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Your reference

TT/AP PLANNING DEPARTMENT Dacorum Borough Council					
Ref: T/APP/A1910/A/89/135748/P2					
Date					
C.P.O.	T.C.P.M.	27	JUN	90	
Received 28 JUN 1990					
Comments					

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
AS AMENDED BY THE HOUSING AND PLANNING ACT 1986
LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
APPEAL AND APPLICATION FOR COSTS BY THE BRADFORD AND BINGLEY BUILDING SOCIETY
APPLICATION NO: 4/0891/89

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal against the decision of the Dacorum Borough Council to refuse planning permission for the change of use from Class A1 to Class A2 at 2-6 Bridge Street, Hemel Hempstead. I held a local inquiry into the appeal on 18 April 1990. At the inquiry, you made an application for costs against the Council and I deal with this separately below.

THE APPEAL

2. From the evidence and my visit to the site and surroundings, I consider that the decision on the appeal rests on whether the introduction of a building society use would have a significantly harmful effect on the character of this part of the shopping area.

3. The Council have recognised the need to maintain the attractiveness of Hemel Hempstead town centre and they have relied on policies in the Dacorum District Plan to determine the main uses within the centre. In particular, Policy 90 makes it clear that the changes from shop to non-shop in primary frontages will normally be refused. The Council say that the policy has been applied consistently since 1984.

4. The Council readily accepted that Policy 90 is in need of review and so I have also had regard to the Interim Town Centre Shopping Policy which has now been drawn up although, at the time of the inquiry, it had not been published for public comment. The interim policy has reduced the amount of primary frontage and increased the mixed frontage where Class A2 and Class A3 uses would be more acceptable. This is a response, say the Council, to Government advice on town centre uses and the development of the Marlowes Centre.

5. No 2-6 is on the corner of Bridge Street and Marlowes and has extensive windows to both frontages. In Policy 90, the frontages of Marlowes and Bridge Street in the vicinity of the appeal site are classified as primary but in the interim policy, Bridge Street and the frontage of Marlowes to the north would become secondary. No 2-6 would, however, remain as primary.

6. Although the building of the Marlowes Centre will probably concentrate the town centre at the lower end of Marlowes, it is clear to me that Bridge Street is an important thoroughfare linking the parking areas of Waterhouse Street to Marlowes. I gained the impression that it was still predominantly a retail shopping street and the Council's concern to keep it so is worthy of support.

7. However, I am also not convinced that No 2-6 occupies a position of quite the importance which the Council have identified. Approaching Marlowes from Waterhouse Lane, the shop is not readily visible and looking south along Marlowes, the side of the building is set back on the corner to such an extent that it is effectively not part of the frontage. The view of the premises with the most obvious impact is looking north along Marlowes towards Bridge Street and the Market but, even here, the view is mostly of the large entrance and the steps. The retail display which is in view is the side windows of No 170 Marlowes.

8. As explained in Development Control Policy Note 11, two important elements of character in a shopping area are vitality and continuity. You maintained that the building society would attract a high number of customers and I tend to agree with you that the steps into the premises and the set back of the frontage of Marlowes are not the most favourable arrangements for lively retailing. The building society has an advantage in this respect as it would attract customers visiting for a specific purpose as well as those who call on a casual basis. In terms of continuity, the appeal premises would be surrounded by retail uses and I do not see that the establishment of a building society here would result in a dead frontage which would deter people passing along to shops further along Marlowes.

9. I find therefore, that the aims of Policy 90 to maintain the attractiveness of the town centre would not be put at risk by this proposed change of use. The balance of uses around Bridge Street would still be very much in favour of retailing, so preserving the vitality and continuity of this part of the shopping area. Insofar as the Council expressed a concern that a permission here would set a precedent, I have borne in mind the advice in DCPN11 that it will be a matter of judgement for the local planning authority whether or when the overall numbers of service outlets can reach or has reached a level at which further changes from retail shop use should be resisted. The Council remain empowered to grant or refuse permission for change of use depending on their judgement of this issue.

10. In coming to this conclusion, I have had regard to the extant but unimplemented permission for change of use of No 2-6 from a shop to a restaurant. Whilst I understand the Council's view that this application should be seen on its own merits, I have borne in mind that the Council permitted a change of use within the terms of Policy 90. Circular 13/87 advises that account should be taken of the spirit of the Use Classes Order 1987 in considering further applications.

11. In deciding to allow this appeal, I consider it important that the shop front should continue to have a retail appearance within the shopping street. You agreed with the Council that a condition requiring a shop window display would be acceptable and I am imposing such a condition. I am also imposing a condition restricting the use to a building society as I have based my decision on evidence related to this use and I am not satisfied that other uses within the class would be as acceptable in terms of vitality and continuity of the shopping area.

12. I have taken into account all the other matters raised but none of these alter the considerations which have led to my decision. For the above reasons, and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for the change of use from Class A1 to Class A2 at 2-6 Bridge Street,

Hemel Hempstead in accordance with the terms of the application No 4/0891/89 dated 15 May 1989 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. Before the use hereby permitted is commenced, a window display shall be provided on both the Bridge Street and Marlowes frontages in accordance with details to be agreed by the local planning authority and shall be retained thereafter.
3. The premises shall be used for a building society and for no other purpose (including any other purpose in Class A2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).
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 Buildings (Disabled People) Regulations 1987.
14. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 23 of the Town and Country Planning Act 1971.

APPLICATION FOR COSTS

15. In support of the application for costs, you referred to paragraphs 7, 8 and 11 of Circular 2/87 and said that the Council had acted unreasonably in their consideration of the application.
16. With reference to paragraph 7, you said that the Council had not produced evidence based on Policy 90 of the District Plan and that no evidence had been produced to show that harm would result if this development were allowed as an exception to the policy.
17. With reference to paragraph 8, you said that the Council accepted that Policy 90 was out-of-date but that no account had been taken of changes in the law and in policy guidance as they related to the facts of the case. Also, the advice contained in Circular 13/87 relating to extant but unimplemented permissions had been ignored.
18. With reference to paragraph 11, you said that the Council had not taken account of the considerable weight of policy guidance and appeal decisions which indicated that a building society was an acceptable use in a shopping area.
19. In reply, the Council said that the reason for refusal was based on Policy 90 and that evidence had been produced which showed the importance which the Council attached to the appeal premises as a shopping unit. Policy 90 was in need of review as it applied to the town centre generally but this was not considered to be the case in relation to the appeal site. The interim policy did not propose a change in the shopping status of the appeal premises. The present application had been considered on its merits and account had been taken of advice in DCPN11 that sufficient provision should be made for service use in town centres.

20. The Council also said that the previous permission for change of use to a restaurant was based on a flexible application of Policy 90.

CONCLUSION ON COSTS

21. In determining this application for costs, I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome of the appeal, and that costs are awarded only on the grounds of unreasonable behaviour. Accordingly, I have considered the application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties, and all the relevant circumstances in this appeal.

22. Whilst I accept that the Council considered this proposal on its merits, I found that the Council's evidence in support of Policy 90 and the harm which would result from a change of use was insubstantial when set against the weight of Government guidance on service uses in shopping areas. The Council admitted that Policy 90 was under review and, at the inquiry, they were clear about the anticipated alterations set out in the interim policy which were seeking to update the provision for service use in line with changes in the town centre and Government advice.

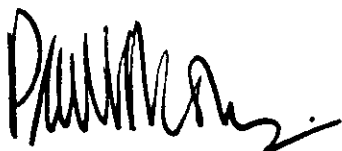
23. However, I am more concerned that the advice contained in Circular 13/87 relating to the extant but unimplemented permission for change of use to a restaurant should also have been an important consideration in the Council's decision. From the advice, the Council should have realised that the applicants could reasonably have expected an approval for development which would not now require express planning consent and that a subsequent appeal would stand a good chance of succeeding. Paragraph 8 of Circular 2/87 advises that a refusal of planning permission which is based solely on development plan provisions may in some circumstances be regarded as unreasonable. I feel that this is the case here.

24. I find that the Council acted unreasonably by not putting forward substantial evidence to support their reason for refusal and not taking explicit account of the previous planning permission. As a result, the appellants incurred the unnecessary expense of an inquiry.

FORMAL DECISION ON COSTS

25. Accordingly a formal order which I have made in exercise of my powers under Section 250(5) of the Local Government Act 1972 and Section 36 of, and paragraph 5 of Schedule 9 to the Town and Country Planning Act 1971 as amended by the Housing and Planning Act 1986 is enclosed with this letter. You are now invited to submit to the Chief Executive of the council to whom a copy of this letter and Order has been sent, details of the costs referred to with a view to reaching agreement on the amount.

I am Gentlemen
Your obedient Servant



PAUL V MORRIS DipTp MRTPI
Inspector

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APPEARANCES

FOR THE APPELLANTS

Mr Anthony Porten

- Queen's Counsel, instructed by Denton Hall Burgin and Warrens, 5 Chancery Lane, Cliffords Inn, London EC4A 1BU.

He called:

Mr A Hambleton FRICS

- Chief Surveyor, Bradford and Bingley Building Society.

Mr A Tapley BSc DipTP MRTPI

- Partner, Healey and Baker.

FOR THE PLANNING AUTHORITY

Miss A Freezer

- Trainee Solicitor, Dacorum Borough Council.

She called:

Mr J E Knapp DipTP MRTPI

- Principal Planner, Dacorum Borough Council.

DOCUMENTS

Document 1 - List of persons present at the inquiry.

Document 2 - Letter of notification and circulation list.

Document 3 - Appendices to Mr Hambleton's evidence:-

1. Shopping Survey 31 March 1989/1 April 1989.
2. Products and services - BBBS.
3. Visits to shops and comparative BBBS branches.

Document 4 - Appendices to Mr Tapley's evidence including:-

1. Planning application, accompanying letter, officers report and decision notice for a previous application at the premises by Pizza Hut, approved 1 October 1987.
2. Officers report on Bradford and Bingley application.
3. Second planning application by Bradford and Bingley Building Society, 30 October 1989.
4. Letter from New Town Commission dated 10 January 1990, regarding the second planning application by Bradford and Bingley Building Society.

DOCUMENTS (CONTINUED)

5. Letter from Charity Shop Services dated 15 February 1990.
6. Letter from Mr A J Hines, dated 27 March 1990.
7. Extracts from County Structure Plan, approved 9 May 1988.
8. Extracts from Dacorum District Plan, adopted 25 January 1988.
9. Extracts from Borough Local Plan Review.
10. Extracts from Hemel Hempstead Town Centre Plan dated June 1988.
11. Copies of 6 decision letters.

Document 5 - Appendices to Mr Knapp's evidence:-

1. Report to Committee - change of use 2-6 Bridge Street, 1 October 1987.
2. Report to Committee - change of use 2-6 Bridge Street, 20 July 1989.
3. Report to Committee - change of use 2-6 Bridge Street, 11 January 1990.
4. Extract from Dacorum District Plan.
5. District Council policy - Non-shop uses in shopping frontages.
6. Interim policy - Shopping Areas in Town Centres - Dacorum Borough Council January 1990.
7. Schedule of applications - Change of use, Marlowes and Bridge Street 1982-1990.

Document 6 Appeal decision letter T/APP/A1910/A/89/140159/P8.

PLANS

Plan A - Application plans.

Plan B - Shopping centre - Hemel Hempstead 1:800.

Plan C - 2/6 Bridge Street - ground floor sketch plan.

Plan D - Plans showing the Marlowes Centre.

PHOTOGRAPHS

Photo 1 - Bundle of 8 photographs - Appendix AH⁴ of Mr Hambleton's evidence.

Photo 2 - Bundle of 8 photographs - Appendix AT⁵ of Mr Tapley's evidence.

LOCAL GOVERNMENT ACT 1972

TOWN AND COUNTRY PLANNING ACT 1971 AS AMENDED BY THE HOUSING AND PLANNING ACT 1986

ORDER AS TO COSTS

THE BOROUGH OF DACORUM

I, Paul Vincent Morris, in exercise of my powers under section 250(5) of the Local Government Act 1972 and section 36 of and paragraph 5 of Schedule 9 to the Town and Country Planning Act 1971 as amended by section 49 of, and paragraph 8 of Schedule 11 to the Housing and Planning Act 1986, and of all other enabling powers, HEREBY ORDER that the Council of the Borough of Dacorum (hereinafter called "the Council") shall pay to the Bradford and Bingley Building Society their costs of the inquiry, such costs to be taxed in default of agreement as to the amount thereof.

Subject of the inquiry

An appeal under section 36 of the said Act of 1971 against the decision of the Council to refuse planning permission for the change of use from Class A1 to Class A2 at 2-6 Bridge Street, Hemel Hempstead.

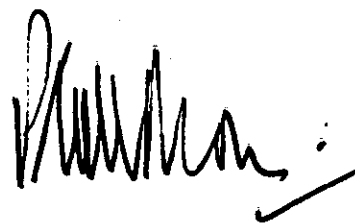
Inquiry date

18 April 1990

Signed

Date: 27 JUN 90

INSPECTOR



TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To Bradford & Bingley Building Society Healey & Baker
 PO Box 2 29 St George St
 Bingley London W1A 3BG
 W Yorks
 BD16 2LW

..... Change of use from shop to building society
 offices
 at 2-6 Bridge Street
 Heme). Hempstead

Brief
 description
 and location
 of proposed
 development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated 15 May 1989 and received with sufficient particulars on 17 May 1989 and shown on the plan(s) accompanying such application..

The reasons for the Council's decision to refuse permission for the development are:—

The site is within a designated primary shopping frontage wherein a change of use from shop to non shop use will normally be refused. Provision exists within Policy 90 of the Dacorum District Plan for the proposed use to be located elsewhere within the commercial area, which would not result in the loss of designated primary shopping frontage.

Dated 20th day of July 19 89

Signed *Wm Bama*

Chief Planning Officer

SEE NOTES OVERLEAF

P/D. 15

NOTE

1. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
2. If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Borough Council in which the land is situated, a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
3. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in s.169 of the Town and Country Planning Act 1971.