



TOWN AND COUNTRY PLANNING ACT 1990

DACORUM BOROUGH COUNCIL

Application Ref No. 4/0795/91

Mr Choudhury & Mr Ali
49-51 High Street
Bovingdon
Herts

D.Kent And Associates
Great Wheelers Barn
The Green
Sarratt
HERTS

DEVELOPMENT ADDRESS AND DESCRIPTION
=====

49-51 High Street, Bovingdon,

VARIATION OF CONDITION 6 OF P/P 4/0414/85 (CHANGE OF USE TO RESTAURANT)

Your application for *the retention of development already carried out* dated 07.06.1991 and received on 11.06.1991 has been **REFUSED**, for the reasons set out on the attached sheet.

Director of Planning

Date of Decision: 25.07.1991

(ENC Reasons and Notes)

REASONS FOR REFUSAL
OF APPLICATION: 4/0795/91

Date of Decision: 25.07.1991



The application site is located close to existing residential properties and the introduction of a facility enabling the provision of takeaway food from the premises would be to the long term detriment of the residential amenity of the locality due to potential problems associated with noise and disturbance. Consequently, the local planning authority is of the opinion the Condition 6 of Planning Permission 4/0414/85 should be retained.



Planning Inspectorate
Department of the Environment

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Handwritten: 2/2/92
2/2/92

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PLANNING DEPARTMENT					
DACORUM BOROUGH COUNCIL					
DoP	T.C.P.M.	D.P.	D.C.	B.C.	Ack.
					dk/cas/212h
					Admin.
					File
					Date
Received		20 MAR 1992			
Comments					

Your reference

Our reference

File

Date

T/APP/A1910/A/91/191287/P7

19 MAR 1992

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY MESSRS CHOUDHURY AND ALI
APPLICATION NO: 4/0795/91

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal against the decision of Dacorum Borough Council to refuse to vary Condition 6 in planning permission No 4/0414/85 dated 6 June 1985 for change of use of ground floor to restaurant and formation of car park at 49 High Street, Bovington. I have considered the representations made by you and the Council. I inspected the site on 19 November 1991.
2. The condition in dispute says that "The use hereby permitted shall extend to that of restaurant only, and meals shall not be provided otherwise than for consumption on the premises." The reason for its imposition is "To safeguard the character and amenity of the area."
3. The application made to the Council is to vary Condition 6 so as to allow the sale of food for consumption off the premises. From my inspection of the site and its surroundings and my consideration of the representations, I believe that the main issue in this appeal is whether Condition 6 is reasonable and necessary to prevent undue noise and disturbance to nearby residents.
4. Your clients already provide a take-away service which is based on the restaurant menu. It is aimed at providing customers with cooked food to eat in their homes, rather than in the street. You say that orders are usually made by telephone and collected by car. A recent survey showed an average of 4 callers a day, with a maximum of 11 on a Friday.
5. It seems to me that such a volume of trade is unlikely to cause any appreciable noise and disturbance to nearby residents. I believe it likely that customers will park in the High Street, where there are no restrictions, so that there will be little impact on the residents in Church Lane. I know that there are some dwellings in the High Street itself, at No 53 and over the shops opposite the appeal premises. But there are a variety of uses in the High Street which attract much larger numbers of visitors, including the Memorial Hall and public houses, which are open late in the evening. Against this



background I do not believe that any noise and disturbance caused by the take-away trade from the appeal premises will be discernible.

6. The Council appear to be particularly concerned that the removal of the condition would allow the premises to be given over entirely to a take-away operation. I agree that there would be no planning impediment to this and that there could be a much greater effect on nearby residents if one of the national fast-food chains were to take over the premises. However I think this is unlikely in view of the location of the site and the recent investment in setting up the restaurant.

7. The Council also refer to 2 recent appeal decisions in Hemel Hempstead and Kings Langley, but to my mind there are significant differences between these and this appeal. Both related to sites on a busy Class I road and the Inspectors considered that there was real potential for attracting passing trade. Furthermore there were highway objections in both cases, unlike this appeal.

8. In my opinion the take-away service provided by your clients is unlikely to cause any material noise and disturbance and I do not consider it reasonable to stop this because of the slight possibility of a more intensive take-away operation taking over. As required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have given special attention to the desirability of preserving or enhancing the character or appearance of the Bovington Conservation Area, in which the appeal premises are located. The appeal proposals involve no physical alterations or significant increase in activity and I am satisfied that the character and appearance of the conservation area would be preserved.

9. I have taken into account all other matters raised in the representations but have found nothing to alter my conclusions. I therefore shall allow this appeal. I note that your clients are willing to accept a limitation on the hours during which the take-away service should be provided and I believe that this is necessary, particularly for the evenings. The restaurant is already subject to a condition about opening hours and I think it appropriate that these same hours should apply to the take-away service.

10. For the above reasons and in exercise of the powers transferred to me, I hereby allow this appeal and vary the planning permission No 4/0414/85 for the change of use of the ground floor to a restaurant and the formation of a car park at 49 High Street, Bovington, granted by Dacorum Borough Council on 6 June 1985 by deleting Condition 6 and substituting therefore the following condition:

Meals for consumption off the premises shall not be provided otherwise than during the following periods:

- a. 12 noon and 14.00 hrs on any day;
- b. 18.30 hrs and 23.00 hrs Monday to Saturday inclusive;
- c. 18.30 hrs and 22.30 hrs on Sunday.

11. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 57 of the Town and Country Planning Act 1990.

I am Gentlemen
Your obedient Servant

J D Micklethwaite

J D MICKLETHWAITE BA DipTP MRTPI
Inspector