

REASONS FOR REFUSAL APPLICABLE TO APPLICATION: 4/01523/99/FUL

Date of Decision: 14 February 2000

- 1. The application site is within the shopping area in the local centre of Markyate, (No. 71 High Street is included by virtue of its historical use and the fact that access to it is by way of No. 73 High Street). The loss of the the shop use of these premises would be contrary to Policy 34 of the adopted Dacorum Borough Local Plan and Policy 44 of the Dacorum Borough Local Plan 1991-2011 Deposit Draft. The proposal would lessen the role of shopping as the prime component of the area; such a loss could jeopardise the viability of the shopping area, thus causing significant harm to the function of the shopping area of Markyate.**
- 2. There is no provision for vehicle parking within the site to meet standards adopted by the local planning authority, and the proposal will therefore result in increased demand for on street parking in the immediate vicinity of the application site. The area around the application site is already heavily parked and cannot accommodate any further increase without harm to the environment, the free flow of traffic and highway safety.**
- 3. Inadequate information in relation to the proposed method of the extraction and filtration of cooking fumes has been provided to enable the local planning authority either to assess the impact of the equipment on the special architectural or historic interest of this Grade II listed building or to demonstrate that the cooking fumes can be adequately dealt with to protect the amenities of adjacent and nearby residential properties.**

**Dacorum Borough Council
Planning Department**

Civic Centre Marlowes
Hemel Hempstead
Herts HP1 1HH



DAVID LANE ASSOCIATES
3 COLLEGE STREET
ST ALBANS
HERTS
AL3 4PW

WAXHOUSEGATE INVESTMENTS LTD
C/O DAVID LANE ASSOCIATES
3 COLLEGE STREET
ST ALBANS
AL3 4PW

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/01523/99/FUL

71-73 HIGH STREET, MARKYATE, ST. ALBANS, HERTS
CHANGE OF USE FROM CLASS A1 TO CLASS A3 AND ALTERATIONS TO
REAR EXTENSION

Your application for full planning permission dated 27 August 1999 and received on 31 August 1999 has been **REFUSED**, for the reasons set out overleaf.

A handwritten signature in black ink, appearing to read 'Colin Barnard'.

Director of Planning

Date of Decision: 14 February 2000

APPEAL DECISION

APPEARANCES

FOR THE APPELLANTS:

Mr D Lane BSc (Hons) Dip TP Dip TP MRTPI - Principal of David Lane Associates Chartered Town Planners. 3 College Street, St Albans, Hertfordshire AL3 4PW.

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Copsey BA (Hons) MA (Hons) MRTPI - Planning Officer, Dacorum Borough Council.

DOCUMENTS

- | | | |
|----------|---|--|
| Document | 1 | List of persons present at the hearing. |
| Document | 2 | Letters of notification of the hearing and the distribution lists. |
| Document | 3 | Letter dated 13 January 2000 from David Lane Associates. |
| Document | 4 | Letter dated 20 October 1999 from Hertfordshire County Council. |

PLANS

- | | | |
|------|---|--|
| Plan | A | Application plan (both applications): site location plan. |
| Plan | B | Application plan (both applications): proposed floor plans and elevations. |

23. I have taken into account all the other matters raised, including the recent change of use from Class A1 to residential use at properties in the local centre at Markyate, and the support for the appeal proposals from the occupiers of the flat at the appeal site. I have also had regard to the fact that the proposed restaurant would not provide a takeaway service, with the Appellant's suggesting imposition of a condition on the grant of planning permission to secure control over this. However, I find none of these matters of such importance as to outweigh the considerations that have led to my decision.

Formal decision

24. For the above reasons, and in exercise of the powers transferred to me, I hereby:

- A. dismiss the appeal made under Section 78 of the Town and Country Planning Act 1990; and,
- B. allow the appeal made under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and grant listed building consent for works associated with a proposal for the change of use of the ground floor to Class A3 restaurant at 71-73 High Street, Markyate, Hertfordshire, in accordance with the terms of the application No 4/01642/99/LBC, dated 27 August 1999, and the plans submitted therewith, subject to the following conditions:

- 1. The works hereby approved shall be begun before the expiration of 5 years from the date of this decision.
- 2. Before the works hereby permitted are commenced, samples of the materials to be used for all internal and external construction and finishes shall be submitted to and approved in writing by the local planning authority, and the works shall be carried out in accordance with the approved samples.
- 3. Before the works hereby permitted are commenced, details of the extraction and filtration system from the kitchen area, including ducting, mechanical and/or electrical plant, filters, flue terminals and the method of fixing the system to the structure, shall be submitted to and approved in writing by the local planning authority, and the works shall be carried out in accordance with the approved details.

25. An applicant for any consent, agreement or approval required by a condition of this listed building consent has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally, or if the authority fails to give notice of its decision within the prescribed period.

26. This document does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Sections 7 and 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

A. J. Bingham.

A J BINGHAM TD Dipl Arch ARIBA MRTPI
Inspector

would address the parking need that would be generated by the proposed development. Having regard to highway conditions in Markyate High Street in the vicinity of the site I consider that the inability to provide off street car parking provision for the proposed development, contrary to the expectation expressed in local plan Policy 54, would give rise to additional on-street car parking. This would unacceptably result in potential for additional hazards to road safety and implications for the free flow of traffic on the High Street.

Consideration of the Section 20 appeal

19. The Council raises no objection to the form of the rear extension. This part of the proposal largely comprises replacement of existing glazing in a small rear ground floor wing of the appeal property with brickwork. I similarly make no criticism of this part of the appeal proposal.
20. Notwithstanding my views and conclusions expressed in connection with the second issue relating to the Section 78 appeal, I share the Council's concern regarding the inadequacy of detail of the proposed fume extraction and filtration system. The relevant application plan shows a high level duct about 300 mm wide but of indeterminate depth. Neither are there any details of its fixing, finish, method of connection to the existing chimney stack, or the positions of fan casings, filters and type of flue terminals. However, it seems to me that these are matters capable of being dealt with by the imposition of a condition imposed on the grant of listed building consent.
21. I have considered the proposal against the provisions of local plan Policy 109, on which the Council relies. However, this policy relates to development affecting listed buildings and cannot relate to an application for listed building consent which does not constitute development. Moreover Policy 109 relates to the demolition or replacement of listed buildings and is not applicable to proposals for alteration or extension. Despite these observations, I consider that the unknown matters of concern to the Council could be satisfactorily controlled. Accordingly, I do not find the proposal, the subject of the Section 20 appeal, contrary to that part of local plan Environmental Guideline 13 which provides for proposals affecting listed buildings. On the basis of these conclusions I find no reason to withhold the grant of listed building consent, but I realise that there is little scope for its implementation owing to dismissal of the Section 78 appeal.

Consideration of other matters

22. I have considered the conditions suggested by the Council for imposition on the grant of planning permission and listed building consent in the event of the appeals being allowed. The conditions relating to the application for planning permission would merely provide control over the development and not the means to overcome or mitigate the planning objections I have identified above. I acknowledge the need for the statutory time condition in relation to the application for listed building consent, and for a condition requiring submission of samples of materials to be used in the construction of the works. However I see no need for a condition concerning removal of the existing post box and stamp machine, which would need the grant of listed building consent before they could be lawfully removed. Neither do I accept the need for a condition relating to the provision of insulation between the proposed restaurant and the first floor flat, which is a condition that would properly relate to the grant of planning permission. I intend to impose the conditions I find acceptable redrafted as I consider necessary.

14. The Council's stance results from consultation with its Environmental Health Officer. It argues that in the event of the proposed solution proving inadequate, additional works of unknown extent might be necessary to protect the residential amenity of persons residing above the proposed restaurant. To counter this argument the Appellant points to recent technological innovation whereby fumes and smell in catering establishments are eradicated at source by ultra violet light, thereby dispensing with need for substantial trunking. I do not discount the thrust of the Appellant's argument, but in view of satisfactory conditions achieved elsewhere by schemes similar to that now proposed, I do not find the somewhat theoretical case put forward by the Council convincing. I am persuaded that the amenities neighbouring residential occupiers might reasonably expect to enjoy would not be eroded by the proposed development, which would not conflict with local plan Policy 8(d) that provides protection, inter alia against disturbance and pollution.
15. Turning to the third issue, the Council points to the fact that the appeal premises are devoid of off-street car parking provision, in which case the car parking requirements stemming from local plan Policy 54 cannot be met. In terms of the adopted local plan the Council demonstrates that the proposed use would generate a car parking demand for 10 additional spaces over and above the extant use of the appeal premises. In rebuttal, the Appellants state that many restaurants in town and village centres throughout the country do not have dedicated car parking provision, including the Class A3 use permitted by the Council in February 1889 in a former shop at 38 High Street, Markyate.
16. In view of these precedents the Appellants consider that it would not be reasonable to apply the Council's car parking standard strictly in the case of this proposed development, particularly as there would be no undue impact on highway safety. It seems to me that this implies a desire to see relaxation of the parking standards, but in the absence of any on-site parking provision, the only option is to ignore the standards completely. In the light of certain of the policy provisions of local plan Policy 49 I do not consider this to be a sound approach. Furthermore, the Appellants claim that the proposed restaurant is intended to serve the local community of the village, in which case customers would walk to the premises, but that is purely supposition. There could be no control over this matter,² and it seems likely that in the interests of securing a sound trading base, customers would be welcomed from any quarter whether they arrived on foot or by car.
17. The Appellants point to the fact that the highway authority raises no objection to the proposed development. However, I notice that the responsible Officer expresses concerns that *"the number of vehicles likely to park within the area of the building would certainly cause a conflict of interest with other road users. In particular residents who currently park along this length of the High Street"*. These concerns are shared by the Council, the Markyate Parish Council, the Markyate Society, and local residents. Moreover, the Inspector who determined the appeal in 1998 relating to the appeal premises noted that *"While parking is permitted along the High Street, that road is narrow, and parked vehicles make it difficult for moving vehicles to pass each other"*.
18. These views expressed by third parties confirm the observations I made at my site inspection. The carriageway width of Markyate High Street at the site frontage is only about 6.0 m, with the carriageway tapering to a lesser width to the south-east. Parking is permitted on many lengths of the High Street, albeit with restrictions, thereby effectively reducing these lengths of the street to single lane working. There is a public car park for some 30 cars in Hicks Road, approximately 130 m from the site. In view of its distance from the site and having regard to its limiting capacity, I do not consider that this facility

appeal property for a use appropriate to this local centre is desirable not only to restore its vitality and contribute to its viability, but also in the interests of securing occupation of the listed building and maintaining the appearance of the conservation area.

9. Policy 40 of the local plan relates to protection of shopping provision in local centres. The table in the local plan following Policy 40 identifies, inter alia, the properties included in the Markyate local centre. The Appellants point out that the Council has permitted 3 of the properties so identified to be converted to residential use, with the Council mentioning the addition of one Class A1 use that has resulted from relocation of the Post Office from the appeal premises. At present, the commercial premises in the local centre comprise 10 Class A1, one Class A2 and one Class A3 uses. In view of this level of provision, protection of shopping premises falls to be considered under the latter part of Policy 40.
10. Part (a) of this element of the policy requires that at least 60% of the total frontage remains in shop use. By means of calculation based the number of units, the Appellants show that 60% of the properties in the defined shopping frontage would remain in retail use following implementation of the proposed development. This is not disputed by the Council, but its calculation based on linear frontage indicates that only 50% of the total length the local shopping area would comprise retail frontage. It is unfortunate that the local plan does not define the method to be used for the application of the 60% requirement, but in view of the Council's admission that both methodologies are used, I consider that it would be unjust not to accept the unit based calculation.
11. I accept that the appeal proposal satisfies the last part of Policy 40(a) as I consider that an appropriate range of local shops would remain. In addition, the appeal proposal complies with parts (b) and (c) of Policy 40 that respectively require the provision an alternative development appropriate to the commercial function of the area; and dispersal of non-retail uses throughout the area. The Council also argues support from local plan Policies 34 and 36. While this former policy states that shopping will be a prime component in each town or local centre, it also sanctions a range of other appropriate uses, including catering establishments. Policy 36 provides for the strengthening the hierarchy of town centres and local centres. In my opinion, the proposed development does not run counter to any of the above-mentioned policies, which leads me to conclude that implementation of the appeal proposal would not adversely affect the vitality or function of the Markyate local centre.
12. In respect of the second issue, the Council contends that in the absence of sufficient detail relating to measures for the extraction and filtration of cooking fumes and smells it has not been possible to assess whether the proposed use would affect the amenity of any persons residing in the flat at the site or other neighbouring residential occupiers. In support of its case the Council refers to an appeal decision issued in March 1994 concerning a proposal at 16 Miswell Lane, Tring. However, I do not accept that this is directly comparable as, unlike the case to hand, the appeal decision letter clearly indicates that *"the provision of an extract flue did not form part of the planning application"*.
13. I am conscious of the fact that the Council had the ability to request submission of details but chose not to exercise this power. The method of fume extraction proposed would be by means of ducting running to an existing double flue chimney, and I accept the Appellant's contention that such means has proven satisfactory elsewhere, including restaurants in the vicinity of the site. I know that extraction and ventilation systems on these lines to properties in Class A3 use have been accepted by other local planning authorities.

time of the hearing, the use of the appeal premises comprises a shop with residential accommodation on the upper floor. The small rear yard at the site adjoins a courtyard enclosed by garages and a building in use as a bakery. Vehicular access to the courtyard runs against the south-east wall of the appeal premises. Facing across the High Street is 2-storey development incorporating commercial uses at ground floor level.

The main issues

4. In my opinion the main issues to be decided in the case of the Section 78 appeal are whether or not the appeal proposal would: firstly, adversely affect the vitality and function of the designated Markyate local centre; secondly, erode the amenities of neighbouring residential occupiers; and thirdly, result in hazards to road safety and implications for the free flow of traffic. The main issue on which the Section 20 appeal turns is whether or not the proposed works would preserve the integrity of this listed building.

The development plan and other planning policy considerations

5. The development plan operated by the Council comprises the approved Hertfordshire Structure Plan Review 1991-2011 and the adopted Dacorum Borough Local Plan. Both elements of the development plan are currently under review and are well advanced in their progression towards statutory adoption. I acknowledge the materiality of the emerging plans. However, insofar as they relate to the appeal proposals, in view of the similarities of their policies to those of the extant plans, and having regard to the fact that Section 54A of the Act relates to the approved or adopted development plan, my consideration of the appeals is based on the current development plan. The Council's appeal statement refers to a raft of policies taken from both elements of the development plan, but at the hearing it was agreed that some policies were, at best, peripheral to the appeal proposals. Reference is also made to guidance provided in PPGs 6 and 7.

Inspector's conclusions

Consideration of the Section 78 appeal

6. The development proposal includes alteration to a rear extension. This is a minor feature of the proposal to which the Council raises no objection. I make no further mention of it in my consideration of the Section 78 appeal, but leave the matter to be considered in the context of the Section 20 appeal.
7. On the matter of the first issue, the shopping area of the local centre at Markyate as identified in the local plan includes the shops dispersed throughout the High Street, including 73 High Street. Owing to the fact that 71 High Street is included in the shop at 73, and having regard to the conclusions of the Inspector in deciding an appeal relating to the appeal premises in October 1998, the principal parties to the appeal agree that 71 High Street effectively forms part of the shopping provision in the local centre. I accept that the land-use issues raised in the instance of the former appeal are not of particular relevance to the current appeals as the matter of retention of the Post Office has been resolved by its relocation to the other side of the High Street.
8. I am informed that the appeal premises have been vacant for about a year, and that it has been the subject of a fruitless marketing campaign. I accept that some local shopping centres such as that at Markyate are in decline, thereby making sale of retail properties difficult or even impossible. These are factors that cannot be ignored. Reoccupation of the



Appeal Decision

Hearing conducted on Wednesday 7 June 2000

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
0117 987 8927

5 JUL 2000

by A J Bingham TD Dipl Arch ARIBA MRTPI

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

DoP	ED	DP	DC	BC	SS
					Date
					File
Rec'd. 06 JUL 2000					
Comments :					
PLANNING DEPARTMENT DBC					

Appeal A: T/APP/A1910/A/00/1038312/P2

Appeal B: T/APP/A1910/E/00/1038314/P2

- The appeals are made by Waxhousegate Investments Limited, firstly under Section 78 of the Town and Country Planning Act 1990, against a refusal of planning permission by the Dacorum Borough Council; and secondly under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990, against a refusal of listed building consent by the same Council.
- The site is located at 71-73 High Street, Markyate, Hertfordshire.
- The applications Ref: 4/01523/99/FUL and 4/01642/99/LBC both dated 27 August 1999, were refused on 14 February 2000.
- The development proposed in the first application is change of use from Class A1 to Class A3 and the erection of a single storey rear extension.
- The works proposed in the second application are change of use of the ground floor to Class A3 restaurant and the erection of a single storey rear extension.

Summary of decision: the Section 78 appeal is dismissed but the Section 20 appeal is allowed.

Procedural matters

- The description of the works proposed in the second application given above has been taken from the application form submitted to the Council. Insofar as change of use does not constitute works that require the grant of listed building consent I have treated the second application as being for works associated with the development proposed in the first application.
- Together with attached buildings, 71-73 High Street, Markyate are included in the Statutory List of Buildings of Special Architectural or Historic Interest. They stand in the Markyate Conservation Area. In view of these matters, in coming to a decision on the appeals I have had regard to the provisions of Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Alterations to the exterior of the appeal premises are limited to minor proposals affecting a small single storey rear wing. I consider that these external works constitute an improvement to the appearance of the building. Accordingly, in the context of the provisions of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I consider that they enhance the character of the Markyate Conservation Area, albeit to a minor degree.

The appeal site and its surroundings

- The properties, the subject of the appeals, form part of a 2 storey terrace of buildings that fronts the north-east side of Markyate High Street. Together they present a frontage of some 11.8 m to the highway. Their brick façade, of 18th century origin, incorporating a shop front at 73, stands coincident with the back edge of the public footway. Although vacant at the