

Mr R Latchford

Local Resident

INTERESTED PERSONS

Mrs C A Pears

153 Ebberns Road, Hemel Hempstead

Mrs B A Short

149 Ebberns Road, Hemel Hempstead

Mr M Ginger

145 Ebberns Road, Hemel Hempstead

Mr T Drewe

157 Ebberns Road, Hemel Hempstead

Mr D Harrington

119 Ebberns Road, Hemel Hempstead

Mr R Willmore

139 Ebberns Road, Hemel Hempstead

DOCUMENTS

Document 1

- List of Persons present at the Inquiry

Document 2

- Letter of notification and circulation list

Document 3

- Letters of representation

Document 4

- Written statement of Mr S A Watkins, Enforcement  
Officer

- Document 5 - Extract from "Traffic in Towns" (Buchanan Report)
- Document 6 - Condition suggested by the council
- Document 7 - Appendices to Mr Knapp's proof
- Document 8 - Appendices to Mr Latchford's proof
- Document 9 - Additional correspondence submitted on behalf of the appellant
- Document 10 - Copies of decided cases cited on behalf of the appellant
- Document 11 - Appendices to Mr Fulcher's proof
- Document 12 - Appendices to Mr James' proof

#### PLANS

- Plan A - Plans attached to Enforcement Notice
- Plan B - Additional plans of the premises, supplied by the parties