



## Department of the Environment

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Council Reference 4/1223/79E &amp; 4/1530/79E

Mr P J Fountaine  
Surveyor  
27 Castle Street  
BERKHAMSTED  
Hertfordshire

TECHNICAL SERVICES DEPT.	
PLANNING SECTION	
11 MAR 1980	
FILE	DATE

Your reference

Our reference

T/APP/5252/C/79/3026 &amp; 3206/G4

Date

6 MAR 1980

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9  
APPEALS BY G F KITE (GLASS MERCHANTS) LIMITED  
LAND AND BUILDINGS AT PARK STREET, BERKHAMSTED

1. I refer to these appeals, which I have been appointed to determine, against 2 enforcement notices served by the Dacorum District Council concerning the above mentioned land and buildings. I held an inquiry into the appeals on 5 February 1980.
2. a. The date of notice A is 23 July 1979.
  - b. The breach of planning control alleged in the notice is the making of a material change in the use to that as an industrial building as defined by the Town and Country Planning (Use Classes) Order 1972.
  - c. The requirement of the notice is that the use be discontinued.
  - d. The period for compliance with the notice is 4 calendar months.
  - e. The appeal was accepted on grounds 88(1)(a) and (b) but at the inquiry ground (d) was added.
3. a. The date of notice B is 10 August 1979.
  - b. The breach of planning control alleged in the notice is the making of a material change in the use to that for the purpose of the sale of joinery items (including window and door frames).
  - c. The requirement of the notice is that the use be discontinued.
  - d. The period for compliance with the notice is 4 calendar months.
  - e. The appeal was accepted on ground 88(1)(b) but at the inquiry your client withdrew this appeal.

## SITE AND SURROUNDINGS

4. The appeal premises comprise the northeastern end of a row of former garages fronting the northwestern side of Park Street, a cul-de-sac. They have a double door and window at this frontage which is set back from the highway behind a deep concrete forecourt. The premises contain 2 former compartments serving as one workshop with a sealed door in a brick wall which separates similar buildings to the southwest. Adjoining the northwestern side of the appeal premises but outside the enforcement notice area is another workshop having planning permission for

carpentry purposes. The appeal premises contain sheets of glass, aluminium sections, workbenches, a metal parting saw, a woodsaw and drills. Noise from the machinery is typical of workshop uses, the metal saw particularly having a high pitched sound. Southwest of the appeal site, the adjoining garages lead to shop premises at the open corner end of Park Street, all of these being occupied by a tyre and exhaust repair service. Northeast of the site and on the opposite side of Park Street are dwellings which extend northeastwards towards the closed end of Park Street which itself gives access only to a church. Park Street also contains a public house to the south of the site, the area generally having mixed uses. The carriageway here is about 18 ft wide with a footpath on the southeastern side only. There is considerable parking in the street and on the forecourt southwest of the site to the extent that the highway was congested at the time of inspection. There are no restrictions on waiting here.

#### FACTS NOT IN DISPUTE

5. The following facts were not in dispute:-

1. the appeal premises, being the end section of several lock-up garages, formed part of 352 High Street from 1937 onwards when the whole property was used for vehicle showroom, petrol pump, office workshop and stores purposes;
2. from 1945 the lock-up garages were used to provide additional business accommodation, the appeal premises formerly 2 garages being converted in 1949 to a body shop for the use of panel beating, spraying and repair of accident damaged vehicles, the remaining garages serving since 1946 as stores for spares;
3. the appeal building housed a compressor and cellulose but whilst no planning application was pursued, the local authority made no objection to the use, the premises being inspected regularly by the Factory Inspector and Fire Officer and the Council issuing an annual licence for cellulose storage;
4. the spraying, panel beating and accident repairs continued in the appeal building until 1972 when the ownership changed;
5. the new owner devoted a considerable part of his business also to the repair of crashed vehicles, the spraying, panel beating and repairs continuing in the appeal premises;
6. about mid-1978, the present use commenced at the site and comprised the cutting of aluminium sections, glass and timber for the production of windows and doors.

#### APPELLANT'S LEGAL SUBMISSIONS

6. Your client's legal submissions were:-

1. the uses at the site have continued from before 1950 and comprised industrial works;
2. the Council's claim that the use here was ancillary to the use at No 352 as a whole is not substantiated by the enforcement notice plan which indicates the appeal premises as the unit concerned.

## COUNCIL'S LEGAL SUBMISSIONS

7. The legal submissions made on behalf of the Council were:-

1. 352 High Street formed one premises used for many years as a repair garage and filling station;
2. the appeal building among others was used for a number of activities ancillary to the primary garage use, the panel beating and spraying here being secondary to the primary use;
3. the whole planning unit consisted of the buildings attached to No 352 and these contained mixed uses for car and petrol sales and the servicing and repair of motor vehicles, each not falling within any of the Use Classes Order categories and the whole use being a use on its own;
4. this overall use does not carry planning permission for any other use and if one of these secondary activities were to become the primary use, it is well established that planning permission is necessary for it;
5. in this instance, the manufacture of windows and doors is a general industrial use and this is now the primary use of the premises in place of the former unclassified mixed use;
6. this amounts to a material change in the use requiring planning permission and as that has not been obtained, a breach of control has occurred, the breach having taken place in 1978.

## CONCLUSIONS - on grounds (b) and (d)

8. Having regard to the evidence and facts presented at the inquiry, my conclusions are:-

1. the planning unit prior to 1978 consisted of No 352 High Street and the buildings extending from it to and including the appeal premises;
2. the use of the unit from about 1949 involved refuelling, car sales, vehicle maintenance and the like but also included a substantial repair activity for crashed or damaged vehicles mostly requiring major spraying works and body repairs;
3. the spraying and body works were significantly more than would be expected in a general garage use and were concentrated at the appeal premises, these uses giving rise to works in their own right and beyond that normally ancillary to a general garage premises;
4. the planning unit, therefore, not only had the general car sales and repair uses but also Class IV and Class VIII activities in their own right;
5. whilst these uses may not apply generally to the planning unit as a whole, they do apply to the appeal premises where these specific activities were performed and, even with partition from the unit, these Class IV and Class VIII uses have run at the appeal premises from about 1949 until 1978;
6. if these uses had commenced before 1 July 1948, ground (b) would have been successful but as they did not they were uses requiring planning permission which had not been obtained, so that a breach of control did occur and ground (b) fails;

7. however, the present use at the premises is Class IV and as this is one of the separate uses performed from before 1964, the appeal succeeds on ground (d) and I have no option but to quash the enforcement notice.

#### MERITS - APPELLANT'S CASE

9. The main arguments made on behalf of your client were:-

1. the area is allocated for commercial use, the adjoining building was granted consent in 1967 for a carpenters' shop and there are several other similar business uses here;
2. the appeal premises conform to the commercial provision and have been in commercial use since 1949, the Council's practice since 1967 being to consolidate a local builders' yard and other commercial uses with which the activities at the site are compatible;
3. the noise and traffic complained of by residents are caused by other businesses as well as your client and any noise arising from his use could be controlled by other powers.

#### MERITS - COUNCIL'S CASE

10. The main arguments made by the Council were:-

1. the site is shown on the development plan approved in 1971 as within the Berkhamsted Central Area where the practice is to regulate the type and quantity of land use having regard to assessed demand and also to retain and enhance character;
2. the site is also shown on the non-statutory Berkhamsted Town Centre Map of 1973 as "offices and commercial" but the policy is not to permit further increases in industrial development in the central area;
3. it is undesirable having regard to these provisions for industrial development to be permitted here, particularly owing to the proximity of dwellings;
4. such uses cause loss of amenity by noise and dust, obstruction by lorries loading, unloading and parking in this narrow and congested cul-de-sac, and such development could lead to further similar activities creating additional harm;
5. the appellant's use creates noise from saws and other banging disturbances which are heard right through the houses nearby, the additional traffic and parking resulting in congestion, danger and obstruction to emergency services;
6. the use here has continued in the evenings and on Sundays creating disturbance and annoyance.

#### MERITS - CASES FOR INTERESTED PERSONS

11. The main points made by 5 local residents objecting to the appellant's use were:-

1. the traffic attracted to the appeal premises creates severe noise, disturbance and congestion and interferes with radio and television reception;

2. the site use creates loud noises which are disturbing particularly in the evenings;
3. Park Street is narrow and the manoeuvring by vehicles going to and from the site causes danger.

#### MERITS - CONCLUSIONS

12. From my inspection of the site and its surroundings and the representations made, I am of the opinion that:-

1. the principal issue in this appeal is whether your client's window and door manufacture could be properly located in Park Street having regard to the provisions of the Development Plan and Town Centre Map and also to its impact on the surroundings. It is noted that the use is not one in accord with the planning provisions although this on its own is not sufficient to justify refusal;
2. however, Park Street is unsuited for any business use, its narrow width and the proximity of its dwellings to the highway being incompatible with commercial activities;
3. any activities involving noise, the comings and going of persons and vehicles are bound to harm nearby residents' enjoyment of their homes and any additional traffic is also bound to add to the congestion which already exists in Park Street;
4. nearby residents suffer already from the effects of the activities here and any addition would exacerbate the harm and, for these reasons, it would be wrong to grant planning permission for the use in dispute which would be wrongly located here;
5. I have considered other matters raised but find they are not of sufficient weight to affect the decision. I propose therefore to allow the appeal on ground (d) and, as this has succeeded, the requirements of the notice and the time for its compliance do not fall to be considered but, as indicated above, no planning permission will be granted for the use in dispute.

#### FORMAL DECISION

13. For the above reasons and in exercise of the powers transferred to me, I hereby allow the appeal under ground (d), quash the enforcement notice but refuse to grant planning permission for the development to which the enforcement notice relates.

#### RIGHT OF APPEAL AGAINST DECISION

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

I am Sir

Your obedient Servant



A A SLOMA, BSc(Eng) MICE FIMunE Barrister, LMRTPI  
Inspector

APPEARANCES

FOR THE APPELLANT

Mr P J Fountaine

He called:

Mr E A Wakefield

FOR THE PLANNING AUTHORITY

Mr A F Baker

He called:

1. Mrs J A Perry }

2. Mr N D Perry }

3. Mr D P Noble, BA MRTPI AIAS  
MRSH

- Surveyor.

- Former site employee.

- Senior Assistant Solicitor,  
Dacorum District Council.

- Nearby residents.

- Senior Assistant Planner,  
Dacorum District Council.

INTERESTED PERSONS

1. Mr L-L Peachey

2. Mrs C Basnett

3. Mr J Blower

4. Mrs V Lloyd

5. Mrs B Blundell

6. Mrs E Weatherill

- Former site operator.

- Adjoining resident.

- 4 Park Street. }

- 14 Park Street. }

- 8 Park Street. }

- 1 Park Street. }

Nearby residents.

## DOCUMENTS

Document 1 - List of persons present at the inquiry.

Document 2 - Copy of circular letter giving notice of the inquiry and list of persons served.

Document 3 - Letters including objections from 3 nearby residents and the Park House Residents' Associations.

Document 4 - Sworn affidavit of Mr L Bennet former site occupier.

Document 5 - Notes and extracts on law cases.

## PLANS

Plan A - Enforcement notice plan.

Plan B - Site location.

Plan C - Garage areas.

Plan D - Premises comprising 352 High Street.

Plan E - Extract from Development Plan.

Plan F - Berkhamsted Town Centre Map 1978.

## PHOTOGRAPHS

Photo 1 & 2 - Views of site frontage.

DEPARTMENT OF THE ENVIRONMENT  
TOLLGATE HOUSE  
HOULTON STREET  
BRISTOL BS2 9DJ

Right of Appeal

An appeal against the decision given in the accompanying letter may be made to the High Court on a point of law under the provisions of section 246 of the Town and Country Planning Act 1971. Any appeal must be made within 28 days of the date of that letter (unless the period is extended by the Court).

Inspection of Documents

Any person notified of the decision given in the accompanying letter may apply to the Secretary of State in writing within six weeks of the notification to him of the decision for an opportunity of inspecting any documents, photographs and plans listed in the notification. Any application should be sent to the address from which the decision was issued, quoting the Department's reference shown on the decision letter and stating the date and time (in normal office hours) when it is proposed to make the inspection. At least three days' notice should be given, if possible.