



**Department of the Environment and
Department of Transport**

Common Services

Room 1408 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct line 0272-248 938
Switchboard 0272-218811GTNC2074 D.P.
Council refs 4/1510/83CHIEF EXECUTIVE
OFFICERPLANNING
DACORUM DISTRICT COUNCIL
15 JAN 1985

File No.

Refer.

Clerk

Admin.

File

Messrs Murgatroyds
Solicitors
36 Holywell Hill
ST ALBANS
Herts AL1 1BT

Your reference	15 JAN 1985
Received	84/AL/120
Our reference	T/APP/A1910/C/84/1492/P6
Comments	and T/APP/A1910/A/84/12589/P6
Date	14 JAN 85

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEALS BY STIMPSONS
LAND AND BUILDING AT 33 MARLOWES, HEMEL HEMPSTEAD

1. As you know I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeals. These appeals are against an enforcement notice issued by the Dacorum District Council and against a refusal of planning permission by that council concerning the above mentioned land and building. I held an inquiry into the appeals on 20 November 1984.

2. a. The date of the notice is 11 April 1984.

b. The breach of planning control alleged in the notice is:

- i. the change of use of the first floor from residential use to office use;
- ii. the change of use of the second floor from residential use to use for the storage of office equipment.

c. The requirements of the notice are:

- i. the cessation of the use of the first floor for offices;
- ii. the cessation of the use of the second floor for the storage of office equipment.

d. The period for compliance with the notice is 6 months.

e. The appeal was made on grounds 88(2)(a) and (h).

3. The development for which planning permission was refused is the change of use of the premises from residential to offices with ancillary storage.

4. At an early stage in the inquiry it became clear that, whilst the second floor of the appeal building was being used for ancillary storage at the time of issue of the enforcement notice, it is now used as a staff training centre. In my opinion, both the storage and the staff training use are uses ancillary to the main use as offices. This point has been canvassed in correspondence between the appellants and the council, and in its letter of 29 May 1984 (see Document 4) the council confirmed that the principal use of the floor space is for office purposes.

5. In the light of this I questioned the wording of Schedules 2 and 3 attached to the enforcement notice. For the council it was said that it is desirable for these schedules to be amended to refer to office use on both upper floors. You said that a variation to the schedules of this nature would not be prejudicial to your clients. Were it my intention to uphold the notice, I would therefore have varied Schedule 2 by substituting the words 'change of use of first and second floors from residential to office use' for the words therein, and Schedule 3 by substituting the words 'the cessation of the use of the first and second floors for offices' for the words therein.

6. The development subject of the Section 36 appeal is described on the application form as change of use from residential to offices with ancillary storage. In the light of the above 2 paragraphs, I intend to deal with this appeal on the basis of the change of use of the upper floors of the appeal building to offices.

SECTION 36 APPEAL AND APPEAL UNDER SECTION 88 GROUND (A)

7. Turning to the question of whether planning permission for this use ought to be granted, there is a clear policy background against which the developments must be judged. The relevant policies are contained in the recently adopted Dacorum District Plan. Policy 61 of that plan states that planning permission will not normally be granted for any change of use or other development which would result in the loss of satisfactory residential accommodation. Policy 56 makes this policy specific to development for office purposes.

8. Therefore, although the appeal premises are within an area shown on the District Plan Proposals Map as the commercial centre of Hemel Hempstead, wherein, under the terms of District Plan Policy 53 changes of use to offices will normally be granted; and although the appellant firm meets the first criterion of Policy 54, which is a further restriction on the grant of planning permission for offices; in view of Policies 61 and 56, I consider that there must be a presumption against the permission for change of use sought by your clients.

9. In view of these matters, and all the other matters raised at the inquiry, I consider that there are 2 main issues for me to consider in deciding whether planning permission ought to be granted. The first is whether there are particular factors in this case which warrant the grant of planning permission in the face of the policies mentioned. The second is whether planning permission should be given in view of the fact that no provision for off-street car parking can be made by the appellants.

10. A policy report concerning possible uses of the upper floors of premises in The Parade was made to the relevant committees of the council (see Document 17). This concluded that no specific policy for The Parade should be drawn up, and that any proposal should be considered against the District Plan policies on its merits.

11. Whilst Policy 56, dealing with office development which results in a loss of residential accommodation makes no distinction on a qualitative basis, Policy 61, within the housing section of the District Plan, is concerned with the loss of 'satisfactory' residential accommodation. In my view, the quality of a residential unit comprised in the 2 upper floors of 33 Marlowes is a material consideration for me to take into account.

12. In this respect you argue that the flat would not be satisfactorily separated from the ground floor office unit, that the staircase is steep and ill-lit and that there is no private open space effectively available to a residential

occupier. In this you gain support from the appeal decision letter issued in October 1977 under which permission was given for the change of use of the first floor to offices for a period of 5 years.

13. In response, the council asserts that there is a need to ensure the availability of a range of residential accommodation in different locations which can meet a variety of housing demands. In particular there is a need for small residential units (see Document 20). Whilst the council acknowledges that if any of a number of facilities of a residential unit is 'less than satisfactory' that unit may be considered for an alternative use - it regards the upper floors of 33 Marlowes as satisfactory on every count: as regards layout, separate access, private amenity space, off-street car parking facilities and degree of nuisance from heavy traffic.

14. If the council's test of 'any facility being less than satisfactory' is correct, then I would be led to regard the upper floors of the appeal building as open to consideration for another use on that ground. This is because I regard the staircase angle and the private amenity open space as less than satisfactory and the off-street car parking as non-existent. But in my opinion it will often happen that a dwelling has unsatisfactory features whilst remaining a reasonable dwelling. This will depend on the quality of other factors, such as proximity to a major shopping centre, public transport and employment opportunities, etc, and cheapness of rent or mortgage. Excellence in particular features may outweigh poorness in others. On balance I take the view that the 2 floors provide a sufficient number of rooms, of good size, lighting and orientation, and with adequate access to make a reasonably satisfactory dwelling bearing in mind the central location.

15. Against the loss of a reasonable dwelling must be set matters dealt with in DOE Circular 22/80 regarding business activity and small businesses and the need to take account of economic effects. In this context your clients were given a 5 year permission to use the first floor of 33 Marlowes without any reason (so far as it is now possible to ascertain) which justified any exception to policy on the basis of a short-term need. In my view, any reasonable person reading the decision upon which that planning permission was based would be led to believe that had the application been for a permanent change of use it would have been granted. Whilst that permission related only to the first floor, it effectively prevented any reasonable residential use of the second floor.

16. In view of this I have decided that the appellants have not acted rashly in building up the business as they have in recent years based on the use of upper floors. Further, I recognise that the loss of this accommodation would now have very serious consequences on the business, and that equally well placed accommodation would probably be difficult to find, at least in any relatively short-term period.

17. I have concluded that these factors, in the particular circumstances of this case and bearing in mind the location of the premises within the commercial centre, justify overriding the planning policy of retaining residential units in that use.

18. On the matter of car parking, Policy 19 of the District Plan requires that all proposals for development should include provision for car parking based on the council's guidelines (Appendix 6 of Document 16). However, this policy is within a section of the plan relating to guidelines for new buildings, and I take the view that development involving existing buildings must necessarily be considered against the particular existing physical circumstances. Since a residential use of the appeal premises would call for a car parking provision only a little less than that required for an office use of the floor space, and since the

number of spaces in this development involved is insignificant in relation to the parking demand and provision in the immediate locality, I do not regard this as an overriding issue.

19. Having taken account of all other matters raised, including the appeal decision in respect of 33C Marlowes in 1983, the concern expressed by the council at the 1977 appeal decision in respect of the present appeal premises, and the commercial property register maintained by the council, in the light of the considerations set out above I am minded to allow the appeals and grant planning permission. The appeal on ground (h) does not, therefore, fall to be considered.

20. In view of the reasons which have led to my decision, hingeing on the relationship of the present use of the upper floors of 33 Marlowes with the ground floor use, I intend to make the planning permission conditional on their being used only as estate agency offices in association with the use of the ground floor.

FORMAL DECISION

21. For the above reasons, and in exercise of the powers transferred to me, I hereby allow your clients' appeals, direct that the notice be quashed and grant planning permission, on the application deemed to have been made under Section 88B(3) of the Act and that dealt with under Section 36, for the use of the first and second floors of 33 Marlowes as offices subject to the condition that the floor space shall be used as estate agency offices in association with the use of the ground floor of the premises and for no other purpose including any other purpose in Class II of the schedule to the Town and Country Planning (Use Classes) Order 1972.

22. This decision ~~does~~ not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971. Attention is also drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970.

RIGHT OF APPEAL AGAINST DECISION

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

I am Gentlemen
Your obedient Servant

T. J. Kemmann-Lane

T J KEMMANN-LANE JP DipTP FRTPI MBIM
Inspector

ENC

APPEARANCES

FOR THE APPELLANT

Mr D A Raine LLB(Lon)

- Partner in the firm of
Murgatroyds, Solicitors,
36 Holywell Hill,
St Albans, AL1 1BT.

He called:

Mr R Perrin MRTPI

- Board Member of
Simpson Cruikshank, Surveyors,
Valuers and Planning Consultants,
29 London Road, High Wycombe.

FOR THE PLANNING AUTHORITY

Mr J Vaughan

- Assistant Solicitor Secretary's
Department, Dacorum Borough Council.

He called:

Mr G P Bailey ARICS

- Senior Assistant Planner of the
Borough Council.

DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- Document 2 - Notification of inquiry and list of addresses.
- Document 3 - Two letters from interested persons.
- Document 4 - Correspondence between appellant company and the local planning authority.
- Document 5 - Summary of planning history at 33 Marlowes.
- Document 6 - Appeal decision letter dated 31 October 1977 in respect of 33 Marlowes.
- Document 7 - Letter of 13 December 1977 from council to DOE re Document 6.
- Document 8 - Reports to committee re use of first floor of 33 Marlowes as offices.
- Document 9 - Schedule of occupiers of The Parade, Marlowes.
- Document 10 - Planning history of The Parade by street number.
- Document 11 - Planning history of The Parade by date.
- Document 12 - Appeal decision letter dated 30 October 1978 re 11A Marlowes.

DOCUMENTS CONTINUED

- Document 13 - Appeal decision letter dated 27 April 1983 re 33C Marlowes.
- Document 14 - Report to committee re use of upper floors of 7 Marlowes for retail purposes.
- Document 15 - Extract from Hertfordshire Structure Plan.
- Document 16 - Extract from Dacorum District Plan.
- Document 17 - Report to committee re policy for upper floor uses, The Parade, Marlowes.
- Document 18 - Extract from DOE Circular 22/80.
- Document 19 - Extract from Housing Land Availability Study.
- Document 20 - Tables of waiting list applications.

PLANS

- Plan A - Plan attached to the enforcement notice.
- Plan B - Plan accompanying the planning application.
- Plan C - Floor plans of appeal building at scale of 1:50.
- Plan D - Land uses in vicinity of appeal site.
- Plan E - Public car parks in vicinity of appeal site.
- Plan F - Waiting restrictions in vicinity of appeal site.

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

THE DISTRICT COUNCIL OF DACORUM

IN THE COUNTY OF HERTFORD

To Messrs. Stimpsons,
33 Marlowes,
Hemel Hempstead,
Herts.

Messrs. Stimpsons Cruickshank,
Planning and Architecture,
14A St. Albans Road,
Watford WD1 1RX.

Change of use to office with ancillary storage
(first and second floors)

at 33 Marlowes, Hemel Hempstead, 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 18th November 1983 and received with sufficient particulars on 23rd November 1983 and shown on the plan(s) accompanying such application.

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

1. The proposal is contrary to Policy No. 56 of the deposited Dacorum District Plan inasmuch as it will result in the continued loss of residential accommodation.
2. The proposal is contrary to Policy No. 19 of the deposited Dacorum District Plan which requires the provision of off-street car parking accommodation in accordance with standards adopted by the local planning authority. No such parking can be provided within the curtilage of the site.

Dated 12th day of ... January 19 84 ...

Signed.....

Chief Planning Officer

NOTE

- (1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.
- (2) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, 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.
- (3) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.