



# PLANNING

Civic Centre Marlowes  
Hemel Hempstead  
Herts HP1 1HH

THE POCKET PHONE SHOP LTD  
ETON VIEW HOUSE  
63 WINDSOR ROAD  
SLOUGH  
BERKS  
SL1 2EE

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/01152/99/ADV

232 MARLOWES, HEMEL HEMPSTEAD, HERTS, HP1 1BJ  
FASCIA BOX SIGN AND PROJECTING BOX SIGN, INTERNALLY ILLUMINATED

Your application for advertisement consent dated 18 June 1999 and received on 23 June 1999 has been **GRANTED**, subject to any conditions set out overleaf.

Director of Planning

Date of Decision: 10 August 1999

**CONDITIONS APPLICABLE TO APPLICATION: 4/01152/99/ADV**

Date of Decision: 10 August 1999

**1. This consent is granted for a period of five years commencing on the date of this notice.**

Reason: To comply with the provisions of the Town and Country Planning (Control of Advertisements) Regulations 1992.

**2. Any advertisements displayed, and any site used for the display of advertisements shall be maintained in a clean and tidy condition to the reasonable satisfaction of the local planning authority.**

Reason: To comply with the provisions of the Town and Country Planning (Control of Advertisements) Regulations 1992.

**3. Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a safe condition.**

Reason: To comply with the provisions of the Town Planning (Control of Advertisements) Regulations 1992.

**4. Where an advertisement is required under the Town and Country Planning (Control of Advertisements) Regulations 1992 to be removed, the removal shall be carried out to the reasonable satisfaction of the local planning authority.**

Reason: To comply with the provisions of the Town and Country Planning (Control of Advertisements) Regulations 1992.

**5. No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.**

Reason: To comply with the provisions of the Town and Country Planning (Control of Advertisements) Regulations 1992.

**6. No advertisement shall be sited or displayed so as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air, or so as otherwise to render hazardous the use of any highway, railway, waterway (including any coastal waters) or aerodrome (civil or military).**

Reason: To comply with the provisions of the Town and Country Planning (Control of Advertisements) Regulations 1992.



# Appeal Decision

site visit held on 8 May 2000

by MARTIN PIKE BA

an Inspector appointed by the Secretary of State for the  
Environment, Transport and the Regions

DoP	ED	DP	DC	BC	SS
Rec'd. 24 MAY 2000					File
Comments :					
PLANNING DEPARTMENT DBC					

The Planning Inspectorate  
Tollgate House,  
Houlton Street  
Bristol BS2 9DJ  
0117 987 8927

3 MAY 2000

**Appeal:** T/APP/A1910/A/00/1037508/P2

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is brought by Francis James Pike against Dacorum Borough Council.
- The site is located at 87 St John's Road, Boxmoor, Hemel Hempstead.
- The application (ref: 4/01153/99/FUL), dated 21 June 1999, was refused on 9 September 1999.
- The development proposed is a change of use from betting offices (Use Class A2) to hot food take-away outlet (Use Class A3).

**Decision:** The appeal is dismissed.

## Procedural matter

1. At the site inspection I made it clear to both parties present that although I have the same surname as the appellant, I am not related to him.

## The main issue

2. From all that I have seen and read, I consider that the main issue in this appeal is the effect of the proposal on the living conditions of neighbouring occupiers, with particular reference to noise and disturbance.

## The policy framework

3. The development plan comprises the Hertfordshire Structure Plan Review 1991-2011 and the Dacorum Borough Local Plan. Structure Plan policy I promotes sustainable development by, amongst other matters, encouraging economic growth consistent with environmental constraints, improving people's quality of life, and containing road traffic growth. Development with significant car parking demand is required by policy 25 to address the problems likely to arise from that demand, and to be in locations with the potential for good access by means other than the private car.
4. The Local Plan divides the Borough into principal land use areas. The appeal site is within a residential area, wherein compatible non-residential development for small-scale social, community and leisure purposes is acceptable under policy 7, but the introduction of incompatible non-residential development is to be resisted. A high quality of development is sought by policy 8, which refers to matters such as avoiding harm to the surrounding neighbourhood and adjoining properties through, for example, noise and disturbance. Policy 42 enables small shops to be provided in exceptional circumstances outside local centres where there is a proven need, and policy 54 expects new development to meet car parking standards, identified in the environmental guidelines as 1 space per 6 sq m of customer circulation area for catering establishments.

5. The Local Plan is currently being reviewed, and a local plan inquiry into the Dacorum Borough Local Plan 1991-2011 Deposit Draft is taking place this year. As the review plan contains very similar policies in relation to the proposal before me, the weight to be attached to it serves merely to reinforce the policies of the adopted plan.

#### Inspector's reasons

6. The appeal property is a vacant ground floor betting office situated on the south side of St John's Road at Boxmoor, a district of Hemel Hempstead. It is part of a detached property that includes a self-contained flat (No 87A) on the first floor, which has a separate entrance beside the door to the betting office, and a dental laboratory at lower ground level that takes access from the rear. The properties to each side and opposite are all residential, a mix of established Victorian dwellings and more recent houses and flats, including a sheltered housing unit opposite the site. St John's Road is the main route through the local centre of Boxmoor, a loose-knit grouping of shops and other facilities that lies to the east of the site. In the emerging local plan the Council defines the western edge of the local centre at the fresh fish /fish and chip shop at No 256 St John's Road and the pet shop opposite (No 67), which are some 50m from the site. As the only non-residential use to the east of these shops is an office, I regard the Council's definition as a reasonable interpretation of the limit of the local centre.
7. Hot food take-away outlets are included in a different Use Class to retail shops because of their greater potential to cause environmental problems, especially as a result of their late night opening hours. Although the appellant's agent argues that noise and disturbance arising from customer behaviour is not strictly a land use planning matter, Government advice in Planning Policy Guidance 24: *Planning and Noise* takes a different view. This recognises at paragraph 20 the particular difficulties posed by commercial developments such as fast food restaurants, highlighting the problems of noise at unsocial hours that may be made by customers in the vicinity, and the disturbance that can be caused by traffic and associated car parking. I appreciate that in recent years the betting office operated on some Sundays and during some spring and summer evenings, though it was more typically open during traditional shop hours. I believe, however, that the overall pattern of use would have been significantly different from the proposed take-away, which would be open until 2300 hours (2230 on Sundays), and would be likely to attract most of its trade during the evening.
8. Noise and disturbance can arise both from the activities inside the take-away, and from customers making their way to and from the premises. With the noise of cooking activity replacing that of race commentaries, I think it unlikely the proposal would give rise to significantly different levels of internal noise when compared with the previous use. I note that letters from the occupier and owner of the first floor flat have not indicated that noise within the premises was previously a problem, despite the occasional extended opening hours. In any event, if regular late opening was likely to cause internal disturbance, I believe that sound insulation between the premises and the flat could resolve the matter. In these circumstances I do not believe that activity within the proposed take-away would be a source of nuisance to the occupiers of the first floor flat.
9. More significant, in my view, is the noise and disturbance likely to be created by customers outside the premises, particularly during the evening when most of the surrounding houses would be occupied. Because the hot food is prepared for consumption as soon after purchase as practicable, take-away shops frequently attract car-borne customers who make a short trip solely to collect food. The appellant's agent has recently carried out a traffic

count which revealed that, despite traffic calming on St John's Road, traffic volumes remained high at between 627 and 484 vehicles per hour between 1700 and 2100 hours. No detailed breakdown of these figures has been given, nor is there any comparison with recent day-time traffic flows. However I saw nothing on my visit to suggest that the pattern of traffic flow along St John's Road would be significantly different to most similar distributor roads within urban areas, which generally experience a gradual fall in traffic as the evening progresses, with an associated decline in ambient noise levels. During the late evening period I think it reasonable to assume that traffic along St John's Road will be relatively light, and despite some pedestrian activity and the intermittent sound of passing trains, I believe that it will be generally quiet in the vicinity of the appeal site.

10. The appellant's agent contends that the take-away would be reliant on local customers, many of whom would walk to the site to collect a meal rather than use a car and risk losing a parking space in the congested streets nearby, and many others who would require home delivery. It is suggested, therefore, that the number visiting by car is likely to be limited to some 3-4 per hour, with a modest increase in pedestrian activity. I suspect that this is a rather low estimate of car-borne visitors; for it seems to me that even a small take-away business is likely to draw a substantial proportion of its custom from outside a walking distance radius. In addition, home deliveries also involve a vehicle journey away from and back to the site. I note the concern of local residents about the shortage of on-street parking spaces close to the site, but the results of a survey carried out by the appellant's agent suggest that most customers should be able to find a space on St John's Road that would be reasonably close to the site, particularly as the day-time parking restrictions along the northern side of the road do not apply after 1830 hours.
11. I saw on my visit that the appeal property is close to the adjacent dwellings. There is a narrow gap to the pair of semi-detached Victorian houses to the east, which have extremely shallow front gardens and bay windows that are about 1m from the back of the footway. The gap to the modern terraced dwellings to the west is similar, though these houses are slightly further back from the road. It is inevitable, in my view, that the occupiers of these properties would be disturbed by the comings and goings of customers to the take-away, especially late in the evening. I consider that the movement of vehicles to and from the site, and the accompanying noise of doors slamming, engines revving and, on occasion, radios playing would be harmful to them. Disturbance would also arise from the flow of customers into and out of the premises, sometimes talking loudly and congregating outside on the footway close to the houses.
12. In short, I believe that the pattern of regular evening activity would detract from the level of amenity that these neighbours should reasonably be expected to enjoy. In reaching this conclusion I am mindful of the comments made by local residents about the experience of the fish and chip shop to the east, which now closes at 2100 hours (2200 on Fridays) because of disturbance and rowdiness when it used to stay open later. Although it might be argued that the proposal before me would attract a different clientele, there can be no guarantee that this would be so.
13. The appellant's agent refers at length to a permission granted on appeal for a hot food take-away at 43 St John's Road, some 140m to the east, arguing that the proposal is almost identical to this case (T/APP/A1910/A/95/247254/P8). It seems to me, however, that there is a fundamental distinction between these two locations, for No 43 is in the heart of the Boxmoor local centre where the shops and other services are concentrated. I accept that there is a residential property adjacent to No 43, and I appreciate that the local centre is

interspersed with dwellings, but nonetheless there is likely to be a greater degree of evening activity along this part of St John's Road. I note that the previous Inspector referred to a number of nearby stores opening beyond normal shop hours, as well as the service station that then existed on the opposite side of the road to No 43, and I am satisfied that the circumstances he described are materially different to those I have found. There is also a significant difference in policy terms, for Local Plan policy 7 encourages catering establishments to locate in local centres, whereas policy 42 requires there to be a proven need for additional shops outside such areas. It is not argued that there is a need in this case, and it would seem unlikely given the existence of two take-away shops in the nearby local centre.

### Conclusions

14. I have found that the late evening noise and disturbance likely to arise from customers to the proposed take-away, and from home deliveries, would harm the living conditions of nearby occupiers and reduce their level of amenity to below that which they should reasonably be expected to tolerate in this residential area. I have considered whether it would be possible to use planning conditions to control the level of nuisance, but I can see no way of significantly reducing the harm I have identified. In my opinion the proposal is contrary to the policies of the development plan which seek to protect residential areas from incompatible development and avoid harm to adjoining properties.
15. I have taken account of all the other matters raised. I am aware of local residents' concerns about cooking smells and litter. I recognise that smell from hot food take-away outlets can cause offence to some people, but in my experience modern filtration and extraction equipment can remove all but a residual odour, and I note that the Council's environmental health officer does not object provided a satisfactory scheme could be installed. Litter is primarily a management issue, and I find nothing in the evidence to suggest that it would be a particular problem in this locality.
16. I can appreciate the view of the appellant's agent that there is little demand for the property in its existing (Class A2) use, or as a retail (Class A1) shop, for I saw other premises within the local centre that were vacant or had been converted back to residential accommodation. There is no evidence, however, that the property is not capable of some beneficial use. I also note the concern about the manner in which the application was decided by the Council's Development Control Committee, contrary to the officer advice, but I see nothing inappropriate in this, especially as the evidence has caused me to reach a similar judgement. Neither these nor any of the other matters are sufficient to outweigh the conclusion that has led to my decision.
17. For the reasons given above I conclude that the appeal should not succeed, and I shall exercise the powers transferred to me accordingly.

Martin Pike