

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

Other

Ref. No.

THE DISTRICT COUNCIL OF DACORUM

IN THE COUNTY OF HERTFORD

To

Mrs. M. P. Kinsella,
 Four Oaks,
 17 Tring Road,
 Northchurch,
 BERKHAMSTED,
 Herts.

Use of part dwelling in connection with private
 car hire service

at 17 Tring Road, Northchurch, Berkhamsted.

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 30th October, 1979 and received with sufficient particulars on 9th November, 1979, 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 proposed development would result in an increase in the use of an existing access.
2. The establishing of an office premises at this location would be incompatible with trunk road interests.

(Refusal directed by the Regional Controller).

Dated 10th day of January, 1980.

Signed.....

Designation Director of Technical Services.

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, Whitehall, London, S.W.1.) 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.

ahj

4/1666/79.



DEPARTMENT OF THE ENVIRONMENT

Room 925

Tollgate House Houlton Street Bristol BS2 9D

Telex 449321

P J Fountaine, Esq
27 Castle Street
Berkhamsted
Herts
HP4 2DW

1) ~~FILE~~
2) ~~FILE~~
3) ~~FILE~~
4) ~~TEAM 2~~

PLANNING DEPARTMENT DACORUM DISTRICT COUNCIL					
Ref.			Ack.		
C.P.O.	D.P.	D.C.	B.C.	Admin.	File
Received JAL - 2 JUL 1982					
Comments					
Direct line 0272-218 610					
Switchboard 0272-218811					
GTN 2074					
LPA Ref: 4/0183/81E REPORT					

Direct line 0272-218 610
Switchboard 0272-218811
GTN 2074

LPA Ref: 4/0183/81E

Your reference

Our reference

APP/5252/C/81/464,5

Date

29 JUN 1982

Sir

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 88
LAND AT 17 TRING ROAD, NORTHCHURCH, BERKHAMSTED
APPEALS BY MR AND MRS M KINSELLA

1. I am directed by the Secretary of State for the Environment to refer to the report of the Inspector, Mr C Russell, Solicitor, who held a local inquiry into your clients' appeals against an enforcement notice served by the Dacorum District Council relating to the use of 17 Tring Road, Northchurch, Berkhamsted, for the purpose of a car hire business.
2. The appeals against the enforcement notice were on the grounds set out in section 88(2)(a), (b), (c), (e), (g) and (h) of the Town and Country Planning Act 1971, as amended by the Local Government and Planning (Amendment) Act 1981. Grounds (e), (g) and (h) are equivalent to grounds (d), (f) and (g) on which the appeals were originally made.
3. A copy of the Inspector's report of the inquiry is annexed to this letter. His conclusions are set out in paragraphs 41 to 48 of the report and his recommendation in paragraph 49. The report has been considered. Account has also been taken of a letter dated 14 April 1982 from Northchurch Parish Council, but the view is taken that the only new issue contained therein, which was not already covered in the Inspector's report, has no material bearing on the decision on the appeals. This issue is dealt with in paragraph 8 below.

SUMMARY OF THE DECISION

4. The formal decision is set out in paragraph 9 below. The appeals succeed. The enforcement notice is quashed and conditional planning permission is granted.

REASONS FOR THE DECISION

5. It is noted that at the inquiry it was accepted on behalf of the Council that the allegation in the enforcement notice should have reflected the mixed use of the appeal premises for residential purposes as well as a car hire business. The view is taken that this error in the notice could be corrected without injustice to the parties under the provisions of section 88A(2) of the 1971 Act as amended by the Act of 1981 and, had the notice been upheld, it would have been corrected accordingly.

6. In support of the appeals on grounds (b), (c) and (e) /formerly ground (d)7 it was submitted on behalf of your clients that the car hire business was on a small scale and that the appeal premises had not been used solely for residential purposes for more than 20 years. The Inspector found as facts, which are accepted, that from 1958 to 1979 the premises were owned and occupied by Mr Allingham, a masseur or osteopath, who worked for Champneys Health Hydro and also saw patients at home in an extension room at the back of the house furnished as a surgery or consulting room. Your clients bought the premises in 1979 and ran a private car service, with 2 cars and one spare: the majority of their business was connected with Champneys, 5 miles away, and they took on average 6-10 jobs each day. The premises were also the home of your clients and their family of one son and 3 daughters, the 2 eldest children having their own cars.

7. On grounds (b), (c) and (e) /formerly ground (d)7 the Inspector concluded:

"As to grounds (b) and (c) I consider that the use for a private hire car business is on a large enough scale, and has a sufficient effect on the volume of traffic to and from the premises, and their character as a whole, to amount as a matter of fact and degree to a material change to the mixed use mentioned above. I consider therefore there has been a breach of planning control, and subject to what I say above, the breach is that mentioned in the notice.

As to ground (e), and to some extent grounds (b) and (c) also, the arguments were based mainly on the previous use by Mr Allingham, in connection with his practice as a masseur. Whether this was material or not in planning terms, a masseur's practice is fundamentally different in character and kind from a car hire business. I consider that a material change of use took place in 1979, when the appellants moved their business to the appeal premises. The previous business use may perhaps be very slightly relevant however in considering the planning merits, in so far as there is a suggestion that the vehicle movements in and out of the premises have not increased to any great extent since Mr Allingham lived and worked there."

These conclusions are accepted, and, for the reasons the Inspector gives, the appeals fail on grounds (b), (c) and (e) /formerly ground (d)7.

8. On ground (a) and the planning merits of the appeals the Inspector concluded:

"On ground (a) the objections are firstly on highway grounds, and there are also policy and amenity objections. Against these there must be weighed the value of this small business and the service and employment it provides.

On the highway issue the use involves a substantial number of extra vehicle movements on and off a narrow section of the very busy trunk road. In assessing the sub-standard visibility however, it must be noted that this site is only just outside the 30 mph limit, where traffic is likely to be travelling more slowly than on an unrestricted stretch of open road. There is undoubtedly an element of danger, which could be mitigated by widening the bellmouth, although this can only be done by agreement, as the verge is outside the appeal site and is vested in the highway authority. The objections on these grounds would of course be very much less when the new by-pass is built.

On the policy issue a business use in a residential area is inevitably a source of conflict. However, only the 2 immediately adjacent houses are affected to any substantial extent. I find it rather surprising that strong objections should emanate from 15 Tring Road, but none from No 19. The distance, and the bank and hedge on the boundary with No 15 must act as a partial baffle against any noise or disturbance. There is no doubt that a family's livelihood depends

to a large extent on this business, which provides a valuable local service, and while the issues are very finely balanced, I consider this to be a case where suitable conditions could allow the business to continue, while mitigating the adverse effects noted above. This accords with the planning officer's original advice and with Paragraph 12 and Annex B to Circular 22/80.

I consider that much depends on the way such a business is run, and the small scale low-key approach adopted by Mrs Kinsella would continue if the number of hire cars was limited to 2. Furthermore I consider the permission should not only be personal to Mrs Kinsella, but also be for a 2 year period in the first instance, so that the matter could be reconsidered at the end of that time, if Mr Roberts' fears as to increased activity and non compliance with the condition limiting the number of vehicles are proved to be well founded."

These conclusions have been considered. Note has been taken of the submission included in the representations of Northchurch Parish Council that the Regional Controller's recommendation "not to allow" precluded and prevented discussion by the members of the Council and that, had the matter been discussed, the Council might well have voted against their officers' recommendation. However, whether or not this is the case, it is agreed with the Inspector, that, for the reasons he gives, planning permission should be granted in respect of the use enforced against, subject to the conditions he recommends, on the application which is deemed to have been made under the provisions of section 88B(3) of the 1971 Act as amended by the Act of 1981. The appeals succeed on ground (a) to this extent and no other grounds of appeal fall to be considered.

FORMAL DECISION

9. For the reasons given above the Secretary of State allows both appeals. He quashes the enforcement notice and hereby grants planning permission for the use of 17 Tring Road, Northchurch, Berkhamsted, as a dwellinghouse and for the purpose of a car hire business, subject to the following conditions:

- i. the use hereby permitted shall cease on or before 30 June 1984;
- ii. this permission for the use of the premises as a dwellinghouse and for the purpose of a car hire business enures only for the benefit of Mrs M P Kinsella and not for the benefit of the land; and
- iii. not more than 2 cars shall be used for the purposes of the car hire business.

10. This letter 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.

RIGHT OF APPEAL AGAINST DECISION

11. This letter is issued as the Secretary of State's determination of the appeals. Leaflet C enclosed for those concerned sets out the right of appeal to the High Court against the decision and the arrangements for the inspection of documents appended to the Inspector's report.

I am Sir
Your obedient Servant

P PASCOE
Authorised by the Secretary of State
to sign in that behalf

(a)

DACORUM DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971.

Enforcement Notice

*(Change of use without permission)

To: (b) Mrs. Margaret P. Kinsella
of 17 Tring Road,
Northchurch, Berkhamsted
Hertfordshire.

1. WHEREAS:

(i) You are the [owner [and] [occupier] of] [~~a person having an interest in~~] the land situate at and known as (c) 17 Tring Road, Northchurch, Berkhamsted

which is more particularly delineated on the attached plan and thereon ~~coloured~~ edged 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 a car hire business

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 ^{TWO} 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 a car hire business

~~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 xxxxxxxxxx days beginning with~~ on 27th February 19 81

DATED this 23rd day of January, 1981.

Keith Hunt

Signed..... (e)

Civic Centre,
Marlowes
Hemel Hempstead
Hertfordshire HP1 1HH

District Secretary
(The officer appointed for this purpose)

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 1BN~~] 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,