

CJ



Department of the Environment and Department of Transport

Common Services

Room 417 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct line 0272-218 927

Switchboard 0272-218811

GTN 2074

CHIEF EXECUTIVE
OFFICER

16 JUL 1986

File Ref.

Ref. to CPO 16/7

Messrs Gordon Hudson and Company
4-8 Queensway
HEMEL HEMPSTED
Hertfordshire
HP1 1LR

DISTRICT COUNCIL

Your reference

PMS/JW/9/2/143

Our reference

T/APP/A1910/A/86/45347/P4

Date

15 JUL 86

Received

16

Gentlemen

Comments

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY C K F KWAN ESQ
APPLICATION NO: 4/1348/85

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against the decision of the Dacorum Borough Council to refuse planning permission for the use of 372 High Street, Berkhamstead as a Chinese take-away food shop with extended opening hours. I have considered the written representations made by you, by the council and also those made by interested persons. I inspected the site on 29 May 1986.
2. From my inspection of the site and surroundings and the representations made it appears to me that the principal factor to be taken into account in determining this appeal is whether in opening for longer hours, the benefit of the additional service offered to customers by your client's business would be outweighed by disturbance to local residents.
3. No 372 High Street, Berkhamstead, is one of a small parade of shops on the north side of High Street at the north-western end of the centre of Berkhamstead. There are flats above the shops. High Street, which is the A41, carries a lot of traffic. On the opposite side of High Street is a large car showroom and petrol filling station.
4. Planning permission for the change of use of No 372 from a Class I retail shop to a shop for the sale of hot food was granted in October 1983 but this was subject to a condition restricting the hours of opening to between 8 am and 10 pm on weekdays and 9 am and 4 pm on Sundays. These hours were extended in a temporary permission in December 1983. The extended hours for opening were between 8 am and 11 pm on Mondays and Thursdays, 8 am and 11.30 pm on Fridays and Saturdays and 9 am and 4 pm on Sundays. A further temporary permission expiring on 31 December 1985 for the same hours of opening was granted in December 1984, and permanent permission for operation within these hours was granted in February 1986. Your client applied in October 1985 for an extension of the hours permitted under the original 1983 permission. The opening hours sought were from 8 am until midnight on Mondays to Saturdays and 9 am until 11.45 pm Sundays. This application, which is the subject of this appeal, was refused by the local planning authority as it was considered that the extended hours of opening would prove injurious to the amenity enjoyed by occupiers of adjoining and nearby residences. It appears that the Council has had no complaints from neighbours about the existing arrangements and occupiers of Nos 370, 374, 376 and 378 as well as the laundry and dry cleaning works, which lie on one side of the back of the appeal property have said that they have no objection to the extended hours of opening. You say that of all the

residential flats in the parade, none is occupied for residential purposes apart for that above the appeal premises which is occupied by the enfranchisee of the appellant's business who favours the extension and the occupier of the flat above the newsagency at No 374 who has confirmed in writing that he has no objections.

5. I note the care which the Council has taken to limit any disturbance which might be caused by the operation of your client's business. This is likely to be mainly disturbance caused by customers arriving in cars to collect and take food away. However, the A41 must carry quite a lot of traffic even at night; occupiers of the immediately adjoining properties have said that they do not object to the proposed extended opening hours and there appear to have been no objections or complaints from any other occupiers of properties in the vicinity including those notified of this appeal. There are other commercial enterprises in the vicinity which are also open late. Obviously, if your client's business attracts enough custom to make it worth while to keep it open for the extended hours sought, it must be providing a service that customers want. In Circular 14/85, the Secretaries of State reiterated that there is always a presumption in favour of allowing applications for development, having regard to all material considerations, unless that development would cause demonstrable harm to interests of acknowledged importance. I consider that the amenities of local residents are such interests but bearing in mind traffic already using the A41 in front of the appeal premises, the largely commercial character of the immediate vicinity of the appeal premises, the absence of complaint from residents and the statement from the occupier of the adjoining flat that he has no objection, I have come to the conclusion that there are insufficient grounds to reject your client's appeal and that it should be allowed.

6. I have considered all the other matters raised in the written representations but find nothing of sufficient weight to affect my decision.

7. For the above reasons, and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for the continued use of the ground floor shop at No 372 High Street, Berkhamstead for the sale of Chinese take-away food in accordance with the terms of the application (No 4/1348/85) dated 17 October 1985 and the plans submitted therewith, subject to the condition that the premises shall not be open for business outside the hours of 0800-2400 hours Mondays to Saturdays and 0900-2345 hours on Sundays.

8. The developer's attention is drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970.

9. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

I am Gentlemen
Your obedient Servant

W.C. Knox

W C KNOX BA
Inspector

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM BOROUGH COUNCIL

AJP

To Mr C Kwan
104 Princes Avenue
Watford
Herts

Gordon Hudson & Company
4-8 Queensway
Hemel Hempstead
Herts

Continued use of ground floor as shop for sale of
hot food other than in accord with previously
imposed time condition.

at 372 High Street, Berkhamsted, Herts

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 17th October 1985 and received with sufficient particulars on 18th October 1985 and shown on the plan(s) accompanying such application.

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

In the opinion of the local planning authority the proposed extended hours of opening would prove injurious to the amenity presently enjoyed by occupiers of adjoining and nearby residences.

Dated 28th day of November 1985.

Signed



Chief Planning Officer

SEE NOTES OVERLEAF

P/D.15

NOTE

1. 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 s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). 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.
2. 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 Borough 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.
3. 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 s.169 of the Town and Country Planning Act 1971.