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CHIEF EXECUTIVE OFFICER
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Date 11 OCT 1983

13 OCT 1983

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEALS BY MR S G HARRINGTON
LAND AND BUILDINGS AT 30-32 LAWN LANE, HEMEL HEMPSTEAD

1. I have been appointed by the Secretary of State for the Environment to determine the appeals against an enforcement notice issued by the Dacorum District Council and against the decision of that council to grant planning permission subject to conditions. I held an inquiry into the appeals on 13 September 1983.

2. a. The date of the notice is 16 May 1983.

b. The breach of the planning control alleged in the notice is failure to comply with a condition subject to which planning permission was granted.

c. The permission was granted on 30 September 1982 for the change of use from shop to restaurant.

d. The condition which is alleged not to have been complied with is "the hours of business shall be restricted to 0900 to 2300 hours".

e. The requirements of the notice are to cease the use of the premises for business outside the hours of 0900 to 2300 hours.

f. The period of compliance with the notice is 28 days.

g. The appeal was made on grounds 88(2)(a), (c) and (g).

3. The development for which conditional permission was granted was change of use from shop to restaurant. Conditions appealed against are numbers:-

2. The use hereby permitted shall be restricted solely to the ground floor of the property.

3. The hours of business shall be restricted to 0900 to 2300.

4. The first floor of the premises shall not be used otherwise than for residential purposes.

(Attached to the permission ref: 4/0960/82 dated 30 September 1982.)

SITE AND SURROUNDINGS

4. The appeal site in Lawn Lane is just outside the town centre of Hemel Hempstead and is located some 200 yds from the major roundabout intersection at the southern end of the shopping centre. The site with its frontage to Lawn Lane is within a secondary shopping/commercial frontage and there is a similar use on the opposite side of the road at Nos 25 to 33 as shown on plan B.

5. The triangle of land in which the appeal site lies has its apex at the roundabout and is bounded on the east by Lawn Lane and on the west by Two Waters Road. Apart from the retail/commercial uses on Lawn Lane, the land is in industrial use southwards to the timber works although there is limited residential use. The eastern side of the road and the land extending behind it - Cedar Walk and Corner Hall Avenue - is wholly residential. Lawn Lane is a bus route and carries a fairly heavy traffic volume. Alongside the appeal site is the Queens Head public house.

6. The premises itself has been attractively converted and presents a good appearance to the street frontage; there is one decorative litter bin on the pavement. Inside, the furnishing, fittings and equipment are of a high quality and the restaurant seats in comfort - 36 people. It is apparent that the Pizza Plus aims at a higher standard of presentation and service than the adjacent Cedar Cafe or Chinese take-away. The main fare offered is Pizza and Baked Potato with a variety of garnishes as shown in the menu (document 6). The wrappings for the take-away food are polystyrene cartons. The first floor is in residential use.

7. Lawn Lane has a carriageway width of 28 ft with substantial footways to either side. The gardens of the houses on the east side of the road slope upwards so that these houses are well above the level of the road.

CASE FOR THE APPELLANT

The main points were:-

8. It is submitted that the alleged breach has not taken place. Whilst it is admitted that from the date of opening in October 1982 until Christmas, the premises were open until 11.15 or 11.20 pm and occasionally 11.30 pm, since January 1983 the condition has been complied with. The practice adopted is to lock the door at 11 pm, switch off the external canopy lights and an employee supervises customers' departure.

9. Following a visit to the premises by an officer of the council, Mr Harrington visited the planning department and was told by Mr Smith that the condition required all customers to be off the premises by 11 pm. A letter to the council on 6 June 1983 elicited the reply at document 9. Consequently, since the condition has been complied with there has been no breach since January 1983. The condition is ambiguous, difficult to understand and impossible to follow in practice. Therefore the appeal on ground (c) should succeed.

10. As regards ground (g), the steps required are excessive because of the measures already taken. The meaning of the steps to be taken is ambiguous and the council has given different interpretations of what is required. One officer of the council said "11.15 or 11.20 pm would be alright, but staying open until 11.30 pm would bring trouble". The planning officer said at the inquiry that if customers were consuming food after 11 pm, the condition would be breached. This is in conflict with the council's own letter which states "shall not be served". Ground (g) should succeed.

11. On planning merit, all 3 conditions should be discharged. Conditions (2) and (4) are unnecessary and pre-empt the appellant's possible future intentions. The first floor was only a shell but has been brought into residential use and is now occupied

/ Mr Harrington's mother. He accepts that planning permission would be necessary for a change of use and there is no present intention of any use other than residential. The application referred only to the ground floor and both conditions should be discharged as they are superfluous.

12. The real issue however in both the section 88 and 36 appeals is condition (3). This time restriction has had a devasting effect on the business since the premises were forced to close at 11 pm: this is illustrated graphically at document 13. The turnover is far below the market projection and the staff has been reduced, thus adding to unemployment. Moreover, it is not understood why other restaurants and food outlets are not restricted in hours. Document 12 lists the opening hours of 24 pre... and only Pizza Plus and Macdonalds are restricted to 11 pm.

13. Close to the site, the Cedar Cafe and China Garden take-away are unrestricted. Adjoining the site is the Queen's Head public house which runs regular discos, and has frequent extensions to licensing hours. The Acropolis Greek Restaurant has been granted permission without restrictions. It was only after a lengthy search and much discussion with the planning officers that the appeal site was chosen. In seeking advice during his year long attempt to find suitable premises, Mr Harrington was finally told by Mr Betambeau that his application for Nos 30-32 was likely to be successful. At no time was there any mention of conditions; these came as a shock.

14. It is felt that the council has reacted to press reports (document 7) and a vendetta by one individual. The appellant is a local man, resident in the town nearly all his life, and the restaurant is a family concern. Market research shows that Hemel Hempstead would support many more take-aways and there is a growing demand. This is not a fast-food shop but a superior speciality restaurant/take-away, with emphasis on quality and family atmosphere. The petition in support (1,000 signatures) and the 26 letters should be weighed against the objections.

15. It is incorrect to describe Lawn Lane as "essentially residential" in character: the development plan shows the area of the triangle between the Lane and Two Waters Road as allocated primarily for industrial purposes. This designation extends below Corner Hall. One side of Lawn Lane is clearly residential and the other, including the appeal site, is clearly non-residential. In practice, only 2 of the first floors on the appeal site side of the road are in residential use. Lawn Lane is the dividing line and the council appear to accept this proposition. There are no policies being contravened either in the development plan or in the draft local plan. In granting planning permission, the council recognise that the use is appropriate in this area but they now seek unfairly to curb the appellant's business activities.

16. The Queen's Head is a much greater source of noise and nuisance and the Pizza Plus is being "tarred with the same brush". The litter problem has now almost solved itself and Pizzas are not mainly eaten in the street but taken home for TV supper. Complying with the condition has resulted in a reduction in staff, and the employment aspects should be considered. Mr Harrington has struggled to set up a much needed service, appreciated by local people, but his efforts are in jeopardy because of the time condition.

17. All the conditions should be removed, but it is vital to the success of the business that at the very least, Monday to Thursday opening should be up to 11.30 pm and to midnight on Friday and Saturday. This is not an unreasonable demand and this extension will not harm residential amenities.

CASE FOR THE PLANNING AUTHORITY

The main points were:-

18. On ground (c), the authority relies on the evidence of local residents and their letters and telephone calls complaining of opening after 11 pm. Moreover, the appellant admits this, both at the inquiry and at paragraph E6 of the statement accompanying the appeal. The wording of the condition is clear and similar conditions have been accepted and operated without difficulty in numerous permissions granted by the council.

19. As regards ground (g), the breach results from the appellant's failure to comply with condition (3) of the planning permission. Accordingly, the steps required, ie to comply with the condition, cannot exceed what is necessary to remedy the breach.

20. The site is shown on the development plan to be within an area allocated primarily for industrial purposes: this designation extends to the whole of the "triangle" and also to land south of Corner Hall. The policies in the Dacorum District Plan (now on deposit) which are relevant are Policies 38 and 61, para 5.28.

21. This is a mixed commercial/residential area and in granting planning permission the effects of the use, incorporating a take-away facility, were taken into account. This type of use frequently gives rise to noise, litter and disturbance late at night when ambient noise levels are low. Residential units on the west side are mostly above the shops. It is agreed that other late night uses nearby cause noise whether or not Pizza Plus opening hours are restricted. Nonetheless, it is the authority's duty to restrict activities which add to the problem. It is also accepted that residents in urban environments cannot expect the same standards of peace and quiet as those in rural areas, but the restriction to 11 pm gives them some protection.

22. No rigid policy is followed as regards hours of opening. Each case is looked at on its own merits and the overriding consideration is to safeguard residential amenities where these can be affected by late opening hours. The only permission granted for a similar use since the appellant's application, was for Macdonalds which is restricted to 11 pm. The Acropolis restaurant is in The Marlowes and no residential amenities are affected. It should be noted that the appellant's graph shows that sales could go up to meet the market projection. In this event the effects on the neighbourhood would be greater. Therefore condition (3) is necessary.

23. Conditions (2) and (4) were imposed to accord with the terms of the application and they also serve to avoid doubt. Any proposal to change the use of the upper floor would be in conflict with Policy 61. These conditions were therefore necessary in order to restrict an intensification of commercial use and to preserve good housing stock. Both the section 88 and 36 appeals should be dismissed.

CASE FOR INTERESTED PERSONS

24. The main concern relates to noise, disturbance and litter, which extends to Cedar Walk as well as Lawn Lane. The full effects of Pizza Plus are set out in detail by Mr Parke at document 3(1). The Queen's Head public house is also a source of noise and disturbance during the evenings: this is being pursued by other means. The bright lights of the Pizza Plus encourage young persons to "hang around". The litter nuisance is attributable to Pizza Plus because of the "peculiar wrappings" used. Mr Cox drew attention to the concern of elderly people living nearby and to noise from car radios outside his house. He has found Pizza cartons and potato skins in his drive.

CONCLUSIONS

25. Bearing in mind the legal implications of the above, it seems to me that on Mr Harrington's own admission, both at the inquiry and in the grounds of appeal, the condition has been breached; there is further uncontested evidence from local residents. I note that Mr Harrington instituted a procedure to comply with the condition from January 1983, also that he has followed this procedure ever since. Nonetheless, I accept that the breach has taken place and I see no reason to question the authority's decision to serve the notice.

26. On the question of whether the wording of the condition is ambiguous, I take the view that on an ordinary construction of the words, the intentions of the authority are reasonably clear. The condition as worded covers all business operations involved and on that basis, in the light of the evidence I conclude that as a matter of fact and degree a breach of planning control has taken place. The appeal on ground (c) fails.

27. On planning merit, I note that the site is located in what is allocated as an industrial area. Nevertheless, the existing residential uses - of long standing - cannot be ignored. The area presents problems peculiar to the edge of a town centre. It might be said that Lawn Lane divides the residential use from the industrial/ commercial use on the west side. However, it must be acknowledged that the use of Pizza Plus does affect houses on the opposite side of the road and even further, into Cedar Walk.

28. In spite of this consideration, I do not accept that all the nuisance said to be suffered by local residents is caused by the late opening of the Pizza Plus. There is substance in the appellant's submission that "he unwittingly stepped into the middle of a private fight between local residents and the Queen's Head public house". Reports in the local press may have heightened feelings and raised apprehension. Against the understandable concern of local residents, there is the considerable level of support expressed by the petition and letters at document 4: albeit that signatories or writers of letters are not such immediate neighbours as those who object.

29. Your client is a local man seeking to found a small business. I have therefore taken account of the Secretary of State's advice set out in Circular 22/80. Despite the more flexible approach urged in the circular, I find no justification to permit unrestricted opening hours which is the central issue of the appeal. It seems to me that the right balance will be struck by extending the hours of business to 11.15 pm Monday to Thursday and 11.45 pm Friday and Saturday. Condition (3) will be discharged and another, reflecting my decision, substituted. As the notice will be quashed, ground (g) does not fall for consideration.

30. The intention behind my decision is that the restaurant shall be closed and no food served after these times. With these timings, customers should have cleared the area by 11.30 pm and midnight respectively.

31. As regards conditions (2) and (4), I accept the authority's submissions. Both conditions are relevant to the permission granted and in my opinion serve the useful planning purpose of making it clear that the first floor of the appeal site can only be used for residential purposes. This should be helpful both to the appellant and any future occupants of the premises.

32. In summary therefore, the notice will be quashed, the condition discharged and a new condition substituted. The section 36 appeal fails in respect of conditions (2) and (4): it succeeds in respect of condition (3) to the extent that the condition will be discharged and another substituted for it.

33. I have considered all the other matters raised but there are none of sufficient weight to override those considerations which led to my decision.

FORMAL DECISION

SECTION 88 APPEAL

34. For the above reasons and in exercise of the powers transferred to me, I hereby allow your client's appeal, quash the notice, discharge the condition to which it relates and substitute for it the following conditions:-

1. No food shall be served, and the premises shall be closed outside the hours of 0900 and 2315 hours Monday to Thursday and 0900 and 2345 hours Friday and Saturday.

2. No customers may remain on the premises after 2330 hours Monday to Thursday and midnight on Friday and Saturday.

SECTION 36 APPEAL

35. I allow your client's appeal insofar as it relates to condition (3), discharge the condition and substitute for it the conditions set out at para 34, 1 and 2 above. I dismiss the appeals in respect of conditions (2) and (4) and refuse to discharge the conditions.

RIGHTS OF APPEAL AGAINST THE DECISION

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

I am Gentlemen
Your obedient Servant

T A K SAVAGE MBE FCIT FCIArb
Inspector

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