



Planning Inspectorate
Department of the Environment

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Mr Christopher Novell
1 Colne Way
Grovehill
HEMEL HEMPSTEAD
Hertfordshire
HP2 6EA

PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL						
					Ack.	
OSP	ICPAR	DP	DC	CC	Admin.	File
Received			27 APR 1992			
Comments						

Your reference

Council reference
4/1486/91EN

Our reference
T/APP/C/91/A1910/680050/P6

Date - 4 APR 92

Sir

**TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
LAND AND BUILDINGS AT 1 COLNE WAY GROVEHILL HEMEL HEMPSTEAD**

1. As you know I have been appointed by the Secretary of State for the Environment to determine your appeal against an enforcement notice issued by the Dacorum Borough Council, concerning the above mentioned land and buildings. I have considered the written representations made by you and by the Council and also those made by an interested person. I inspected the site on 10 February 1992.
2.
 - a. The notice was issued on 19 September 1991.
 - b. The breach of planning control alleged in the notice is a change of use of land and buildings from residential use to a mixed use of residential and storage together with maintenance of ice cream sales vehicles and storage of ice cream for retail sales.
 - c. The requirements of the notice are to cease the use for the storage and maintenance of ice cream sales vehicles together with storage of ice cream sales vehicles and ice cream for retail sales.
 - d. The period for compliance with the notice is four months.
 - e. The appeal was made on the grounds set out in S174(2) (b) and (c) of the 1990 Act.

THE APPEAL SITE AND SURROUNDINGS

3. The appeal site is an end terraced house within a residential area at Grovehill, located some 2km to the north east of the town centre. The dwelling has a rear garden, now hard surfaced, and garage which obtain access from Mersey Place. At the time of my inspection the garage was empty and unused apart from containing a few items of domestic storage. The paved rear

100%



RECYCLED PAPER

garden was occupied by two ice cream vans and you indicated that a third, normally parked there, was away under repair. Within the house was an upright freezer/chiller cabinet, formerly positioned within the garage, but this was now unused.

4. The surrounding area is entirely residential in character apart from an alleged use of a garage and parking area at the rear of 275 St. Agnells Lane, approached by way of Mersey Place, for vehicle repairs. However this matter, raised by the interested person, is not before me for determination.

THE APPEAL ON GROUND C

5. In support of your appeal on ground (c), that the matters alleged have not occurred as a matter of fact, you state that you came to the property in 1981 and have since that time parked vehicles in the rear garden in the same way as other persons park vehicles on their driveways. You do not use the premises for the storage of ice cream other than stock which is kept on the vehicles. The use of the freezer/chiller cabinet, formerly kept within the garage, for storage of small quantities of ice cream was for domestic purposes only.

6. It appears to me that you have partly misunderstood the basis of an appeal under ground (c) as you accept that ice cream sales vehicles have been parked and stored (over the winter period) at the appeal site since 1981. It also appears that you accept, as a matter of fact, that the vehicles are used for the storage of ice cream for retail sale.

7. From the representations before me and my observations during the site inspection I accept that no part of the dwelling or garage is used for the storage of ice cream for retail sale. Similarly there is no evidence before me to substantiate the allegation of maintenance of vehicles at the appeal site. I am accordingly satisfied that the vehicles have only been parked or stored at the site. To this limited extent, therefore, your appeal on ground (c) succeeds and I propose to correct the notice accordingly.

THE APPEAL ON GROUND B

8. In support of your appeal on ground (b), that the matters alleged do not constitute a breach of planning control, you state that in 1984 you notified the Council of your intention to park the vehicles at the appeal site. You understood that planning permission was not required provided the property was not altered or extended. In later representations you state that you accept that there was no written agreement with the Council but that they have been aware of the use since 1983 as a result of a requirement to register the vehicles, and the location of their usual parking place, with the Council's Environmental Health Department.

9. The vehicles you operate are used for commercial purposes. When parked at the appeal site they contain your stock in trade (except over the winter months). All of the rear garden of your property is paved and used exclusively for the parking and storage of the ice cream sales vehicles. In these circumstances I consider that a material change of use has occurred which is within the definition of "development" set out in Section 55 of the Town and Country Planning Act 1990. Planning permission is required and failure to obtain such permission constitutes a breach of planning control.

10. I do not regard either the informal enquiry of the Council in 1984 or the registration of both the premises and vehicles in 1983, for the purposes of

other legislation, as representing any form of commitment on the part of the Council under the scope of the Town and Country Planning Acts. Accordingly your appeal under ground (b) fails.

THE DEEMED APPLICATION FOR PLANNING PERMISSION

11. Although you have not pleaded ground (a), namely that planning permission ought to be granted, there is before me a deemed application under Section 177(5) of the Act which falls to be considered. In determining the deemed application I consider that the main issue is whether the retention of the use would result in unacceptable harm to the appearance of the area or to the amenities of persons living nearby.

12. In relation to the deemed application the Council draw my attention to the objectives of policies within both the adopted Dacorum District Plan (1984) and the emerging Dacorum Borough Local Plan. Policy 18 of the adopted plan indicates that the impact of developments will be assessed in relation to the characteristics of the site; location of adjacent development; traffic considerations and the creation of a satisfactory environment. Policy 7 of the emerging Local Plan indicates that in residential areas the introduction of incompatible non-residential development will be resisted. Policy 8 sets out various criteria against which proposals are to be assessed including the question of harm arising from noise/disturbance; satisfactory access; traffic generation and parking/servicing provision.

13. The Council consider that the use of your property as an operating centre for a small fleet of commercial vehicles is inappropriate in a residential area, giving rise to undue noise/disturbance and detriment to visual amenity. They consider that such a use should be confined to appropriate commercial premises.

14. The impact of the use upon the appearance of the area is confined to the parking of the three vehicles within the paved rear garden area. In this respect it appears to me that the impact would be limited to the occupiers of the dwellings at 1-11 Mersey Place, who have an outlook towards the side of your property, together with the occupiers of those dwellings in Colne Way and St. Agnells Lane who are able to view your rear garden from their upper floor windows. The boundary wall, fence, gates and garage to your property partly screen the vehicles from these viewpoints but not to the extent that the parking or storage of commercial vehicles on the appeal site could be accepted on a permanent basis. Although the vehicles in question are no larger than Transit type vans or Dormobiles, which are commonly parked within domestic curtilages, in this case I consider that the presence of three vans occupying virtually the entire paved rear garden area results in an unacceptable change to the residential character of the site and the surrounding area.

15. From the evidence presented I am satisfied that the vehicles are not maintained or repaired at the appeal site and in respect of noise/disturbance attributable to the use this would appear to me to be confined to the movement of vehicles into and out of their parking places. Apart from the manoeuvring of the vehicle closest to the boundary with No.3 Colne Way I consider that the degree of disturbance would not be significantly greater than that arising from the movement of a car into or out of a garage or parking space. You state that the vehicles leave the site between 0800-0900 and return between 1900-2000 hours. In this respect it appears to me that there would be no movement of vehicles during unsocial hours likely to lead to disturbance to nearby residents. During the inspection you demonstrated to me that when the

refrigeration units within the vehicles are powered by the public electricity supply the only perceptible noise was a low hum which I consider unlikely to result in any degree of nuisance for the occupiers of nearby dwellings.

16. I regard the impact of the use upon the appearance of the area and the amenities of nearby residents as finely balanced. I share the view of the Council that the site is unsuitable on a permanent basis for the parking of commercial vehicles, because of the change in character of the site and the visual intrusion, but consider that there is no evidence of demonstrable harm to the amenities of nearby residents in terms of noise and disturbance. I have also considered your views as to the effect of upholding the enforcement notice upon the operation of the business. I have accordingly reached the conclusion that whilst the retention of the use cannot be accepted on a permanent basis you should be afforded an extended period during which to seek alternative premises for the business. In the interim I consider that the use of the appeal site should be controlled by conditions on the grant of a temporary planning permission.

17. Having regard to the foregoing the enforcement notice, as corrected, will be quashed and I propose to grant planning permission on the deemed application for a temporary period until 31 December 1993 subject to conditions defining the extent of the permitted use; limiting the number of vehicles to be kept at the site; precluding mechanical repair/maintenance and controlling the extent of any storage activity.

18. In reaching my conclusion on the deemed application I have taken into account all the matters raised in the representations but none outweighs the considerations which have led to my decision.

FORMAL DECISION

19. For the above reasons, and in exercise of the powers transferred to me, I hereby correct the notice as follows :-

- i. by the deletion of the words "...together with maintenance..." from the allegation in Schedule 2 of the notice and
- ii. by the deletion of the words "...and maintenance of ice cream sales vehicles together with storage..." from the steps required to be taken in Schedule 3 of the notice.

Subject thereto I allow the appeal, direct that the notice be quashed and grant temporary planning permission on the application deemed to have been made under Section 177(5) for the continuation of the use of land and buildings at 1 Colne Way, Grovehill, Hemel Hempstead for the parking and storage of ice cream sales vehicles and the storage of ice cream for retail sales subject to the following conditions:

1. the use hereby permitted shall cease on or before 31 December 1993.
2. not more than 3 ice cream sales vehicles shall be parked or stored at the site at any time.
3. no works of mechanical repair or maintenance shall be undertaken to the vehicles at the site at any time other than cleaning and/or washing, but excluding painting.

4. the storage of ice cream for retail sale shall only take place on the vehicles.

5. when the vehicles are immobile their refrigeration units shall be powered from the public electricity supply.

20. This decision does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

RIGHT OF APPEAL AGAINST DECISION

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

I am Sir
Your obedient Servant

A handwritten signature in black ink, appearing to read 'Keith Smith', with a stylized flourish at the end.

KEITH SMITH BA (Econ) DipTP DPA FRTPI ACIS
Inspector

IMPORTANT: THIS COMMUNICATION AFFECTS YOUR PROPERTY

DACORUM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

ENFORCEMENT NOTICE

Material Change of Use

LAND AT 1 COLNE WAY GROVEHILL
HEMEL HEMPSTEAD HERTFORDSHIRE

W H E R E A S:

- (1) It appears to the Dacorum Borough Council ("the Council") being the local planning authority for the purposes of s.172 of the Town and Country Planning Act 1990 ("the Act") in this matter, that there has been a breach of planning control after the end of 1963 on the land or premises ("the Land") described in Schedule 1 below.
- (2) The breach of planning control which appears to have taken place consists in the carrying out of development by the making of the material change in the use of the land described in Schedule 2 below, without the grant of planning permission required for that development.
- (3) The Council considers it expedient, having regard to the provisions of the development plan and to all other material considerations, to issue this Enforcement Notice, in exercise of its powers contained in the said section 172, for the reasons set out in the Annex to this Notice.

NOTICE IS HEREBY GIVEN that the Council requires that the steps specified in Schedule 3 below be taken in order to remedy the

breach within the period of four months from the date on which this Notice takes effect

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of s.175(4) of the Act, on 31st October 1991.

SCHEDULE 1

LAND OR PREMISE TO WHICH THIS NOTICE RELATES:

Land at 1 Colne Way Grovehill Hemel Hempstead Hertfordshire
shown edged red on the attached plan

SCHEDULE 2

ALLEGED BREACH OF PLANNING CONTROL:

Change of use of land and buildings from residential use to a mixed use of residential and storage together with maintenance of ice cream sales vehicles and storage of ice cream for retail sales

SCHEDULE 3

STEPS REQUIRED TO BE TAKEN:

To cease using the land and buildings for the storage and maintenance of ice cream sales vehicles together with storage of ice cream sales vehicles and ice cream for retail sales

Issued

19th September 1991

Council's address:

Civic Centre
Marlowes
Hemel Hempstead
Herts HP1 1HH

(Signed) _____

K.M. Pugh

(Designation) _____

Director of Law and Administration
(The Officer appointed for this purpose)

THE ANNEX

This information is given in pursuance of the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 and Circular 38/81.

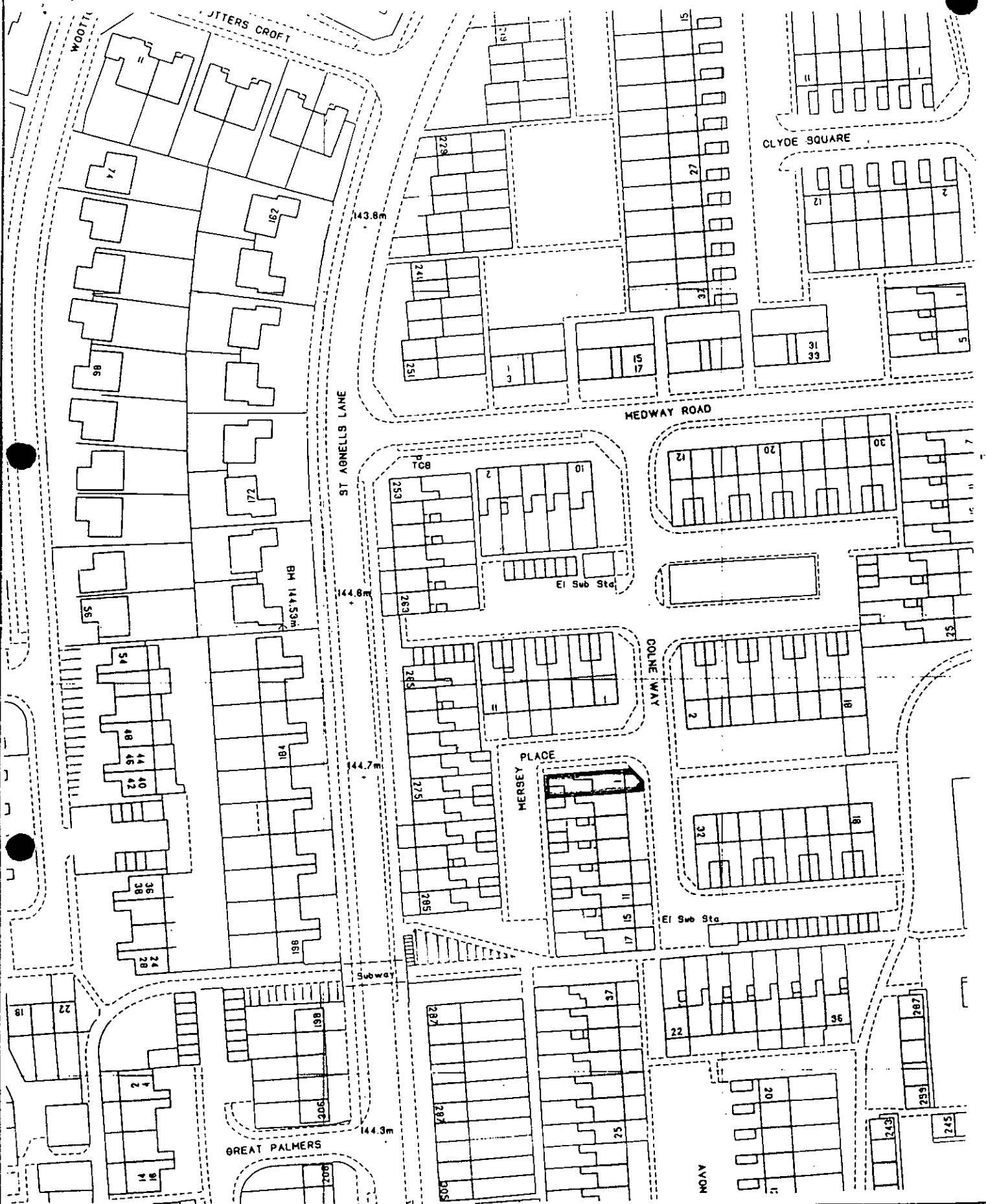
The Council, as the local planning authority, considers it expedient to serve this Notice upon you for the following reasons:

Policy 18 of the Adopted Dacorum District Plan (1984) and policy 8 of the Deposited Draft Dacorum Borough Local Plan Review (1991) seek to ensure that the environment of residential areas should not be harmed by new developments by way of visual intrusion, noise, disturbance, pollution or loss of privacy. The alleged unauthorised development the subject of the enforcement notice conflict with the aims of these policies by reason of:

- (a) noise and disturbance generated by equipment used in association with the storage of ice cream and parking of ice cream sales vehicles on the site;
- (b) noise and disturbance generated by increased comings-and-goings to and from the site arising from the parking of ice cream sales vehicles on the site; and
- (c) the intrusiveness created by and consequent detriment to the general appearance of the locality caused by the parking of ice cream sales vehicles on the site.

Even though the use is small in scale, acceptance of one instance is likely to lead to further similar uses being developed and which cumulatively undermine the objectives of the policies and the overall effect would be harmful to the character of the residential area which the policies seek to protect. Bearing in mind the close proximity of adjacent dwellings, the increased activity arising from the mixed use and adverse appearance of the site as a result of the parking of ice cream sales vehicles are detrimental to the amenities of the locality especially those enjoyed by the occupiers of those dwellings. The local planning authority considers, therefore, that for these reasons the guidance contained in Planning Policy Guidance Note No. 4 in respect of small businesses working from home, is outweighed.

1 COLNE WAY, GROVE HILL, HEMEL HEMPSTEAD.



PLAN REFERRED TO IN ENFORCEMENT NOTICE DATED

SCALE: 1:1250

APPLICATION No.

DACORUM BOROUGH COUNCIL,
CIVIC CENTRE, MARLOWES,
HEMEL HEMPSTEAD.

Based on the O.S. Map with the sanction of the Controller of H.M. Stationary Office
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BY C. NOIELLO

APPEAL UNDER S. 174 OF THE TOWN AND COUNTRY PLANNING ACT 1990 & AGAINST THE DECISION OF DACORUM BOROUGH COUNCIL TO SERVE AN ENFORCEMENT NOTICE IN RESPECT OF THE USE OF RESIDENTIAL PROPERTY AT 1 COLNE WAY HEMEL HEMPSTEAD FOR THE STORAGE OF ICE CREAM SALES VEHICLES AND ICE CREAM FOR RETAIL SALE.

DEPT OF ENVIRONMENT REF NO.

APP/8/91/A/910/680050

DACORUM BOROUGH COUNCIL REF

4/1486/91EN

WRITTEN STATEMENT OF DACORUM BOROUGH COUNCIL

1. The site and Surroundings

The Appeal site comprises an end of terrace dwelling with rear garage and garden area - the majority of which has been hard-surfaced. The surrounding area is exclusively residential in nature and comprising terraced housing with rear access ~~roads~~ similar to No.1 Colne Way. Access roads are of ~~various~~ limited width (5.1m), although garage court areas are of more generous dimensions (8m - 10m). The site is bounded to the North side by a 1.8m wooden fence with a gate of similar height giving vehicular access to the 'garden' area.

2. Policies

2.1 ~~The site lies within~~ The Dacorum District Plan was adopted by the Council on 25 Jan. 1984 and came into effect as the statutory local plan on 26 Jan 1984. Policy 18 is relevant to this appeal.

2.2 The Dacorum Borough Local Plan is ^{currently} on deposit and will replace the Dacorum District Plan as the Development Plan. Policy No 7 & 8 suggests that the introduction of incompatible non residential development in residential areas will be resisted.

3. PLANNING CONSIDERATIONS

3.1 The overriding consideration in this matter is clearly the effect ~~the~~ of the use on the ~~environment~~ ^{visual} peace, ~~and~~ quiet and general ^{visual} amenity enjoyed by surrounding residents. Whilst the parking of one van in the rear

yard of the property ~~as~~ may be considered acceptable. The storage of two vehicles on the site (and occasionally a fluid reefer), together with the accompanying activity cannot be condoned. Photographs of site attached as Appendix A.

3.2. The use of a residential property ~~for the~~ as an operating base for a small 'fleet' of vans, in the opinion of the local Planning Authority, constitutes a change of use for which planning permission has not been sought. The use is one which should be confined to commercial premises and the appellant has, in fact, been offered premises by the Borough's Estates Officer.

4. COMMENTS ON GROUNDS OF APPEAL

4.1 Although only a small proportion of neighbours have complained they are those most affected by the activity. Lack of representations does not necessarily imply that nuisance is not experienced.

4.2 There are no records within the planning department of any agreement that vans could be parked on the property.

4.3 In respect of any nuisance, ^{that may be} caused by activity associated with the business the presence of several ice cream vans parked in the vicinity is in itself a visual intrusion that is inappropriate in a residential area.

4.4. The inability of the appellant to rent premises from the Council is not a relevant consideration.

5. CONCLUSIONS

The appellant has not, in the opinion of the Council, put forward adequate ~~justification~~ evidence to suggest that the business activity being carried on at the site is exempt from planning control. That being the case, it is the Council's view that such activity is unacceptable in a predominantly residential area and the Secretary of State is respectfully requested to uphold the Enforcement Notice and dismiss the appeal.