



The Planning Inspectorate

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Council References:

4/0910/94RD & 4/1406/94EN

Our References:

T/APP/C/94/A1910/636092

T/APP/A1910/A/94/244254/P6

Date: **18 MAY 1995**

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 SECTIONS 78 AND 174
AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY HOLYWELL PROPERTY (ST ALBANS) LIMITED
LAND AND BUILDING AT 125 HIGH STREET, BERKHAMPSTEAD**

1. The Secretary of State for the Environment has appointed me to determine your client's appeals against an enforcement notice issued by the Dacorum Borough Council and refusal of planning permission by the same Council, both concerning the above mentioned land and building. I have considered the written representations made by you and the Council together with those made by interested persons. I made an accompanied inspection of the site on 10 April 1995.

The Enforcement Notice: Appeal A (ref: T/APP/C/94/A1910/636092)

2. The enforcement notice was issued on 23 September 1994. It alleges that without planning permission, the use of the ground floor premises has been changed to cafe/restaurant use from retail shop use. The requirements of the notice are to remove from the premises all chairs, tables, kitchen and catering equipment used in connection with the cafe/restaurant business; and, cease all cafe/restaurant use at these premises. The period for compliance with these requirements is 3 months.

3. Your client's appeal against the enforcement notice is proceeding on Ground (a) as set out in Section 174(2) of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

Refusal of Planning Permission: Appeal B (ref: T/APP/A1910/A/94/244254/P6)

4. The development for which the Council has refused planning permission is the change of use from a bakery/bistro to restaurant of the ground floor of 125 High Street, Berkhamstead.

Procedural Matters:

5. Both appeals relate to identical use of the premises. Consequently, the policy framework, issues and considerations will be the same for each. I shall, therefore, deal with both appeals together, referring where necessary to the particular merits of each.

Policy Framework:

6. The appeal site lies within the Berkhamstead Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant planning permission, special regard is paid to the desirability of preserving or enhancing the character or appearance of such areas. This principle is echoed in Policy 14 of the Deposit Draft of the Dacorum District Plan and the Environmental Guidelines within the draft Borough Local Plan..

7. The appeal premises were listed, in grade II, as a building of special architectural or historic interest on 26 January 1995. You suggest that since they were not listed at the time the Council served the enforcement notice and refuse planning permission, this change is not relevant to your client's appeals. However, I am empowered to consider the merits of the case as if at first instance and I must take account of the situation as it now exists. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant planning permission for development which affects a listed building, special regard is paid to the desirability of preserving the building, its setting or any features of special architectural or historic interest which it possesses.

8. The development plan, through Policy 67 of the approved Hertfordshire Structure Plan Review states that within town centres service and leisure uses, together with others cited will normally be acceptable. More detailed guidance is contained in emerging policy contained in the draft district and local plans. Both support a mixture of uses within town centres and accept, subject to some provisos, non-shop uses in retail frontages outside primary shopping areas. The appeal site is not within a primary frontage and, therefore, there is no objection in principle, to the use of the appeal premises as a restaurant.

9. The use has given rise to complaints about noise from the appeal premises by a neighbouring resident in the past. These have been the subject of consideration by the Council and form the reason given for issuing the notice and the basis for refusing planning permission.

10. Both draft plans contain policies relating to car parking provision for new development. Whilst not raised either in the reasons for refusal of planning permission or for issuing the enforcement notice, these requirements were raised by the Town Council and are a material consideration in my assessment of the change of use. The Council have calculated that their policy would normally require some 20 spaces for the use at the appeal premises.

Main Issues:

11. Having regard to the above factors and all the other information before me, I consider that the appeals raise the following main issues:

- 1) whether sufficient car parking would be available to avoid any detrimental impact upon the free flow of traffic in the vicinity;
- 2) the effect of the restaurant use upon the residential amenity of neighbouring property; and,
- 3) its effect upon the character of the listed building.

Issue 1: Car Parking:

12. On the first issue, the Council acknowledge that there are about 19 parking spaces on land behind the appeal site. Of these you accept that only about 5 are available for the exclusive use of the occupier of the appeal premises. Consequently, the Council contend that parking provision is inadequate for the restaurant use.

13. During the day you state that most of your client's customers come from the town centre and are working there or already visiting its facilities. Therefore, most do not arrive in cars at the appeal premises. This would seem reasonable and was supported by the fact that, during my lunchtime inspection, there were parking spaces available both behind the premises and along High Street.

14. Evening trade is likely to be attracted from a wider area since most of the shops and commercial premises nearby would be closed. Consequently, it is likely that more customers would arrive by car and create a greater demand for car parking. It is likely that the parking spaces behind the appeal site would not be used after normal office hours and, if available for customers, these would probably suffice. In any event, there is no evidence to suggest that, in the past, car parking has been inadequate or caused any undue problems in the vicinity. Although the provision may not comply with the Council's parking standards in their emerging plan, parking does not give rise to the kind of problems which they seek to address and alone it would not, therefore, justify refusal of planning permission for the use.

Issue 2: Residential Amenity:

15. On the second issue, noise emanating from the appeal premises has, in the past, given rise to complaint. It was witnessed by the Council from within the flat above. I note that the occupant now supports the restaurant use. However, occupants of such premises do change over time and for this reason I must assess the situation based upon generally applied standards. When the complaint was investigated by the Council the noise of normal business activity below, such as washing up and conversation of customers and staff could be clearly heard in addition to amplified music. Although evident during the day, the noise was particularly noticeable in the evening when the ambient noise levels are lower. The restaurant

use extends well into the evenings, unlike the previous shop use. Your client would wish this to continue and, in such circumstances, I consider that the noise resulting from it represents serious harm to the residential amenity of the dwelling. This view is supported by the fact that the Council issued a Notice in respect of Statutory Nuisance relating to noise emitted from the appeal premises on 11 May 1994.

16. I accept that the situation may have been alleviated to some extent through alterations to the mode of operation for the use. I also note that neighbouring commercial uses support your client's activity. However, any planning permission granted for a restaurant use would enure for the benefit of the land. Consequently, whilst the method of operation may be material, I must also have regard to the likelihood of future operators using the premises differently and the effect this could have upon amenity. In my view there remains the potential for problems arising through noise and disturbance.

17. In some circumstances, the effect of noise within premises can be limited by imposing conditions upon any planning permission requiring the provision of sound attenuation measures. You state that your client would be willing to provide such measures. If this could be satisfactorily achieved in this case then I would be satisfied that the objections I have identified could be resolved and the use would, therefore, be acceptable.

Issue 3: Effect upon the Listed Building:

18. The appeal building is listed and this may present particular problems with regard to the provision of sound attenuation measures which may have a material impact upon the character of the building. You contend that the interior of the building is much altered already and little is therefore original. Also, you point out that there is already a suspended ceiling over part of the restaurant and it would be possible to install insulation above this without any change to the interior. Sound attenuation works can, in my experience, be substantial and may not merely involve the introduction of insulation materials.

19. Listing of buildings seeks to preserve and protect not only their appearance but their fabric and features. Planning Policy Guidance Note No.15 advises, in paragraph 3.12, that the elements which make up the special interest of a building comprise not only obvious visual features, but the spaces and layout of the building and the archaeological or technological interest of the surviving structure and surfaces. In these circumstances I believe it is necessary for details of the proposed works necessary to achieve satisfactory sound attenuation to be available in order that their impact upon the building can be assessed. In the absence of this information I remain unconvinced that such works would not harm the character of the building which would be contrary to government and local policy.

Summary:

20. In summary, whilst the planning objections I have identified may be capable of being overcome, the works necessary to achieve this may be unacceptable within a listed building. On the information available I am not convinced that they would not be so and accordingly I find the use would either detract from the residential amenity of neighbouring premises or may be harmful to the character of a listed building.

Other Matters:

21. I have taken into account all other matters raised in the representations received, but they do not outweigh the considerations which have led to my decisions.

FORMAL DECISIONS:

22. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss Appeal A (ref: T/APP/C/94/A1910/636092), uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under S177(5) of the amended Act. I also hereby dismiss Appeal B (ref: T/APP/A1910/A/-94/244254/P6).

RIGHTS OF APPEAL AGAINST DECISIONS:

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

Yours faithfully



Keith Turner LLB(Hons) DipArch(Dist) RIBA MRTPI FRSA ACIarb
Inspector

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