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7 JUL 1986

File Ref.

Refer to CPO 7/7

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JMA
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Your reference

TH/ab

PLANNING DEPARTMENT

Our reference DACORUM DISTRICT COUNCIL

T/APP/A1910/A/86/044084/P5

Ref.

Date

C.P.O.

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Admin.

File

Received

-8 JUL 1986

Comments

SCHEDULE 9

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND
APPEAL BY MACDONALDS HAMBURGERS LTD
APPLICATION NO:- 4/1079/85

1. As you know I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against the decision of the Dacorum Borough Council to grant planning permission subject to conditions for the change of use of 162 Marlowes, Hemel Hempstead from a shop to a restaurant. I have considered the written representations made by you and by the council and also those made by the Hertfordshire Constabulary and interested persons. I inspected the site on 6 May 1986.

2. The condition in dispute was attached to planning permission 4/1079/85 as Condition 2 which reads:- "The premises shall not be open outside the hours of 0730-2300 Mondays to Saturdays inclusive and 0900 to 2300 on Sunday". Although your clients were seeking permission to extend the opening hours to between 0600 and 0100, I understand they are now prepared to accept a condition limiting these hours to between 0700 and midnight.

3. From what I have seen of the site and its surroundings and read in the representations I have formed the view that the principal issue in this case is whether the proposed extended opening hours would materially harm the local residents by reason of noise and disturbance.

4. The appeal site lies on the west side of Marlowes within the core of Hemel Hempstead Town Centre. It comprises a 2-storey, purpose-built shop unit in use as a Macdonalds Restaurant. As well as serving as the commercial and leisure focus for the town, the central area also provides a significant proportion of residential accommodation in the form of flats over shops. Although there are no dwellings in the parade to either side of this site, on the east side of Marlowes there are a large number of 2-storey flats which directly overlook the appeal premises and any noise and disturbance associated with this use would, inevitably in my view, affect the occupiers of these dwellings.

5. As they live in the town centre I consider the residents must expect some degree of noise and disturbance late into the evening. However, at night and early in the morning I think they are justified in expecting some peace and quiet. Although I accept that your clients' aim to operate a well-run, carefully controlled facility to attract family business, they are unable to prevent people from congregating outside the premises or vehicles noisily drawing up.

to and leaving the site. Such activity would be very disturbing to local residents late at night and early in the morning when they might expect the general bustle of the town centre to have died down.

6. In my opinion the hours your clients were originally seeking (ie 0600-0100) would be wholly unreasonable, in that local residents could only hope to enjoy a maximum of 5 hours peace and quiet when the premises would be closed. Having regard to people's varied needs for sleep and relaxation, I consider the neighbours are entitled to expect an undisturbed period of 8 hours in order to enjoy their homes. Accordingly, I am unable to support your suggested revised hours of 0700 to midnight as this would still intrude into the period when I consider the residents needs are paramount. However, on Mondays to Saturdays inclusive I see no objection to the hours being revised to between 0730 and 2330 as suggested by the Commission for New Towns in their response to the council on the original application. The additional 30 minutes in the evening would go some way towards satisfying your clients' wishes without seriously imposing on the local residents. On Sundays, however, I do not consider it would be reasonable to permit the premises to open as early as 0730 as people generally expect Sunday mornings to provide a period of tranquility in contrast to the early bustle of the town centre on commercially active days. I conclude, therefore, that, on Sundays, the premises should not open before 0900.

7. I am sympathetic to your clients' wish to expand their business and have taken into account the advice contained in Circulars 22/80 and 14/85 on the need to encourage such growth. Nevertheless, having regard to the mixed commercial and residential nature of this town centre, I do not feel these premises are in a suitable location for a facility operating the length of hours your clients now seek. In my view, the demonstrable harm this use would have on local residents in terms of noise and disturbance during anti-social hours, outweighs the economic benefit which might accrue from allowing this proposal.

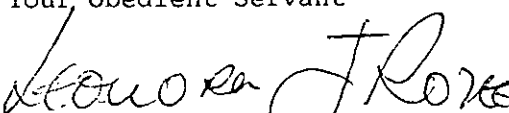
8. You refer to 4 other sites within the town centre which operate late-opening hours. Apart from the Tandoori Restaurant at 5 Bridge Street, which lies directly opposite flats over the shops in Bridge Street, none of the others is directly comparable with the appeal site in that they lie either outside or on the fringes of areas of residential accommodation. I note that the Tandoori Restaurant closes at 2330.

9. I have taken into account all other matters raised but find nothing of sufficient merit to override the conclusions I have reached. For the above reasons, and in exercise of the powers transferred to me, I hereby allow the appeal and grant planning permission to continue the use without complying with condition No 2 attached to planning permission (4/1079/85) dated 26 September 1985 for the change of use of 162 Marlowes, Hemel Hempstead from a shop to a restaurant but subject to the following condition:-

"The premises shall not be open outside the hours of 0730-2330 Mondays to Saturdays inclusive and 0900-2330 on Sundays".

10. 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.

I am Gentlemen
Your obedient Servant


LEONORA J ROZEE BA(Hons) MRTPI
Inspector