



Department of the Environment

Room 1411

Toligate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct line 0272-218 914

Switchboard 0272-218811

GTN 2074

000865

Council Reference 4/1223/79E & 4/1630/79E

Mr P J Fountaine  
Surveyor  
27 Castle Street  
BERKHAMSTED  
Hertfordshire

TECHNICAL SERVICES DEPT.	
PLANNING SECTION	
11 MAR 1980	
FILE No.	DATE

Your reference

Our reference

T/APP/5252/C/79/3026 & 3206/C4

Date

6 MAR 1980

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9  
APPEALS BY G F KITE (GLASS MERCHANTS) LIMITED  
LAND AND BUILDINGS AT PARK STREET, BERKHAMSTED

1. I refer to these appeals, which I have been appointed to determine, against 2 enforcement notices served by the Dacorum District Council concerning the above mentioned land and buildings. I held an inquiry into the appeals on 5 February 1980.
2. a. The date of notice A is 23 July 1979.  
b. The breach of planning control alleged in the notice is the making of a material change in the use to that as an industrial building as defined by the Town and Country Planning (Use Classes) Order 1972.  
c. The requirement of the notice is that the use be discontinued.  
d. The period for compliance with the notice is 4 calendar months.  
e. The appeal was accepted on grounds 88(1)(a) and (b) but at the inquiry ground (d) was added.
3. a. The date of notice B is 10 August 1979.  
b. The breach of planning control alleged in the notice is the making of a material change in the use to that for the purpose of the sale of joinery items (including window and door frames).  
c. The requirement of the notice is that the use be discontinued.  
d. The period for compliance with the notice is 4 calendar months.  
e. The appeal was accepted on ground 88(1)(b) but at the inquiry your client withdrew this appeal.

SITE AND SURROUNDINGS

4. The appeal premises comprise the northeastern end of a row of former garages fronting the northwestern side of Park Street, a cul-de-sac. They have a double door and window at this frontage which is set back from the highway behind a deep concrete forecourt. The premises contain 2 former compartments serving as one workshop with a sealed door in a brick wall which separates similar buildings to the southwest. Adjoining the northwestern side of the appeal premises but outside the enforcement notice area is another workshop having planning permission for

carpentry purposes. The appeal premises contain sheets of glass, aluminium sections, workbenches, a metal parting saw, a woodsaw and drills. Noise from the machinery is typical of workshop uses, the metal saw particularly having a high pitched sound. Southwest of the appeal site, the adjoining garages lead to shop premises at the open corner end of Park Street, all of these being occupied by a tyre and exhaust repair service. Northeast of the site and on the opposite side of Park Street are dwellings which extend northeastwards towards the closed end of Park Street which itself gives access only to a church. Park Street also contains a public house to the south of the site, the area generally having mixed uses. The carriageway here is about 18 ft wide with a footpath on the southeastern side only. There is considerable parking in the street and on the forecourt southwest of the site to the extent that the highway was congested at the time of inspection. There are no restrictions on waiting here.

#### FACTS NOT IN DISPUTE

5. The following facts were not in dispute:-

1. the appeal premises, being the end section of several lock-up garages, formed part of 352 High Street from 1937 onwards when the whole property was used for vehicle showroom, petrol pump, office workshop and stores purposes;
2. from 1945 the lock-up garages were used to provide additional business accommodation, the appeal premises formerly 2 garages being converted in 1949 to a body shop for the use of panel beating, spraying and repair of accident damaged vehicles, the remaining garages serving since 1946 as stores for spares;
3. the appeal building housed a compressor and cellulose but whilst no planning application was pursued, the local authority made no objection to the use, the premises being inspected regularly by the Factory Inspector and Fire Officer and the Council issuing an annual licence for cellulose storage;
4. the spraying, panel beating and accident repairs continued in the appeal building until 1972 when the ownership changed;
5. the new owner devoted a considerable part of his business also to the repair of crashed vehicles, the spraying, panel beating and repairs continuing in the appeal premises;
6. about mid-1978, the present use commenced at the site and comprised the cutting of aluminium sections, glass and timber for the production of windows and doors.

#### APPELLANT'S LEGAL SUBMISSIONS

6. Your client's legal submissions were:-

1. the uses at the site have continued from before 1950 and comprised industrial works;
2. the Council's claim that the use here was ancillary to the use at No 352 as a whole is not substantiated by the enforcement notice plan which indicates the appeal premises as the unit concerned.

## COUNCIL'S LEGAL SUBMISSIONS.

7. The legal submissions made on behalf of the Council were:-

1. 352 High Street formed one premises used for many years as a repair garage and filling station;
2. the appeal building among others was used for a number of activities ancillary to the primary garage use, the panel beating and spraying here being secondary to the primary use;
3. the whole planning unit consisted of the buildings attached to No 352 and these contained mixed uses for car and petrol sales and the servicing and repair of motor vehicles, each not falling within any of the Use Classes Order categories and the whole use being a use on its own;
4. this overall use does not carry planning permission for any other use and if one of these secondary activities were to become the primary use, it is well established that planning permission is necessary for it;
5. in this instance, the manufacture of windows and doors is a general industrial use and this is now the primary use of the premises in place of the former unclassified mixed use;
6. this amounts to a material change in the use requiring planning permission and as that has not been obtained, a breach of control has occurred, the breach having taken place in 1978.

## CONCLUSIONS - on grounds (b) and (d)

8. Having regard to the evidence and facts presented at the inquiry, my conclusions are:-

1. the planning unit prior to 1978 consisted of No 352 High Street and the buildings extending from it to and including the appeal premises;
2. the use of the unit from about 1949 involved refuelling, car sales, vehicle maintenance and the like but also included a substantial repair activity for crashed or damaged vehicles mostly requiring major spraying works and body repairs;
3. the spraying and body works were significantly more than would be expected in a general garage use and were concentrated at the appeal premises, these uses giving rise to works in their own right and beyond that normally ancillary to a general garage premises;
4. the planning unit, therefore, not only had the general car sales and repair uses but also Class IV and Class VIII activities in their own right;
5. whilst these uses may not apply generally to the planning unit as a whole, they do apply to the appeal premises where these specific activities were performed and, even with partition from the unit, these Class IV and Class VIII uses have run at the appeal premises from about 1949 until 1978;
6. if these uses had commenced before 1 July 1948, ground (b) would have been successful but as they did not they were uses requiring planning permission which had not been obtained, so that a breach of control did occur and ground (b) fails;

7. however, the present use at the premises is Class IV and as this is one of the separate uses performed from before 1964, the appeal succeeds on ground (d) and I have no option but to quash the enforcement notice.

#### MERITS - APPELLANT'S CASE

9. The main arguments made on behalf of your client were:-

1. the area is allocated for commercial use, the adjoining building was granted consent in 1967 for a carpenters' shop and there are several other similar business uses here;
2. the appeal premises conform to the commercial provision and have been in commercial use since 1949, the Council's practice since 1967 being to consolidate a local builders' yard and other commercial uses with which the activities at the site are compatible;
3. the noise and traffic complained of by residents are caused by other businesses as well as your client and any noise arising from his use could be controlled by other powers.

#### MERITS - COUNCIL'S CASE

10. The main arguments made by the Council were:-

1. the site is shown on the development plan approved in 1971 as within the Berkhamsted Central Area where the practice is to regulate the type and quantity of land use having regard to assessed demand and also to retain and enhance character;
2. the site is also shown on the non-statutory Berkhamsted Town Centre Map of 1973 as "offices and commercial" but the policy is not to permit further increases in industrial development in the central area;
3. it is undesirable having regard to these provisions for industrial development to be permitted here, particularly owing to the proximity of dwellings;
4. such uses cause loss of amenity by noise and dust, obstruction by lorries loading, unloading and parking in this narrow and congested cul-de-sac, and such development could lead to further similar activities creating additional harm;
5. the appellant's use creates noise from saws and other banging disturbances which are heard right through the houses nearby, the additional traffic and parking resulting in congestion, danger and obstruction to emergency services;
6. the use here has continued in the evenings and on Sundays creating disturbance and annoyance.

#### MERITS - CASES FOR INTERESTED PERSONS

11. The main points made by 5 local residents objecting to the appellant's use were:-

1. the traffic attracted to the appeal premises creates severe noise, disturbance and congestion and interferes with radio and television reception;

2. the site use creates loud noises which are disturbing particularly in the evenings;
3. Park Street is narrow and the manoeuvring by vehicles going to and from the site causes danger.

#### MERITS - CONCLUSIONS

12. From my inspection of the site and its surroundings and the representations made, I am of the opinion that:-

1. the principal issue in this appeal is whether your client's window and door manufacture could be properly located in Park Street having regard to the provisions of the Development Plan and Town Centre Map and also to its impact on the surroundings. It is noted that the use is not one in accord with the planning provisions although this on its own is not sufficient to justify refusal;
2. however, Park Street is unsuited for any business use, its narrow width and the proximity of its dwellings to the highway being incompatible with commercial activities;
3. any activities involving noise, the comings and going of persons and vehicles are bound to harm nearby residents' enjoyment of their homes and any additional traffic is also bound to add to the congestion which already exists in Park Street;
4. nearby residents suffer already from the effects of the activities here and any addition would exacerbate the harm and, for these reasons, it would be wrong to grant planning permission for the use in dispute which would be wrongly located here;
5. I have considered other matters raised but find they are not of sufficient weight to affect the decision. I propose therefore to allow the appeal on ground (d) and, as this has succeeded, the requirements of the notice and the time for its compliance do not fall to be considered but, as indicated above, no planning permission will be granted for the use in dispute.

#### FORMAL DECISION

13. For the above reasons and in exercise of the powers transferred to me, I hereby allow the appeal under ground (d), quash the enforcement notice but refuse to grant planning permission for the development to which the enforcement notice relates.

#### RIGHT OF APPEAL AGAINST DECISION

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

I am Sir  
Your obedient Servant



A A SLOMA, BSc(Eng) MICE FIMANE Barrister, LMRPI  
Inspector

# APPEARANCES

## FOR THE APPELLANT

Mr P J Fountaine

He called:

Mr E A Wakefield

- Surveyor.

- Former site employee.

## FOR THE PLANNING AUTHORITY

Mr A F Baker

He called:

1. Mrs J A Perry }

2. Mr N D Perry }

3. Mr D P Noble, BA MRTPI AIAS  
MRSB

- Senior Assistant Solicitor,  
Dacorum District Council.

- Nearby residents.

- Senior Assistant Planner,  
Dacorum District Council.

## INTERESTED PERSONS

1. Mr L L Peachey

2. Mrs C Bassett

3. Mr J Blower

4. Mrs V Lloyd

5. Mrs B Blundell

6. Mrs E Weatherill

- Former site operator.

- Adjoining resident.

- 4 Park Street. }

- 14 Park Street. }

- 8 Park Street. }

- 1 Park Street. }

Nearby residents.

DACORUM DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971.

## Enforcement Notice

\*(Change of use without permission)

1630/796

To: (b) George Frederick Kite  
of 354 High Street,  
Berkhamsted, Herts.

### 1. WHEREAS:

(i) You are the [owner [and] [occupier] of] ~~to person having an interest in~~ the land situate at and known as (c) lock-up garages and forecourts thereto in Park Street, Berkhamsted, Hertfordshire

which is more particularly delineated on the attached plan and thereon coloured edged in red (hereinafter called "the said land").

(ii) The (a) Dacorum District Council (hereinafter called "the Council") are the Local Planning Authority (*inter alia*) for the purposes of the provisions of section 87 of the Town and Country Planning Act 1971 (hereinafter called "the Act of 1971").

(iii) It appears to the Council that after the 31st day of December 1963 there has been a breach of planning control in that the said land has been developed by the making of a material change in the use [thereof] ~~of the buildings situate thereon~~ to a use for the purpose of the sale of joinery items (including window and door frames)

without the grant of permission required in that behalf under Part III of the Town and Country Planning Act 1962 or Part III of the Act of 1971.

(iv) The Council consider it expedient having regard to the provisions of the development plan and to all other material considerations to serve this notice.

[CONTINUED OVERLEAF]

(a) Insert the name of the council serving the notice.

(b) Insert the name of the person, company or other body on whom the notice is being served. In the case of a company, service should be on the company, not on individual directors or officers, but in the case of an incorporated company or body service may be made by delivering or addressing the notice to the clerk or secretary. In the case of a partnership, service should be on each of the partners by name, but a notice may be served on a partner or a person having the control or management of the partnership business. (Section 233 of the Local Government Act 1972.) Service on (i) an occupier or (ii) a person having any interest in the land whose name cannot be ascertained after reasonable inquiry can be made in the manner provided by sub-section (2) of section 283 of the Town and Country Planning Act 1971. There is also provision in sub-section (3) of that section for service of notices in respect of occupied land.

(c) Insert a full description of the land to which the notice relates, sufficient to enable its location and extent to be readily understood. Where there is a postal address for the land, this should be included. The land should also be shown on a plan attached to the notice, where possible. In drafting an enforcement notice regard should be had to the whole of the planning unit in respect of which it is alleged there has been a breach of planning control, not merely to that part of the land which is directly affected by the activities, or failure, constituting the alleged breach.

YOUR ATTENTION IS DIRECTED TO THE ATTACHED NOTES WHICH EXPLAIN YOUR RIGHT OF APPEAL AGAINST THIS NOTICE. YOU SHOULD READ THEM CAREFULLY.

2. **NOW THEREFORE TAKE NOTICE** that in exercise of the powers contained in the said section 87 of the Act of 1971 the Council **HEREBY REQUIRE YOU** within the period of four calendar months beginning with the date on which this notice takes effect to discontinue the use [of the said land] ~~[of the buildings situated on the said land]~~ for the purpose of the sale of joinery items (including window and door frames).

~~and to restore the said land (and the buildings situated thereon) to (its) (their) condition before the said development took place~~

3. **THIS NOTICE SHALL TAKE EFFECT**, subject to the provisions of section 88(3) of the Town and Country Planning Act 1971, ~~at the end of the period of~~ ~~xxxxxx~~ days beginning ~~with (d)~~ on the 20th September 19 79

DATED this Tenth day of August, 1979 .

*Keith Hunt*

Signed.....

District Secretary

(e)

(The officer appointed for this purpose)

Civic Centre,  
Marlowes,  
Hemel Hempstead,  
Herts.

*Address to which all communications should be sent.)*

(d) The period specified must be such that not less than 28 clear days elapse between the date of the service of the notice and the effective date (a longer period may be specified). Where several persons are served, ensure that the effective date is not less than 28 clear days after the *latest* date of service. (The period of 28 clear days cannot begin to run until the day following the day when service of the notice on all those persons entitled to be served has been completed.)

(e) Insert title of proper officer.

## NOTES FOR PERSONS SERVED WITH AN ENFORCEMENT NOTICE

(These notes do not form any part of the enforcement notice)

### PENALTIES FOR NON-COMPLIANCE

1. You have been served with an enforcement notice which will come into effect at the expiry of the period stated in paragraph 3 of the notice. You then have the further period set out in paragraph 2 of the notice in which to comply with the requirements set out. If you fail to comply within that time you will be liable to prosecution and, on conviction, to a fine. The continuing contravention after conviction can lead to a further fine for each day the offence continues.

### RIGHT OF APPEAL

2. You have a right of appeal against the notice to [the Secretary of State for the Environment] ~~[the Secretary of State for Wales]~~. If you do appeal, the notice will not come into effect until the appeal is finally determined. In considering whether to exercise this right, you are invited to consider the reasons given in the Council's letter why this notice has been served.

### WHEN TO APPEAL

3. An appeal *must* be made within the period at the end of which the notice is stated to take effect. This is the period set out in paragraph 3 of the notice. *The Secretary of State has no power to extend this period nor to accept an appeal made out of time.*

### HOW TO APPEAL

4. There are no special forms on which to make an appeal, but it should be made in writing and addressed to [the Secretary of State, Department of the Environment, Tollgate House, Houlton Street, Bristol] ~~[the Secretary of State, Welsh Office, Summit House, Windsor Place, Cardiff, CF1 1BB]~~ and the envelope marked "Enforcement Appeal". You should state (a) the grounds on which the appeal is made, and (b) the facts on which those grounds are based. (It will help the Secretary of State in dealing with the preliminary stages of the appeal (see paragraph 7 below) if you enclose a copy of the enforcement notice or, failing that, state the name of the Council serving the notice, and the address of the property or location of the land enforced against. If you have also made, or are making, an appeal against a refusal of planning permission in respect of the same land, you should mention this as well.)

### GROUND ON WHICH AN APPEAL CAN BE MADE

5. An appeal can be made on one or more of the grounds set out in Section 88(1) of the Town and Country Planning Act 1971—reproduced with other relevant sections of the Act below/overleaf. In general,