



# Department of the Environment

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Messrs Cruickshanks  
Rye House  
29 London Road  
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Your reference

88/80/RP/JMS

Our reference

T/APP/5252/A/80/13188/G6

Date

10 FEB 1981

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9  
APPEAL BY MR A KADIR  
APPLICATION NO:- 4/1232/80

1. I refer to this appeal, which I have been appointed to determine, against the decision of the Dacorum District Council to refuse planning permission for the change of use from shop to restaurant at No 283 High Street, Berkhamsted. I have considered the written representations made by you and by the council and also those made by the Berkhamsted Town Council, the Berkhamsted Citizens Association and by other interested persons. I inspected the site on 14 January 1981.

2. The appeal property is on the south side of Berkhamsted High Street (part of the A41 Trunk Road) at the western end of the Berkhamsted town centre. It is a 3-storey building, at present empty but last used as a shop on the ground floor with living accommodation over. It forms part of a small terrace lying between the meeting hall of the Society of Friends to the west (which is set back from the road) and a public house on the corner of Boxwell Road to the east. It is flanked on one side by a dwelling house, No 287 High Street, under part of which there is an archway giving access to the rear of the premises and to No 285, a wooden structure housing a small business repairing sports goods; and on the other side by another dwelling house, No 281. The remaining property in the terrace, No 279 High Street, comprises a newsagents and tobacconists' shop on the ground floor, with living accommodation over. The area behind these properties fronting the High Street is residential. Opposite to the appeal site is the entrance to St John's Well Lane on the western side of which are several pairs of semi-detached houses, some in partial use as offices, and on the eastern side is a telephone exchange and a post office. The lane leads to a public car park.

3. From my inspection of the site and its surroundings and from the written representations made the main issue in this case, in my opinion, is the impact which the proposed restaurant use would have on the amenities and environment of the immediate locality, notably the adjoining properties.

4. You have contended that the premises have an existing use as a shop and lie in a predominantly commercial area, within the "Central Area" notation in the Approved County Development Plan of 1971 and allocated as "offices and commercial" in the Berkhamsted Town Centre Plan. You claim that it is not within a residential area and the amenities of adjoining properties would not be materially affected. Further, any cooking smells would be the subject of environmental health control and your clients are willing to accept conditions prohibiting any take-away service or live music and restricting the hours of trading to 12.00 am to 2.30 pm and 6.00 pm to

11.30 pm. Neither the Regional Controller nor the County Surveyor has raised objection on highway grounds; and for customers there is a public car park within a few minutes walk.

5. The local planning authority do not regard the notation as "offices and commercial" as of particular significance in this instance since it is only intended as a guide to the future location of additional office development. They do not consider that the site can be regarded as a primary part of the town centre but is part of a fringe shopping frontage in an area which is primarily residential, with commercial interests as a secondary role. For that reason they have had regard to policies in the Consultative Draft of the Dacorum District Plan relating to the maintenance of a high quality of environment in residential areas and the control of non-residential development in such areas. They consider that the proposed restaurant would have an adverse impact on the surrounding residential properties, particularly as compared with shop use, because of the later hours of opening, smell from cooking and noise and general disturbance after other business and commercial activities have ceased. They also contend that the access to the premises and the 2 parking spaces at the rear (which you have stated are intended for staff and not for customers) are inadequate to service the proposed restaurant.


6. The immediate area in which the appeal site lies is one of mixed development and I am not persuaded either that the proposed change of use should be considered as being in the context of a predominantly commercial area, as you have contended or, although there are residential areas to the north and south as the local planning authority have claimed, that it should be considered as being in a residential area. However, it is the fact that the properties immediately adjoining the site are in residential use and in my view the proposed restaurant use would affect the amenities of those who live in those properties. Although I recognise that measures would be taken to deal with cooking smells and kitchen fumes I am not convinced that the properties immediately adjoining would be unaffected by them; the effects would be likely to be more severe in the longer period of evening opening when the occupants would more usually be at home. Similarly, while the restaurant would no doubt be properly conducted, as you contend, it appears to me that some disturbance of the residents of adjoining properties would result and, as the local planning authority have suggested, this would be particularly so in the evening when other shopping and commercial activities would have ceased. These are consequences which would not follow from an ordinary shop use and I do not consider that they could be obviated by the conditions which you have said your client would be prepared to accept.

7. I have noted carefully what you have said about staff car parking and access to the property for service vehicles and although I do not consider the latter to be wholly satisfactory I would not regard this as justifying refusal of permission if there were no objections on other grounds. I have also noted the submissions about customer parking. It appears to me that some additional parking in the High Street would be likely to occur in the evening, after the period of restriction of parking, and while, in my view, this would not of itself constitute an objection sufficient to warrant refusal of permission it could add to the disturbance of local residents.

8. I have taken into account all other matters raised in the written representations but I do not consider any of these to be of such substance as to outweigh the factors which have led to my conclusion that the proposed restaurant use would be unacceptable because of adverse effects on the amenities of the adjoining residential properties.

9. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

I am Gentlemen  
Your obedient Servant

  
R T SCOWEN  
Inspector

## TOWN &amp; COUNTRY PLANNING ACTS, 1971 and 1972

Other

Ref. No. ....

THE DISTRICT COUNCIL OF ..... **DACORUM** .....

IN THE COUNTY OF HERTFORD .....

To

A. Kadir, Esq.,  
17 Amesbury Avenue,  
Streatham,  
LONDON.Messrs. Cruickshanks,  
Rye House,  
29 London Road,  
HIGH WYCOMBE,  
Bucks.

Change of use from shop to restaurant

at ..... **283 High Street, Berkhamsted.** .....Brief  
description  
and location  
of proposed  
development.

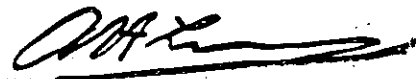
In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated ..... and received with sufficient particulars on ..... **11th August, 1980** ..... and shown on the plan(s) accompanying such application..

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

Having regard to the limited area of the site and its relationship with neighbouring properties, the proposed development would be prejudicial to the amenities and environment of the locality.

Dated ..... **2nd** ..... day of ..... **October,** ..... 19 **80.** .....

Signed.....

Designation..... **Director of Technical Services.** .....

## NOTE

- (1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.
- (2) 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 section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Whitehall, London, S.W.1.) 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.
- (3) 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 District 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.
- (4) 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 section 169 of the Town and Country Planning Act 1971.