

TOWN AND COUNTRY PLANNING ACT 1990

DACORUM BOROUGH COUNCIL

Application Ref. No. 4/1303/93

J Orchard  
Marchday Group PLC  
43 Portland Place  
London  
WIN 3AG

DEVELOPMENT ADDRESS AND DESCRIPTION  
=====

24-26 High Street, Hemel Hempstead, Herts

CHANGE OF USE OF GROUND FLOOR RETAIL SHOP (A1) TO A3 USE (RESTAURANT)

Your application for *full planning permission* dated 20.09.1993 and received on 24.09.1993 has been **GRANTED**, subject to any conditions set out on the attached sheet(s).

Director of Planning.

Date of Decision: 11.11.1993

(encs. - Conditions and Notes).



**Direct Line** 0272-878927  
**Switchboard** 0272-878000  
**Fax No** 0272-878769  
**GTN** 1374-

Dear Sirs

1. As you know, I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the Dacorum Borough Council to refuse an application for planning permission under Section 73 of the Town and Country Planning Act 1990, for the development of land without complying with conditions subject to which a previous planning permission was granted. The planning permission was No 4/1303/93 dated 11 November 1993 for change of use of ground floor retail shop (A1) to A3 use (restaurant) at 24/26 High Street, Hemel Hempstead. I conducted a hearing into the appeal on 19 July 1994. At the hearing, you made an application on behalf of your clients for an award of costs against the Council. This is the subject of a separate letter.

3. the restaurant or cafe use hereby permitted shall not be open for business outside the hours of 0900 and 2300 on Mondays to Saturdays and 1000 and 2230 on Sundays and Public Holidays.

2. to safeguard the amenities of nearby residential properties and ensure that pressure for short-stay on-street parking is avoided;



3. in the interests of the amenity of occupants of nearby and adjacent properties.

4. Your clients wish to use the premises as a delivery and take-away outlet, so that, as you made clear, their principal concern is with condition No 2. If that condition were removed, they would also wish to trade every day until 12 midnight, in accordance with their usual practice elsewhere. Removal or variation of Condition No 3 alone would however be of little or no benefit to them, and I have borne this in mind in determining the appeal.

5. From the evidence presented to me at the hearing, the written representations and my inspection of the site and surrounding area, I thus regard the main issues in this case to be first, whether to remove condition No 2 would be detrimental to road safety and the free flow of traffic, and second, whether removal and/or variation of the conditions would result in harm to local residents' living conditions, through excessive noise and disturbance. The consequences for the High Street Conservation Area must also be considered.

6. The High Street is within the Hemel Hempstead Old Town Local Centre, as defined by Policy 34 of the emerging Dacorum Borough Local Plan. Policies 7 and 34 seek to encourage a broad range of uses in such locations, including catering establishments. Policy 8 however seeks to prevent development which would be harmful to the surrounding neighbourhood and adjoining properties through, for example, noise and disturbance. The Policy also contains requirements concerned with road safety, including one seeking provision of sufficient parking. Though in the present case the Council did not rely on the application of parking standards, I regard the underlying objective of this requirement to be prevention of danger to pedestrians and road users. Taking account also of the advanced stage of the Plan's preparation, I attach considerable weight to these objectives.

7. The appeal premises consist of a double fronted, ground floor retail unit, currently in use as a furniture showroom, towards the southern end of the High Street. The upper floor is in use as a dance studio. There is no on-site parking provision, but access is obtainable to the rear of the building via the narrow lane alongside the southern boundary. The High Street rises quite steeply northward outside the premises, where there are parking restrictions between 0830 and 2300 hours. The restrictions alter a short distance away to the south, toward the bellmouth junction with Queensway, allowing street parking after 1830 hours.

8. The High Street is classed as a local distributor road. It is on a number of bus routes, and by its nature, is likely to carry a significant amount of commercial traffic. Evening peak hour traffic flows were found in May 1993 of over 700 vehicles per hour, which you did not dispute. The road narrows considerably away from the southern junction, so that

on-street parking causes obstructions, and can easily reduce the flow of traffic to a single direction. I saw this occur when I visited the area, even with a van parked outside premises to the south of the appeal site, where the road is wider. The footways vary in width, but are often narrow, being some 2.5m outside Nos 24/26. The tendency of drivers making short stops, which I also witnessed, was to park partly on the pavement, causing hazards both to pedestrians and road users.

9. Traffic volumes could be expected to be lighter in the later evening, but the local conditions are such, in my opinion, that any increase in short-stay, on-street parking should be avoided. You provided evidence of your clients' experience elsewhere which suggested that some 75% of their trade would be conducted by delivery. Using projected sales figures and the average take-away spend figure, you estimated 3 take-away customers per hour, not all of whom would necessarily travel by car. I have no reason to doubt the evidence of past experience, nor of your clients' present intentions, but there could be no guarantee of the pattern or volume of future sales, even if the use were made personal to your clients or restricted to a particular type of food. Further, the evidence of visits to other branches showed fewer being made in the daytime than in the evening. A relatively low hourly average would not prevent there being busy periods.

10. Neither the length of time taken to prepare the food, nor the fact that some customers might already be in the area, would necessarily deter them travelling to the premises by car to collect their meals. As was pointed out, there are other outlets, such as a video shop, close by which might also be attractive to them. It was indeed said to be your clients understandable policy to locate their branches close to such complementary facilities. Of the available parking space in the area, that in the High Street is limited and/or some distance away, while that in Alexandra Road is also limited, and requires the crossing of a busy main road to get to it. Not all customers would be prepared to use even the nearest off street facilities, even if aware of them; those expecting a short stay would in my opinion want to park as close to the premises as possible.

11. You provided evidence of an early weekday evening's observation of the area, when you did not see any parking in breach of the restrictions by customers of the long established take-away just to the south. I have no reason to doubt your evidence of one evening's activities, but the restrictions do not apply directly outside those premises after 1830 hours. Further, your observations are not matched by the evidence of those with regular day to day experience of the locality. With a number of public houses, the existing take-away and other evening attractions, such as activities at the old Town Hall, in the vicinity, the ability of your clients' customers to park close by without breaching the restrictions would be limited. Because of the side access

lane, and a dropped kerb just beyond it, it is easy for a vehicle to mount the kerb outside Nos 24/26. From there, or while visiting other premises nearby, observation could be maintained while waiting for food to be prepared.

12. Both Circulars 1/85 and 13/87 make it clear that there will only occasionally be circumstances in which it will be acceptable to restrict the scope of a particular use class. There is to my mind a material difference between the restaurant use, and use as a take-away in that restaurant customers would usually need to stay for much longer periods than those simply collecting their meals to eat elsewhere. They would therefore more readily park their cars further away, to avoid risk of a penalty, than those expecting a brief visit. I thus conclude that to allow the premises to be used as a take-away outlet, even to the limited extent envisaged by your clients, would result in a significant level of short stay parking, in a location where this would cause obstructions and hazards for both pedestrians and road users. For that reason I consider that condition No 2 is both justified and necessary in the interests of road safety.

13. Turning to the second issue, this in my view is an area where residents are likely to experience a degree of noise from surrounding uses and activities until well into the evening. Indeed, those activities can be a major part of the attraction of living in such a location, but I do not regard the High Street in the same light as, for example, a busy metropolitan centre. There are only a limited number of residents at this southern end of the High Street, principally above public houses and to the rear of No 20, on the other side of the access lane to the appeal site. In this setting, I would not consider the noise associated with customers' arrival and departure by itself sufficient to justify dismissal of the appeal, save that it would be undesirable for any disturbance so caused to be prolonged long after normal licensing hours.

14. The plan submitted at the hearing, No 356/101, was indicative only, but illustrates your clients intention of keeping the delivery mopeds in a store at the back of the building. Given the limited width of the access lane, which is also used by others, and of the footway at the front of the premises, the mopeds would probably have to be kept in this area between deliveries. Your clients own figures suggest that there could be up to 15 delivery trips per hour until about 2000 hours, and between 4 and 6 trips per hour thereafter.

15. No 20A is a 2 storey dwelling which lies immediately opposite the rear entrance to the premises. Mopeds may be relatively quiet vehicles, depending on the model, age and condition, but in the confined space of the access lane, their frequent arrival and departure would in my opinion result in excessive noise and disturbance for the occupiers of No 20A. This would become increasingly intrusive as the evening wore

on, and on Sundays and public holidays. There may be many reasons why the present occupiers of this property did not make representations on the proposal, not least possible ignorance of its full implications. That is no reason for me not to take account of the effect on their living conditions, which I consider would be substantially harmed if condition No 2 were removed, with an even greater impact if condition No 3 were relaxed as well.

16. The area is characterised by a wide range of buildings and uses, reflecting its historical position and role as the former centre of commercial life in the town. Given the existing permission for restaurant use, I do not consider the present proposal has any significant implications for the preservation and enhancement of the Conservation Area's character and appearance.

17. I fully accept that your clients are a reputable national company, who would act entirely responsibly in the conduct of their business. It is the particular location of this site which in my opinion renders it unsuitable for take-away use, and I can find no means by which the above objections could be overcome. The limited permission for restaurant use appears to me to achieve a balance between both national and local policy objectives, concerned with the vitality and range of uses in such centres, and those concerned with protection of other interests of acknowledged importance. To allow the appeal would serve to undermine the latter.

18. I have taken account of all other matters raised but none serves to outweigh my conclusions set out above.

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

Yours faithfully



R O EVANS BA(Hons) Solicitor  
Inspector

**APPEARANCES**

**FOR THE APPELLANTS**

- |                                       |  |
|---------------------------------------|--|
| Mr G Murdoch BSc(Hons) MRTPI<br>ARICS | - Director, Fibbens Fox<br>Associates, Chartered<br>Town Planners. |
| Mr J Gilson ARICS                     | - Acquisitions manager,<br>Pizza Hut (UK) Ltd.                     |

**FOR THE LOCAL PLANNING AUTHORITY**

- |                               |                      |
|-------------------------------|----------------------|
| Mrs J Custance BA(Hons) MRTPI | - Planning Officer.  |
| Mr N F Edlin HNC              | - Transport Officer. |

**DOCUMENTS**

- |                 |  |
|-----------------|--|
| Document 1      | - List of persons present at the Hearing.                            |
| Document 2      | - Council's letter of notification and<br>list of addressees.        |
| Document 3      | - Bundle of replies to Document 2 and<br>representations to Council. |
| Document 4(1-7) | - Bundle of documents referred to by<br>Mr G Murdoch.                |
| Document 5(1-6) | - Bundle of documents referred to by<br>Mrs J Custance.              |

**PLANS**

- |        |  |
|--------|--|
| Plan A | - Application site location plan.                |
| Plan B | - Indicative site plan 356/101.                  |
| Plan C | - Plan of High Street parking restrictions.      |
| Plan D | - Plan showing distribution of residential uses. |
| Plan E | - Plan of intended trading area.                 |





# The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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PLANNING DEPARTMENT				
DACORUM BOROUGH COUNCIL				
DCP	T.C.P.M.	D.P.	HC	EC

Four Ref: Ack: 1959/AP1A

Admin Ref: T/APP/A1910/A/94/237220/P2

Received 12 AUG 1994 Date: 11 AUG 1994

Comments

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND SCHEDULE 6

LOCAL GOVERNMENT ACT 1972, SECTION 250(5)

APPEAL BY PIZZA HUT (UK) LTD

APPLICATION FOR COSTS BY PIZZA HUT (UK) LTD

1. I refer to your application for an award of costs against the Dacorum Borough Council which was made at the hearing held at Hemel Hempstead on 19 July 1994. The hearing was in connection with an appeal by Pizza Hut (UK) Ltd against a refusal of planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. The planning permission was No 4/1303/93 dated 11 November 1993 for change of use of ground floor retail shop (A1) to A3 use (restaurant) at 24/26 High Street, Hemel Hempstead. A copy of my appeal decision letter is enclosed.

2. In support of your application, you referred to the 2 written statements presented by the Council. On the highways aspect, despite evidence on a range of matters, the one thing missing was evidence of any existing on-street parking problem to support the Council's assertions. They had concentrated on parking available in the High Street and had failed to mention Alexandra Road. On the question of residential amenities it had only been acknowledged at the hearing that, without any traffic objection, no objection arose to a take-away use during the working day to 1830 hours from Sunday to Thursday, and to 2300 hours on Fridays and Saturdays. Not even the original permission made these distinctions. There was no mention of the relationship of residential properties to the appeal site, nor of the present circumstances, nor of the impact of the proposal. The suggestion that there would be more take-away than restaurant customers was contradicted by your clients' evidence. There was nothing about the proposal in conflict with the Development Plan. The Council had failed to produce evidence to substantiate their reasons for refusing the application. It was an unreasonable decision, entitling





your clients to an award of costs, in accordance with the terms of Circular 8/93.

3. In response, it was pointed out that there were 2 reasons for refusal. The first did not refer to an on-street parking problem, but a general one. Statements had been exchanged in advance of the hearing, and the Council could not then anticipate every point that would be raised on the Appellants' behalf. It was not possible to identify every car park or road where customers might park. Those in the High Street would be most obvious. Customers from outside Hemel Hempstead would be unaware of facilities in Alexandra Road, and a take-away could generate greater demand than a restaurant. The Council had taken account of the lower proportion of take-away customers associated with the Appellants' operation, but this was not a matter controllable by condition. A difference in opening hours was acknowledged in the hours as they stood. The Council were concerned with the difference between a restaurant and a take-away, which involved a higher turnover of customers with limited seating. Evidence from the electoral roll had been produced, and the proximity of dwellings to the appeal site would be seen on the site inspection.

4. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably.

5. The Council's evidence on road traffic matters included accident statistics, traffic volume figures, car parking data, information on parking standards, bus services and descriptive information about the High Street and surrounding area. This was followed by their professional officer's assessment of local conditions, and the impact the proposal would have in relation to them. The fact that there was no statistical evidence of on-street parking, nor mention of Alexandra Road, did not prevent these assessments being made. In reaching my decision, I took account of all the evidence presented, but reached similar conclusions to the Council officer's on both aspects.

6. Despite the limited number of nearby residents, I also took the view that use as a delivery and take-away outlet, particularly with extended opening hours, would result in excessive noise and disturbance to them. The full implications became clear on my inspection of the site, particularly arising from the layout of the premises and the position of the dwelling at No 20A. The latter was specifically drawn to my attention when at the site, and known residential addresses were clear from the Council's supporting documents. In relation to both their reasons for refusal therefore, I consider that the Council produced evidence sufficient to substantiate them, by reference to the emerging Local Plan and all other material considerations. This is

reflected in my dismissal of the appeal. I thus conclude that your application for an award of costs is not justified.

**FORMAL DECISION**

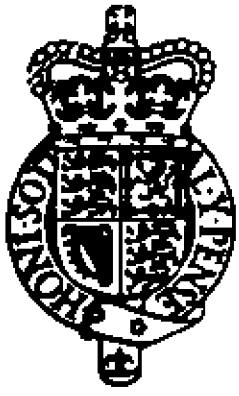
9. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Pizza Hut (UK) Ltd for an award of costs against the Dacorum Borough Council.

Yours faithfully



R O EVANS BA(Hons) Solicitor  
Inspector

ENC



# The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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Tollgate House  
Houlton Street  
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The Solicitor to the Council  
Dacorum Borough Council  
Civic Centre  
Hemel Hempstead  
Herts.  
HP1 1HH

Your Ref:

4/0261/94

PLANNING DEPARTMENT  
DACORUM BOROUGH COUNCIL  
T/APP/A1910/A/94/237220/P2

Ref.

DcP

TCP

OV

DC

Date:

11 AUG 1994

Received

12 AUG 1994

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND  
SCHEDULE 6  
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)  
APPEAL BY PIZZA HUT (UK) LTD

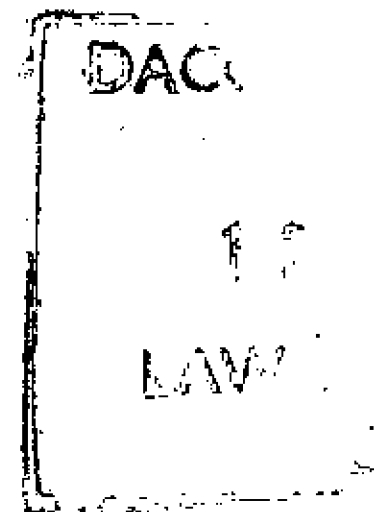
1. At the hearing into the above mentioned appeal, held on 19 July 1994, an application for costs was made on behalf of Pizza Hut (UK) Ltd.

2. I enclose my decision on this application.

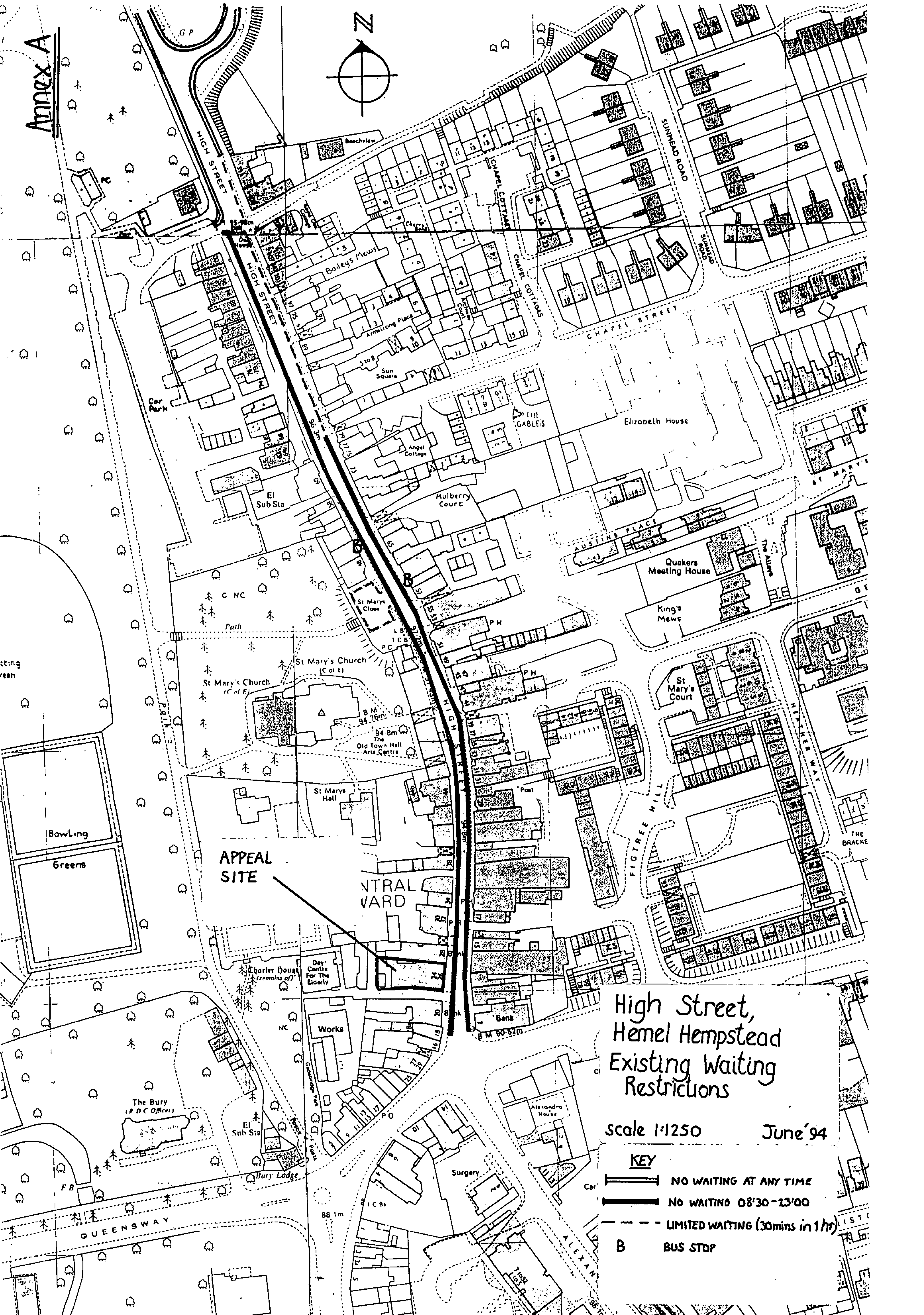
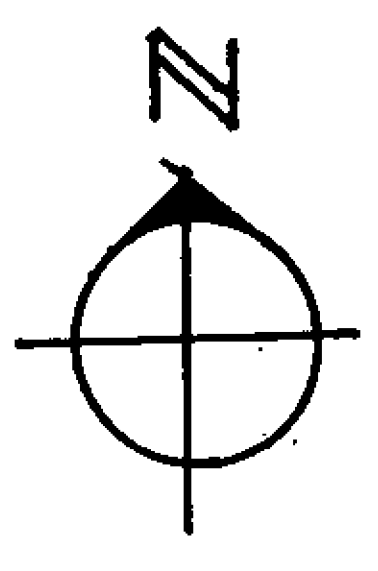
Yours faithfully

R O EVANS BA(Hons) Solicitor  
Inspector

ENC



Annex A



High Street,  
Hemel Hempstead  
Existing Waiting  
Restrictions

Scale 1:1250

June '94

KEY

- NO WAITING AT ANY TIME
- NO WAITING 08:30-13:00
- LIMITED WAITING (30mins in 1hr)
- BUS STOP

## TOWN AND COUNTRY PLANNING ACT 1990

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APPEAL BY PIZZA HUT (U.K.) LTD. UNDER SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AGAINST THE DECISION OF DACORUM BOROUGH COUNCIL ACTING AS LOCAL PLANNING AUTHORITY TO REFUSE PERMISSION FOR THE VARIATION OF CONDITIONS 2 & 3 OF PLANNING PERMISSION 4/1303/93 ( CHANGE OF USE GROUND FLOOR RETAIL SHOP (A1) TO (A3) USE (RESTAURANT) AT 24/26 HIGH STREET, HEMEL HEMPSTEAD, HERTFORDSHIRE

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DACORUM BOROUGH COUNCIL : 4/0261/94RC  
REFERENCE

DEPARTMENT OF THE ENVIRONMENT : APP/A1910/A/94/237220  
REFERENCE

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PRE-HEARING STATEMENT OF JANE ELIZABETH CUSTANCE BA (Hons) MRTPI  
FOR AND ON BEHALF OF DACORUM BOROUGH COUNCIL

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### 1. THE SITE AND SURROUNDINGS

- 1.1 The appeal property is a two storey end of terrace building located close to the junction of High Street and Queensway is situated within the urban area of Hemel Hempstead. The appeal site comprises the ground floor of 24/26 High Street, and has an area of approximately 230 square metres. The premises is currently in retail use at ground floor and dance studio at first floor. There is no car parking within the curtilage of the site. Immediately to the south of the appeal site runs Half Moon Yard, a lane providing rear access to both the appeal property, properties in Queensway, a furniture repository and an Elderly Persons Day Centre.
- 1.2 The High Street is an unclassified road running between Queensway, B487 to the south and the Link Road, A4147, to the north. Prior to the development of Hemel Hempstead New Town in the 1940s the High Street formed the main commercial and shopping area of the town. The area is currently classed as a Local Centre and acts as an adjunct to the town centre. The area is in mixed use comprising retail, office, catering and residential uses. In close proximity to the appeal property are a video shop, a hot food takeaway and a newsagents.
- 1.3 The High Street is a designated Conservation Area and contains a number of attractive Listed Buildings. Gadebridge Park, a large area of public open space lies to the west of the High Street.



2. PLANNING HISTORY & BACKGROUND

2.1 The appeal property, 24/26 High Street, was built circa 1937 and was formerly occupied by Waters Garage, at ground floor level and used as a car showroom. The first floor has been in use as a dance hall/studio since at least 1973.

2.2 A Certificate of Lawful Use was granted in February 1993 for the use of the premises as a dance studio (first floor) and retail showrooms (ground floor) (LA Ref 4/1432/92LD).

2.3 In November 1993 an application for the change of use of ground floor retail shop (A1) to (A3) restaurant use was granted (4/1303/93FL) subject to the following conditions:

1. The development to which this permission relates shall be begun within a period of five years commencing on the date of this notice.

Reason: To comply with the provisions of s.91 of the Town and Country Planning Act 1990.

2. This planning permission shall extend solely to the sale of food and drink to be consumed on the premises.

Reason: To safeguard the amenities of nearby residential properties and ensure that pressure for short-stay on-street parking is avoided.

3. The restaurant or cafe use hereby permitted shall not be open for business outside the hours of 09.00 and 23.00 on Mondays to Saturdays and 10.00 and 22.30 on Sundays and Public Holidays.

Reason: In the interests of the amenity of occupants of nearby and adjacent properties.

4. The use permitted shall not be commenced until there has been submitted to and approved by the local planning authority a scheme for ventilation of the premises including the extraction and filtration of cooking fumes. The approved scheme shall be carried out prior to the occupation of the premises for the use hereby permitted.

Reason: In the interests of the amenity of occupants of nearby and adjacent properties.

2.4 On 24 February 1994 an application for the variation of Conditions 2 & 3 of the above permission was submitted on behalf of Pizza Hut (UK) Ltd. This application is the subject of the current appeal.

### 3. THE APPEAL

3.1 On the 20 April 1994 Dacorum Borough Council acting as local planning authority refused planning permission for the variation of conditions 2 & 3 of planning permission 4/1303/93 (change of use ground floor retail shop (A1) to (A3) use as restaurant) at 24/26 High Street, Hemel Hempstead.

3.2 The application was refused for the following reasons:

3.2.1 The addition of a takeaway use is likely to generate a demand for short stay on-street parking which is likely to exacerbate existing parking problems which would result in consequential inconvenience and danger to other road users.

3.2.2 The application site is located within the Hemel Hempstead High Street Local Centre as defined by Policy 34 of the Dacorum Borough Local Plan Deposit Draft. Within Local Centres it is the Council's policy to seek to maintain the vitality and viability for retail purposes but also to safeguard the residential environment. The High Street is not simply a shopping street, but is also a residential area of some significance. It is considered that the introduction of a takeaway use and the relaxation of restrictions relating to hours of opening would result in an unacceptably adverse effect on the amenities which people living in the area can reasonably expect to enjoy.

3.3 The appeal has been lodged against this decision.

### 4. DEVELOPMENT PLAN POLICIES

4.1 The statutory Development Plan for the area comprises the Hertfordshire County Structure Plan Alterations 1990, the adopted Dacorum District Plan and the Dacorum Borough Local Plan - Deposit Draft.

4.2 The County Structure Plan 1986 Review was approved by the Secretary of State for the Environment on 9 May 1988 and became operative from 31 May 1988. The Hertfordshire County Structure Plan Alterations 1990 which "rolled forward" the plan to 2001 were approved by the Secretary of State for the Environment on 23 June 1992.

4.3 The Dacorum District Plan was adopted by the then District Council on 25 January 1984 and became operative on 26 January 1984. Although still relevant in the assessment of planning applications the Dacorum District Plan has been under review and the Dacorum Borough Local Plan has been produced. The Borough Plan was certified as being in accordance with the Structure Plan by the County Council on 5 June 1991 and was placed on Deposit



on 15 July 1991. Following representations received by the Council relating to the Deposit Draft of the Local Plan the plan was modified to reflect these representations and incorporate significant new information. A Public Local Inquiry was held in May 1992. The Inspectors report into objections to the Plan has been received and the Plan has been modified as result of his comments. However, in order to bring the timescale of Borough Plan in line with that of the County Structure Plan the Plan has been modified again and has recently been the subject of a second Public Local Inquiry.

4.4 As the plan emerges through the various stages of its formulation, it gains greater weight and importance. Its contents are now used as the Council's approved policy basis for development control purposes. In accordance with section 54A of the Town and Country Planning Act 1990, its policies and proposals are to be treated as material considerations in the determination of this appeal.

4.5 The Borough Plan car parking standards have recently been reviewed and are now made up of both the standards set out within the Environmental Guidelines section of the Borough Plan and Car Parking Standards for Hertfordshire a document produced by the Hertfordshire Technical Chief Officers Association. These standards are referred to in the Borough Plan (proposed Modification No. 252), as supplementary guidance that can be used in Development Control.

4.5 The relevant policies are listed below and are attached at Appendix 1:

Hertfordshire County Structure Plan Alterations 1990

Policies 37, 47, 48, 67 & 69

Dacorum District Plan

Policies 19, 72, & 90

Dacorum Borough Local Plan - Deposit Draft

Policies 1, 7, 8, 9, 10, 34, 40, 46, 49, 50, 54, proposed modification 252 & Environmental Guidelines

## 5. PLANNING CONSIDERATIONS

5.1 The property is located within Hemel Hempstead High Street Old Town Centre which is designated as a Local Centre by Policies 34 & 40 of the Dacorum Borough Local Plan - Deposit Draft.

5.2 Considerations relating to the original 1993 proposal (4/1303/93) for the change of use of the appeal premises from A1 retail to A3 restaurant were as follows. Within local centres catering (A3) uses may be acceptable, however, Policy 40 of the Borough Plan states inter alia:

"(A) AT LEAST 60% OF THE TOTAL FRONTAGE REMAINS IN SHOP USE AN APPROPRIATE RANGE OF LOCAL SHOPS REMAIN;

(B) THE ALTERNATIVE USE IS APPROPRIATE TO THE COMMERCIAL FUNCTIONING OF THE AREA; AND

(C) NON-RETAIL USES ARE DISPERSED THROUGHOUT THE AREA."

5.3 It was considered that the proposal complied with this policy and that there were therefore no objections in principle.

5.4 Policy 8 of the Borough Plan sets out general criteria which all development proposals are expected to meet. Policy 9 refers to Environmental Guidelines set out in Part 5 of the Plan which amplify these general criteria.

5.5 In this case issues of available car parking, traffic generation, noise and disturbance to local residents and litter were also considered to be relevant planning considerations. Taking each point in turn;

#### HIGHWAY CONSIDERATIONS

5.6 There are no car parking spaces within the curtilage of the site. The Dacorum Borough Local Plan requirement for the existing shop use (based on a floorspace of 200 sq m) would be 6 spaces. Inadequate information was provided to assess the exact requirement for catering use but this could have been as high as 33 spaces resulting in a deficiency of 27 spaces. Clearly it would not be possible to provide this number of spaces within the curtilage of the property.

5.7 More detailed considerations of the highway aspects relating to this proposal are discussed in Mr B Scott's written statement.

5.8 In summary in view of the lack of on-street parking facilities, parking/traffic management controls and existing highways problems it was considered that takeaway use was not acceptable. Indeed this a view that has been consistently taken by the Council. A schedule of previous applications relating to A3 uses within the vicinity is attached at Appendix 2.

5.9 However whilst takeaway use was not considered to be acceptable where restaurant uses are proposed within local centres with existing public car parks it is reasonable to expect customers to use these facilities. This approach has been endorsed through recent appeal decisions. An

extract from an appeal decision letter relating to 350 High Street, Berkhamsted is set out below. The appeal decision is attached at Appendix 3:

"Patrons of a cafe/restaurant trade would be more likely to require car parking for a longer period than people visiting a takeaway premises. I am satisfied that in the absence of any available parking spaces outside the appeal premises the free car park which is signed fairly close to the appeal premises would be used by daytime patrons of a cafe/restaurant. Due to the isolated location of the car park off the High Street, I consider it would be unlikely to be used by patrons at night but after 18.30 there are no parking restrictions outside the appeal premises on the High Street, and therefore High Street spaces would be available on both sides of the road. Staff car parking may be required close to the appeal premises at times when the High Street parking is still restricted, but there would be provision for 3 spaces within the site."

5.10 Circumstances relating to the current appeal property are similar to those of the above example - 24/26 High Street is within walking distance of both public car parks located in the High Street and Civic Centre/Dacorum College car parks which are available for public use outside working hours. The area immediately outside the appeal premises is subject to parking restrictions prohibiting parking other than for loading/unloading. It was therefore considered that objections to the proposal based on lack of car parking could be overcome via the imposition of conditions precluding takeaway use.

5.11 The situation regarding staff car parking provision would be no different to the existing situation.

#### NOISE AND DISTURBANCE

5.12 With respect to the effect of the proposal on local residents Planning Policy Guidance note 1, General Policy and Principles states that it is the purpose of the planning system to regulate the use of land in the public interest. This includes assessing whether development would affect the locality generally and unacceptably affect amenities that ought in the public interest to be protected.

5.13 Within local centres it is the Council's policy to seek to maintain vitality and viability for retail purposes in accordance with advice set out in DoE Planning Policy Guidance note 6 Town Centres and Retail Developments, but also to safeguard the residential environment. In addition to being a neighbourhood shopping area the High Street is also a residential area. An extract from the Electoral Role showing the distribution of residential properties is attached at Appendix 4. In addition to existing residential units an application for the change of use of the adjacent property 28 High Street to residential use is currently under consideration (LA Ref 4/0780/94).

5.14 Policy 8 of the Borough Plan Criterion D states that:

"Development will not be permitted unless....it avoids harm to the surrounding neighbourhood and adjoining properties through, for example, visual intrusion, loss of privacy noise, disturbance or pollution;"

5.15 It was considered that the introduction of takeaway use would result in undue noise and disturbance from pedestrian customers and vehicles visiting the premises. It is reasonable to expect that a takeaway would result in a greater throughput of customers during opening hours than a restaurant. Occupants of nearby dwellings in the vicinity of the premises are entitled to expect reasonable residential amenity and for this reason a condition was imposed restricting takeaway use. As an added safeguard in the interests of preventing undue disturbance at antisocial times conditions were imposed restricting hours of opening. An appeal decision relating to hot food takeaways at 94 and 98 London Road, Apsley is attached at Appendix 5. This case demonstrates the harm to the amenity of local residents caused by the operation of takeaway outlet at antisocial hours.

#### LITTER

5.16 Finally, takeaway uses can result in excess litter. Although alone this is not considered to be a reason for refusal as the appeal site is located within a designated Conservation Area it was considered reasonable for the Council to seek to resist uses of this sort.

5.17 After having regard to the above consideration planning permission was granted subject to conditions restricting hours of opening and precluding takeaway use. This decision followed advice set out in DoE Circular 13/87:Changes of Use of Buildings and Other Land, paragraph 19 which states:

"Granting permission subject to conditions designed to alleviate a particular difficulty should always be considered as an alternative to refusal where serious environmental problems are envisaged."

#### 6 COMMENTS ON APPELLANT'S CASE

6.1 The appellants argument for the variation of these conditions at the time the application was submitted was as follows.

6.2 The appellants, Pizza Hut (UK) Ltd intend to use the property solely for takeaway sales/home delivery and to open between the hours of 12pm and 12 am seven days a week. They have provided evidence based on existing outlets in Borehamwood and southeast London to suggest that these

"Delta" outlets involve 75% sales via home delivery service and that only approximately 3 takeaway sales per hour take place. Supplementary information submitted with the application is attached at Appendix 5.

- 6.3 Whilst the appellants recognise the Council's concerns relating to the use of the property as an unrestricted hot food takeaway it is their view that in view of the mode of operation these concerns could be overcome by the imposition of a personal condition.
- 6.4 On the basis of the appellant's research, 3 take away sales per hour could be expected. This could result in cars being parked on the highway for 15 minutes in every hour. This would still be unacceptable from a highway standpoint in an area where the Council is seeking to resist further traffic generating uses. This point is discussed further in Mr Scott's statement.
- 6.5 Furthermore, DoE Circular 1/85: The Use of Conditions in Planning Permissions sets out 6 tests for conditions. "Conditions should only be imposed where they are:
  - (a) necessary
  - (b) relevant to planning
  - (c) relevant to the development to be permitted
  - (d) enforceable
  - (e) precise; and
  - (f) reasonable in all other respects.
- 6.6 Paragraph 22, Test of enforceability, states: "A condition should not be imposed if it cannot be enforced. It is often useful to consider what means are available to secure compliance with a proposed condition....."
- 6.7 Paragraph 23, Practicality of enforcement, gives the following example of an unenforceable condition: "a condition imposed for traffic reasons restricting the number of persons resident at any one time in a block of flats would be impracticable to monitor and pose severe difficulties in proving an infringement."
- 6.8 Paragraph 72, Occupancy general considerations, states: "Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal of permission."
- 6.9 It is considered that a condition which attempted to restrict the appellants mode of operation would be both unreasonable and unenforceable. Although information/data has been produced showing that "Delta" outlets currently operate with a 25/75 take away/home delivery split there is no guarantee that Pizza Hut will continue to operate in

this way. If a personal condition was attached Pizza Hut could alter their business to 100% take away without the need for further permission. Indeed the "Delta unit" is a new concept for the company and demonstrates the point that there is no guarantee that further changes in the operation of the business could take place in the future.

- 6.10 Bearing in mind tests for conditions set out in Circular 1/85 it is my opinion unlikely that conditions could realistically be imposed that would limit the appellants operation to 25/75 takeaway/home delivery split. Limiting the takeaway sales to a certain floor space would be ineffective as any number of pizzas could be sold from a very limited amount of floorspace. Similarly it is unlikely that a condition limiting takeaway sales to 25% of total sales would be effective. Firstly as it would be unenforceable and secondly as the total turnover is unknown and the actual amount of takeaway sales would also be unknown. Limiting sales to 3 per hour would also be unenforceable as it would be impractical to monitor such a condition and unreasonable to expect that Pizza hut would turn away the "fourth customer in an hour."
- 6.11 As the operation cannot realistically be limited by condition the Council's concerns relating to the proposal still stand. It should also be borne in mind that if conditions attached were both unreasonable and unenforceable it could be argued by any subsequent occupant that such condition were ultra vires and that the property could therefore be used totally for takeaway sales.

## 7 CONCLUSIONS

### 7.1 To conclude the following points are advanced:

- 7.1.1 The addition of a takeaway use is likely to generate a demand for short stay on-street parking which is likely to exacerbate existing parking problems which would result in consequential inconvenience and danger to other road users.
- 7.1.2 The application site is located within the Hemel Hempstead High Street Local Centre. Within local centres it is the Council's policy to seek to maintain vitality and viability for retail purposes but also to safeguard the residential environment. The High Street is not simply a shopping street but is also a residential area of some significance. It is considered that the introduction of a takeaway use and the relaxation of restrictions relating to hours of opening would result in an adverse effect on the amenities which people living in the area can reasonably expect to enjoy.
- 7.1.3 It is not considered that conditions that would be both reasonable and enforceable could be attached

to any permission that would overcome the Council's objections to the proposal.

- 7.2 For the above reasons the Council respectfully requests that the duty under Section 54A to have regard to the provisions of the development plan is exercised and that the appeal is dismissed.



DACORUM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

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APPEAL BY PIZZA HUT (UK) LIMITED UNDER S.78 OF THE TOWN AND COUNTRY PLANNING ACT 1990 AGAINST THE DECISION OF DACORUM BOROUGH COUNCIL TO REFUSE AN APPLICATION FOR VARIATION OF CONDITIONS 2 AND 3 OF PLANNING PERMISSION 4/1303/93 AT 24-26 HIGH STREET, HEMEL HEMPSTEAD, HERTS

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DACORUM BOROUGH COUNCIL : 4/0261/94  
REFERENCE

DEPARTMENT OF ENVIRONMENT : APP/A1910/A/94/237220  
REFERENCE

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PRE-HEARING STATEMENT BY MR B E SCOTT BSc HONS CEng MICE  
HEAD OF TRANSPORTATION, DACORUM BOROUGH COUNCIL

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1. THE APPLICATION

1.1 On 20 April 1994 Dacorum Borough Council, as local planning authority, considered an application by Pizza Hut (UK) Limited for the removal of two conditions imposed on a previous permission on the site for change of use of the ground floor of the appeal site from retail shop (A1) to use as a restaurant (A3).

1.2 The two conditions, the removal of which was sought, were conditions 2 and 3, namely:

2. This planning permission shall extend solely to the sale of food and drink to be consumed on the premises.

Reason: To safeguard the amenities of nearby residential properties and ensure that pressure for short-stay on-street parking is avoided.

3. The restaurant or café use hereby permitted shall not be open for business outside the hours of 09.00 and 23.00 on Mondays to Saturdays and 10.00 and 22.30 on Sundays and Public Holidays.

Reason: In the interests of the amenity of occupants of nearby and adjacent properties.

1.3 The application was refused for the following reasons:

1.3.1 The addition of a takeaway use is likely to generate a demand for short stay on-street parking which is likely to exacerbate existing parking problems which would result in consequential inconvenience and danger to other road users.

1.3.2 The application site is located within the Hemel Hempstead High Street Local Centre as defined by Policy 34 of the Dacorum Borough Local Plan Deposit Draft. Within Local Centres it is the Council's policy to seek to maintain the vitality and viability for retail purposes but also to safeguard the residential environment. The High Street is not simply a shopping street, but is also a residential area of some significance. It is considered that the introduction of a takeaway use and the relaxation of restrictions relating to hours of opening would result in an unacceptably adverse effect on the amenities which people living in the area can reasonably expect to enjoy.

1.4 I shall address the matters relating to the first reason for refusal, whilst my colleague from the Borough Council's Planning Department, Ms J Custance, will address matters relating to the second reason for refusal.

## 2. THE APPEAL SITE AND SURROUNDINGS

- 2.1 The appeal site is a retail unit located in the High Street, Hemel Hempstead, approximately 30 metres north of the junction of the High Street with Queensway.

### Physical Characteristics

- 2.2 Classified as the U740, the High Street is single carriageway two-lane road approximately 370 metres long connecting Queensway to Piccotts End Road at its junction with Fletcher Way (see plan annexed at A). It runs in a north-south direction climbing at approximately 1 in 20 from its junction with Queensway before levelling off to approximately 1 in 80 by the time it reaches St Mary's Close. It provides frontage access to retail, commercial and residential properties.
- 2.3 Its classification in the road hierarchy is as a local distributor and it provides access to areas of the Old Town to the east of the High Street as well as forming part of a route to Highfield and Grovehill. The road has street lighting, is subject to a 30 mph speed limit and waiting restrictions along much of its length, as shown on the plan annexed at A which prohibit parking on-street for much of its length between 08.30 and 23.00 hours.
- 2.4 At its junction with Queensway, traffic from High Street is required to "Give Way". At this junction the High Street forms a crossroads with Queensway and Alexandra Road. Visibility for traffic exiting is good in both directions. A central island is provided to assist pedestrians across High Street at this point which has a wide 'bellmouth' principally because of a gently sweeping kerbline on the western side.
- 2.5 The width of the High Street varies considerably throughout its length with its southern end being generally narrower at about 5.5 metres and the northern end beyond the Old Town Hall opening up to over 7 metres, and in places to greater than 8 metres in width.
- 2.6 Footways are generally narrow at the lower end with widths of 1.5 metres being typical. North of St Mary's Close the footways are generally wider at between 2 and 3 metres wide.
- 2.7 For a distance of approximately 110 metres on the west side of the High Street, south of the car park vehicular access, properties are set back and fronted by a service road of between 2.5 and 5 metres width. The service road generally sits approximately 1.2 metres below the level of the High Street carriageway

and can be accessed by car at its northern end where it joins the main car park access or at its approximate mid-point via a ramp from the High Street.

### 3. TRAFFIC STATISTICS

#### Accidents

- 3.1 Five personal injury accidents have occurred in the High Street in the 3-year period up to, and including February 1994 (the latest period for which statistics are available).

#### Traffic Volumes

- 3.2 A traffic counter located in the High Street in May 1993 produced the following results:

Peak hour )	Towards Queensway	408 vehs	(08-09.00 hrs)
Flows )			
(Weekday )	Towards Piccotts End	538 vehs	(17-18.00 hrs)
average) )			
)	Combined Flows	711 vehs	(17-18.00 hrs)

#### Car Parking

- 3.3 Data on car park demand has been collated from in-house survey work in 1993 and from surveys carried out by Transportation Engineers, Wootton Jeffreys, as part of the Hemel Hempstead Transportation Study in 1991.

- 3.4 The areas available for parking on the High Street and their approximate distance from the appeal site are as follows:

OFF-STREET	CAPACITY	DISTANCE (metres)
High Street car park (uncontrolled)	96	250
St Mary's Close (short stay)	10	155
ON-STREET		
High Street (short stay)	14 approx	225

- 3.5 This survey work shows that for much of the working day the High Street car park is over-subscribed and that the degree of over-subscription has increased from 1991 to 1993. The 1993 survey showed that 64% of vehicles parked in this car park stayed less than 2 hours.

- 3.6 St Mary's Close contains ten spaces, one of which is allocated to orange badge holders. Parking is limited to 30 minutes in 1 hour by waiting

restrictions. For much of the survey period in 1993, the car park was full with the exception of the disabled bay. 95% of vehicles stayed less than 2 hours.

- 3.7 The on-street parking in the High Street is located on the east side towards the northern end, north of Chapel Street, and is controlled by waiting restrictions limiting duration of stay to 30 minutes. Generally parking is easier at this location. The 1993 surveys showed the maximum number parked was 13 (estimated capacity 14). On thirteen of the 21 visits, nine or more vehicles were parked. 79% of vehicles stayed less than 1 hour with 98% staying less than 2 hours.

### **Parking Standards**

- 3.8 Current retail (A1) use 1 space per 35 sq metres
- Restaurant (A3) use 1 space per 6 sq metres  
dining area
- Hot takeaway use (HTCOA standard) 1 space per 3 sq metres of  
public area

Dacorum Borough Council has no specific standard for hot takeaway food premises; however, a standard has been developed by the Hertfordshire Technical Chief Officers Association as indicated above. The area of the appeal site that could be allocated to takeaway use is difficult to determine but comparison of the above standard shows that a takeaway use requires higher provision than a non-takeaway restaurant facility.

### **Bus Services**

- 3.9 The High Street has one bus stop in each direction, both located in the general vicinity of St Mary's Close. The following Hemel Hempstead Town Services travel through the High Street:

H7	Station, Boxmoor, Town Centre, Highfield, Grovehill, Woodhall Farm
H16	Grovehill (West), Highfield, Town Centre, Station, Chaulden, Stoneycroft
H17	As H16
H22	Town Centre, Apsley
H27	As H7
H37	As H7

In addition, the following inter-urban routes also use the High Street:

30 Town Centre, Berkhamsted, Aldbury  
31 As 30  
43 Town Centre, Luton  
758 Northchurch, Town Centre, London Victoria

- 3.10 The current design standards of the Highway Authority (Hertfordshire County Council) specifies a minimum carriageway width for conventional bus operation on distributor roads of 6.75 metres with parking on the carriageway on bus routes generally discouraged. On lower category roads a minimum of 5.5 metres is required. In the latter case, however, the effect of on-street parking would be greater.

#### 4. HIGHWAYS CONSIDERATIONS

- 4.1 As stated in 2.3 above, High Street is classed as a local distributor. These roads form the link between Main or Secondary Distributor roads and residential access roads and are likely to carry significant volumes of traffic including heavy goods vehicles and buses.
- 4.2 Whilst it is difficult to compare long established road networks with standards established for new development, in this particular case it is important to note that current standards, as set out in Hertfordshire County Council's design guide "Roads in Hertfordshire", normally requires a carriageway width of 6.75 metres with a minimum of 6.1 metres, a verge and footway of combined minimum width 3.3 m on both sides and normally no frontage access. This reflects the primary role of a Local Distributor to carry traffic. The High Street falls well short of those standards and the traffic carrying role has been protected by the introduction of waiting restrictions throughout much of its length, including the area fronting the appeal site which prohibit parking from 08.30 to 23.00 hours. Observation on site indicates general compliance with the restrictions; however, vehicles parking on-street, particularly near the appeal site, reduce the road to single way working and, on occasions, cause considerable congestion.
- 4.3 Parking availability in the area of the appeal site is limited. The existing on and off-street facilities, as indicated in 3.4 are some distance away. In addition, they are substantially full for much of the day with a majority of the parking being short-term in nature. Clients visiting the appeal site by car to order a takeaway meal would have the choice of parking some distance away at a facility where space for much of the time is at a premium or risk parking closer to the site on-street, possibly partly on the footway in view of the narrow carriageway and resultant obstruction to traffic flow that would occur. In view of the relatively short period of time involved in collecting a meal it is the Borough Council's contention that many drivers would risk a parking fine rather than walk a considerable distance due to the current deficiency

of short stay parking. In view of the road's traffic carrying role, any increase in such obstructive parking is not considered to be acceptable.

## **5. CONCLUSION**

- 5.1 High street is a Local Distributor road which falls substantially short of current standards in terms of its geometry.
- 5.2 Parking in the immediate area of the appeal site is not available between 08.30 and 23.00 hours. The parking that is available some metres distant is heavily used and, indeed, effectively full for much of the day.
- 5.3 A takeaway facility at the site is likely to attract a level of short stay parkers to the area who, due to the limitations of parking supply, are likely to seek to park on-street near the site.
- 5.4 Parking on-street near the site will result in obstruction to traffic flow or pedestrian movement. In view of the role of a Local Distributor as a carrier of traffic, an increased likelihood of such obstruction is considered to be unacceptable.

6.94/APP/4/0261/94/BS/CA/PL.2