



The Planning Inspectorate

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Ms L Kirkpatrick
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Planning Department
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Hemel Hempstead
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Your Ref:
4/1621/99ENA

Our Ref:
APP/A1910/C/99/1029188

14 February 2000

Dear Madam

**TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY CASTLES ESTATE AGENTS
SITE AT 148 HIGH STREET, BERKHAMSTED, HERTFORDSHIRE**

I enclose a copy of our Inspector's decision letter.

Yours faithfully

Mr P Wilks

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PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL					
DoP	ED	DP	DC		FILE
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Received		15 FEB 2000			
Comments					

The Planning Inspectorate

An Executive Agency in the Department of the Environment, Transport and the Regions, and the Welsh Office

RIGHT TO CHALLENGE THE APPEAL DECISION

The attached appeal decision is final unless it is successfully challenged in the Courts on a point of law. If a challenge is successful the case will be returned to the Secretary of State by the Court for re-determination. However, if it is re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

Depending on the circumstances, an appeal may be made to the High Court under either or both sections 288 and 289 of the Town & Country Planning Act 1990. There are differences between the two sections, including different time limits, which may affect your choice of which to use. These are outlined below.

You may wish to consider taking legal advice before embarking on a challenge. The following notes are provided for guidance only.

CHALLENGES UNDER SECTION 289

Section 289(1) relates to decisions on enforcement appeals. The appellant, the local planning authority or any person having an interest¹ in the land to which the enforcement notice relates may appeal to the High Court against the decision on a point of law.

An appeal under section 289 may only proceed with the *leave* (permission) of the Court. An application for leave to appeal must be made to the Court within 28 days of the date of the appeal decision, unless the period is extended by the Court.

If you are not the appellant, the local planning authority or a person with an interest in the land but you want to challenge an enforcement appeal decision on grounds (b) to (g), or the decision to quash the notice, you may make an application for judicial review. You should seek legal advice promptly if you wish to use this non-statutory procedure.

CHALLENGES UNDER SECTION 288 OF THE 1990 ACT

Decisions on appeals under section 78 (planning) or section 195 (Lawful Development Certificate) may be challenged under this section. Section 288 also relates to enforcement appeals, but only to decisions granting planning permission or discharging conditions. Success under section 288 alone would not alter any other aspect of an enforcement appeal decision. The enforcement notice would remain quashed unless successfully challenged under section 289 or by judicial review.

Section 288 provides that a person who is aggrieved by the decision to grant planning permission or discharge conditions (on an enforcement appeal) or by any decision on an associated appeal under s78 or s195 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

- i) the decision is not within the powers of the Act; or
- ii) any of the 'relevant requirements' have not been complied with ('relevant requirements' means any requirements of the 1990 Act or of the Planning & Tribunals Act 1992, or of any order, regulation or rule made under either Act).

¹ To have an interest in the land means essentially to own, part own, lease and in some cases, occupy the site.

These two grounds mean in effect that a decision cannot be challenged merely because someone does not agree with an Inspector's judgement. Those challenging a decision have to be able to show that a serious mistake was made by that Inspector when reaching his or her decision; or, for instance, that the inquiry, hearing or site visit was not handled correctly, or that the appeal procedures were not carried out properly. If a mistake has been made the Court may decide not to quash the decision if the interests of the person making the challenge have not been prejudiced.

Please note that under section 288 an application to the High Court must be lodged with the Crown Office within 6 weeks of the date of the accompanying decision letter. This time limit cannot be extended. Leave of the High Court is not required for this type of challenge.

ADVICE

If you require further advice on making a High Court challenge you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL. Telephone: 0171 936 6000.

INSPECTION OF DOCUMENTS

In an inquiry case, any person who is entitled to be notified of the decision has a statutory right to view the listed documents, photographs and plans within 6 weeks of the date of the decision letter. Other requests to see appeal documents are not normally refused but please note that our appeal files are usually destroyed one year after the decision is issued. Please make your request to Room 11/00, Tollgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference and stating the day and time you wish to visit. Give at least 3 days' notice and include a daytime telephone number, if possible.

COMPLAINTS TO THE INSPECTORATE

You can make a written complaint about the decision letter, or about the way in which the Inspector has conducted the case, or any procedural aspect of the appeal to the Complaints Officer in Room 14/04, Tollgate House, Houlton Street, Bristol, BS2 9DJ quoting the Inspectorate's appeal reference. We aim to send you a full reply within 15 days of receipt of your letter. Please note that, once the decision has been issued, we cannot reconsider any appeal or the decision. This can be done only following a successful High Court challenge as explained in this leaflet.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (THE OMBUDSMAN)

If you consider that you have been unfairly treated through maladministration on the part of the Inspectorate or the Inspector you can ask the Ombudsman to investigate. The Ombudsman cannot be approached directly; only an MP can pass on your request. In most cases, your local MP may be the easiest to contact (their name and address is listed at the local library) although you may approach another MP if you prefer. Although the Ombudsman can recommend various forms of redress he cannot alter the appeal decision in any way.

COUNCIL ON TRIBUNALS

If you feel there was something wrong with the basic procedure used for the appeal, you can make a complaint to the 'Council on Tribunals', 22 Kingsway, London, WC2B 6LE. The Council will take the matter up if they think it comes within their scope. They are not concerned with the merits of the appeal and cannot change the outcome of the appeal decision.



Appeal Decision

site visit held on Tuesday, February 1, 2000

by Derek Thew DipGS ARICS

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

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

☎ 0117 987 8927

14 FEB 2000

Appeal : T/APP/A1910/C/99/1029188

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against an enforcement notice.
- The appeal is brought by Castles Estate Agents against Dacorum Borough Council.
- The site is located at 148 High Street, Berkhamsted, Herts.
- The Council's reference is 4/01621/99/ENA.
- The notice was issued on 26 August 1999.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of a new shopfront; and without consent the display of advertisements – an illuminated fascia sign and illuminated hanging sign.
- The requirements of the notice are (i) permanently remove the shopfront consisting of fascia, pilasters and stallrisers; and (ii) permanently remove the hanging sign and lettering on the fascia, together with the associated lighting.
- The period for compliance with the requirements is 6 months.
- The appeal was made on the grounds set out in section 174(2)[a] and [g] of the 1990 Act.

Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the notice as varied is upheld as detailed in the attached schedule.

Procedural matters

1. Paragraph 4 of DoE Circular 5/92 advises that, because specific powers are available to local planning authorities to control the display of advertisements, it is normally inappropriate to control such display by the issue of an enforcement notice. Notwithstanding this advice, I intend to consider the advertisement aspects of this appeal. However, should I be minded to allow those advertisement aspects of this appeal (in whole or part), I have no authority to grant consent for the advertisements. Such consent can only be granted where an appeal is lodged under Regulation 15 of the Town & Country Planning (Control of Advertisements) Regulations 1992.
2. I am also mindful that section 54A of the 1990 Act does not apply to advertisement appeals, and that advertisements are subject to control only in the interests of "amenity" and "public safety". However, I intend to have regard to development plan policies in respect of advertisements in my determination of this appeal. Furthermore, as the appeal site is within a designated conservation area, it seems to me that the consideration of amenity includes the duty under section 72(1) of the Planning (Listed Buildings & Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

The Appeal on Ground A and the Deemed Application

The development plan

3. The development plan for the area is the Hertfordshire Structure Plan Review 1991-2011 and the Dacorum Borough Local Plan. My attention has been drawn by the Council to policy 38 of the Structure Plan and policies 8, 9, 103 and 110 of the Local Plan. Structure Plan policy 38 aims to protect important environmental assets, including conservation areas. Local plan policy 8 is a general development control policy which seeks to ensure that a high standard is achieved in all new development, and this is linked to policy 9 which identifies the intention to apply specific Environmental Guidelines that amplify the criteria in policy 8. Sections 11, 12 and 13 of these Environmental Guidelines relate to shop fronts, advertisements and conservation areas respectively, and I intend to have regard to those sections in my determination of this appeal. Policy 103 of the Local Plan relates to advertisements and states that within conservation areas express consent to display an advertisement will be given, provided certain general criteria are met and:

(criterion h) *"the advertisement makes use of natural or other materials which are in keeping with and enhance the character of the Conservation Area and, if positioned on a building, the character of that building."*

Policy 103 is generally permissive towards non-projecting illuminated advertisements in conservation areas, but aims to resist projecting illuminated signs in such areas. Lastly policy 110 deals with development in conservation areas, setting out the requirement that new development should preserve and enhance the character of the area.

4. I have also had regard to the fact that these policies and Environmental Guidelines are, for the most part, reiterated in the emerging Local Plan Review.

The main issues

5. In the light of the above policies and the other evidence before me, I find the main issue in this case to be the effect of the metallic finish to the new shop front, and the associated advertisements, upon the character and appearance of the surrounding conservation area.

Inspector's reasons

6. The appeal building is a modest mid-terrace property in Berkhamsted retail and commercial centre. The shop front is of conventional design with a central entrance door flanked by large glass display windows. I note that the Council have no objection to the broad design of the shop front, but they are concerned about the external appearance of the fascia area (immediately above the door and display windows), the pilasters at either end of the frontage and the stall-risers. Each of these parts of the frontage has been clad with metal, which the Council describe as having a "silver aluminium finish". There is gold-coloured metallic trim to the stall-risers; and the telephone number and name of the business, 'Castles', is displayed in a similar colour on the fascia. The fascia is externally illuminated from above by four projecting lights, fixed to the front wall of the premises. At first floor level there is a projecting, hanging sign. The notice refers to this sign being illuminated, but at the time of my late morning visit I saw no evidence of either external or internal illumination to that hanging sign.

7. I will consider first the metallic finishes to the shop front. The Council have described this as a "very modern design....completely out of keeping with the character of this prominent part of the conservation area and to the building on which it is displayed". That the metal finishes are of a modern design is true, but I do not consider that in itself to be a sufficient reason for concluding that the scheme is "completely out of keeping" with the locality. The Council's evidence includes no clear assessment of the factors which give this conservation area its particular character or appearance that they are seeking to preserve and enhance. I have therefore considered this matter myself. As part of my site visit I looked at all of the retail and commercial section of the High Street. Within this area there is wide range of shop designs, and it seems to me that the character of the area owes more to the preponderance of small-scale retail and commercial units, rather than the use of either specific shop front styles or specific materials in their construction. In this context I note that section 11 of the Council's Environmental Guidelines, in referring to shop fronts, states:

"The main character of the older shops is created by the continually changing forms and styles of individual buildings and their shop fronts coming together to form the street scene. This gives a vertical emphasis to the street, creating variety and interest."

This recognises that the "continually changing" style of individual shop fronts can be part of an area's character. New shop fronts do not need to be just a pastiche of old styles, and I consider that modern design and modern materials can be appropriate in a conservation area so long as they are used in a manner that respects their context.

8. During my visit I noted other nearby High Street premises with fascias formed from timber, metal and plastic, whilst within the same terrace as the appeal building I noted stall-risers in timber, facing bricks, ceramic bricks and ceramic tiles. Whether or not these shop fronts exist with planning permission I do not know. However I saw no clear demonstration that any particular materials were an essential part of the area's character. In such circumstances I see no clear-cut reason for excluding metal as a finish for the shop front to the appeal premises. The metal sheeting that has been used gives the ground floor of the premises a polished, contemporary appearance. I consider that the design of the shop front is to an acceptably high standard. And, for each of the above reasons, I consider that the scheme preserves the character of the conservation area.
9. Turning to the advertisement on the fascia, I consider that the gold lettering and numbering complement the silver aluminium finish of the metal sheets to which they are fixed. The external lights which illuminate the fascia are typical of those to be found at numerous other properties in the High Street. The fascia advertisement makes use of natural materials and, for the reasons as set out in the preceding sentences and paragraphs, I find it to be in keeping with the character of both the conservation area and the building to which it is fixed. As such it is in accordance with criterion (h) of Local Plan policy 103. To my mind the sign is not harmful to amenity and I draw support for this conclusion from policy 103 of the Local Plan which is generally permissive towards non-projecting illuminated advertisements in conservation areas.
10. As for the projecting illuminated sign, I note that policy 103 aims to resist projecting illuminated signs in conservation areas. In addition section 11 of the Council's Environmental Guidelines states that signs and advertisements will be restricted to ground floor wall areas. This particular hanging sign, bearing what appears to be a logo etched on

metal, is of a scale and design that is compatible with the external appearance of the shop front. However the position of this sign at first floor level, in my view, introduces an element of clutter onto the otherwise unadorned upper portion of the building. In itself I consider that this sign harms the appearance of the building. Furthermore to allow this sign to be retained would make it difficult for the Council to resist other similar signs, the proliferation of which would be likely to seriously damage the character and appearance of this part of the conservation area.

11. In summary, therefore, I am satisfied that the appeal should succeed in part only. I will allow this appeal in so far as it relates to the installation of the new shop front and the illuminated fascia sign. I will also grant planning permission for the installation of the new shop front. No planning conditions have been suggested by the Council and I do not consider any to be necessary. In the light of my comments in paragraph 1 of this decision, I will not grant consent for the illuminated fascia sign. Subject to these variations, I will uphold the notice with regard to the illuminated hanging sign.

The Appeal on Ground G

12. In view of the above, the appeal on this ground relates only to the illuminated hanging sign. It has been requested that the compliance period be extended from 6 to 12 months to allow the business time to redesign its logo and put in place a new image. However, as the notice now only requires the removal of one sign, it seems unlikely that this will necessitate a redesign of the business image. I consider 6 months to be a reasonable time in which to remove that one sign and so the appeal on ground [g] fails.

Conclusions

13. For the reasons given above I consider that, on balance, the appeal should succeed to the extent set out in paragraph 11 above.

Right of Appeal Against Decision

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



Derek Thew

Inspector

Schedule:

Appeal : T/APP/A1910/C/99/1029188

- I hereby allow the appeal in so far as it relates to the installation of a new shop front and the display of an illuminated fascia sign at no. 148 High Street, Berkhamsted. I grant planning permission, on the application deemed to have been made under section 177(5) of the amended Act, for the installation of a new shop front at those premises.

- I hereby vary the enforcement notice as follows:
 - (i) delete requirement 5.1; and
 - (ii) delete from requirement 5.2 the words "and lettering on the fascia".
- Subject thereto, the appeal is dismissed and the enforcement notice as varied is upheld.

**NORTHGATE
DOCUMENT STAMPED
TO ENSURE DETECTION
BY SCANNER**