

Departments of the Environment and Transport

Eastern Regional Office (Environment)

Heron House 49-51 Goldington Road Bedford MK40 3LL

Telex 82481

Telephone 0234 (Bedford) 63161 ext

Facsimile 303

34540

CHIEF EXECUTIVE OFFICER

25 OCT 1990

File no. ....  
Refer to *DP* ✓  
Cleared *29/10*

DKP

Chief Executive  
Dacorum Borough Council  
Civic Centre  
Hemel Hempstead  
HP1 1HH

Your reference

Our reference APP/A1910/A/89/117542  
APP/A1910/E/89/804273

Date 24 October 1990

Dear Sir

LOCAL GOVERNMENT ACT 1972 - SECTION 250 (5)  
TOWN AND COUNTRY PLANNING ACT - SECTION 36 AND SCHEDULE 11  
APPEALS BY MIDFAIR PROPERTIES LTD  
LAND AND BUILDINGS AT 91-101 HIGH STREET, BERKHAMSTED

*Recd. 10/9 — DP. 10/9.*

1. I refer to the Department's letter of 5 September 1990 notifying the Secretary of State's decision on the above appeals and to your Council's application, made at the inquiry, for an award of costs against the appellants in respect of the application for listed building consent.

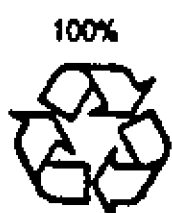
2. You will see from the enclosed letter of today's date to the appellants' solicitors that it has been decided that an award of costs against the appellants would not be justified and your Council's application for costs has accordingly been refused.

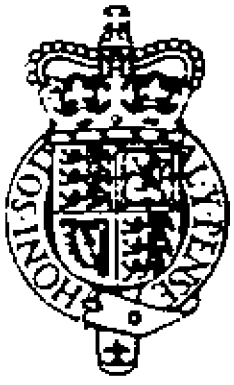
Yours faithfully

*R A Sanderson*

R A SANDERSON

PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL						
Ref.				Ack.		
C.P.O.	T.C.P.M.	D.P.	<i>DP</i>	B.C.	Admin	F79
			<i>VT3</i>			
Received				29 OCT 1990		
Comments <i>Report to be cited.</i>						





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DKP

Tarlo Lyons  
Solicitors  
High Holborn House  
52/54 High Holborn  
LONDON WC1V 6RU

Your reference

Our reference APP/A1910/A/89/117542  
APP/A1910/E/89/804273

Date 24 October 1990

Gentlemen

LOCAL GOVERNMENT ACT 1972 - SECTION 250 (5)  
TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 36 AND SCHEDULE 11  
APPEALS BY MIDFAIR PROPERTIES LIMITED  
LAND AND BUILDINGS AT 91-101 HIGH STREET, BERKHAMSTED, HERTS

1. I am directed by the Secretary of State for the Environment to refer to the letter dated 5 September 1990 notifying his decisions on your clients' appeals against the failure of Dacorum Borough Council to give notice of their decisions within the prescribed period on an application for planning permission for redevelopment of the above-mentioned land and buildings and on an application for listed building consent for the demolition of the Rex Cinema at the same address. I am now able to deal with the application for an award of costs made by the Council against your clients at the local inquiry held between 1 and 4 May 1990 in respect of the application for listed building consent.

2. The submission made at the inquiry on behalf of the Council in support of their application for costs, the reply on behalf of your clients and the Inspector's comments are set out in his costs report, a copy of which is enclosed. In planning and listed building appeals, the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and costs are awarded only on grounds of unreasonable behaviour. Accordingly, the application for costs has been considered in the light of Department of the Environment Circular 2/87, the Inspector's costs report, the appeal papers and all the relevant circumstances.

3. The Inspector's comments on the Council's application for costs were as follows:-

"In my opinion both parties were at fault when the application for listed building consent was submitted. Firstly the appellants were, or should have been aware of the considerations required to be made in relation to any application for the demolition of a listed building, namely those outlined in paragraphs 89 and 90 of Circular 8/87. In such circumstances more supporting evidence should have been submitted.

However, it would appear that no attempt was made by the Council to obtain the additional information they would require in order to consider the application. The Council could, at the onset, have advised the appellant that the application was incomplete and more information would be required. Even at a late stage in the process, when the Council requested an extension of time, they could have still reminded the appellants that the additional information was required, but they did not do so.



While the contractual obligation into which the appellants entered is not in itself a planning matter, it does lay down that in the event of approvals not being obtained the appeal process should be started. However, such a process is a statutory right. In this respect once the statutory process started I can see nothing in the conduct of the 2 parties which raises questions as to unreasonable behaviour.

I am therefore drawn to the conclusion that the appellants acted unreasonably at the application stage by not supplying the information they should have known the Council would require in order to determine the application. However, I consider that the Council, by not asking for the information they knew would be needed in order to process the application negate any claim for unreasonable behaviour by their own inaction."

The Inspector recommended that no award of costs be made.

4. The Secretary of State has carefully considered all the evidence in this case. He agrees with the Inspector's comments that your clients' contractual obligation to pursue the appeal is not, in itself, a planning matter; and he does not regard this as relevant to the costs application. The decisive issue is considered to be whether your clients exercised their statutory right of appeal in a "reasonable" manner. Particular regard has been paid to paragraphs 20 to 22 of Department of the Environment Circular 2/87. No evidence is seen that the lodging of the appeal was itself "unreasonable", in the light of the parties' submissions and paragraph 20 of Circular 2/87. As to the conduct of the appeal, it is noted that the Council's case focuses on alleged "unreasonable" behaviour prior to the appeal, in not complying with, or providing evidence of compliance with, the relevant requirements of Department of the Environment Circular 8/87. However, it is not evident that your clients' initial behaviour resulted in an otherwise avoidable appeal or unnecessarily greater expense in the proceedings. Nor is it evident that your clients acted "unreasonably" during the appeal proceedings by being deliberately unco-operative, eg by failing to explain their grounds of appeal or to provide any requested information.

5. The Secretary of State has concluded that your clients did not act "unreasonably", as this term is interpreted in DOE Circular 2/87. While agreeing with some of the Inspector's conclusions, insofar as these are described above, he sees no evidence of any "unreasonable" behaviour prior to the appeal which resulted in unnecessary expense in the proceedings; and he does not consider they any otherwise justified claim was negated by the Council's own conduct. Accordingly, and for these reasons, he accepts the Inspector's recommendation and has decided that an award of costs against your clients, on grounds of "unreasonable" behaviour, is not justified in the particular circumstances. The Council's application is therefore refused.

6. A copy of this letter is being sent to Dacorum Borough Council.

I am Gentlemen  
Your obedient Servant

R A SANDERSON  
Authorised by the Secretary of State  
to sign in that behalf

Geoffrey E. Izard	Derek G. Randall	
D. Michael Rose	Maed A. McIwan	<i>Finance Director</i>
Liza L. Beavon	Charles Suchett Kaye	Lough G. Barkley
Dakota E. Welch	Martin B. Gilby	
Maurice Martin		<i>Consultants</i>
Philip Diamond	Nicholas J. Arnold	Louis Tarlo
David M. Ford	Simone Collins	Sidney Ford
Robert L. Halls	Lawrence Phillips	Hetty L. Lyons

**Tarlo Lyons** Solicitors

The Solicitor and Secretary  
 Dacorum Borough Council  
 Civic Centre  
 Marlowes  
 Hemel Hempstead  
 Hertfordshire  
 HP1 1HH

High Holborn House,  
 52/54 High Holborn, London WC1V 6RU  
 Telephone: 071-405 2000  
 Telex: 267572 Tarlo G  
 Fax: 071-405 3976 (Groups 2 and 3)  
 DX82 London

Our Ref: **RM/SL**

Your Ref:

Date: **9 October, 1990**

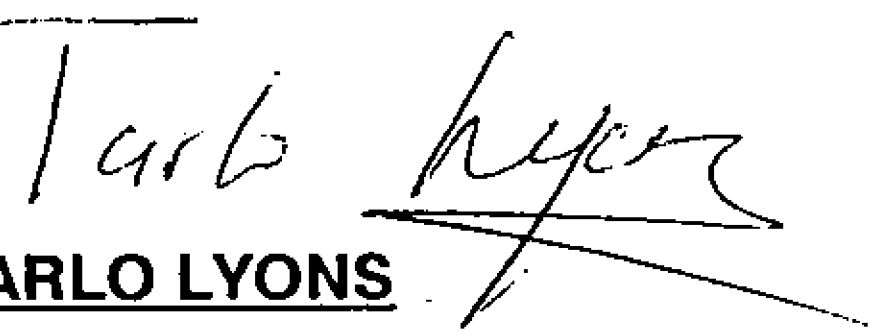
Dear Sir,

**MIDFAIR PROPERTIES LIMITED  
 LAND & BUILDINGS KNOWN AS 91-101 HIGH STREET BERKHAMSTEAD  
 HERTFORDSHIRE**

We enclose a copy of the Notice of Motion served upon the Chief Executive of the Dacorum Borough Council.

We would be grateful if you could acknowledge safe receipt.

Yours faithfully

  
**TARLO LYONS**

PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL						
Ref.	4/1989/88LB				Ack.	
G.P.O.	T.C.P.M.	D.P.	B.C.	B.C.	Admin.	File
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Received		10 OCT 1990				
Comments						

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**IN THE MATTER OF THE TOWN & COUNTRY PLANNING ACT 1990**

**AND**

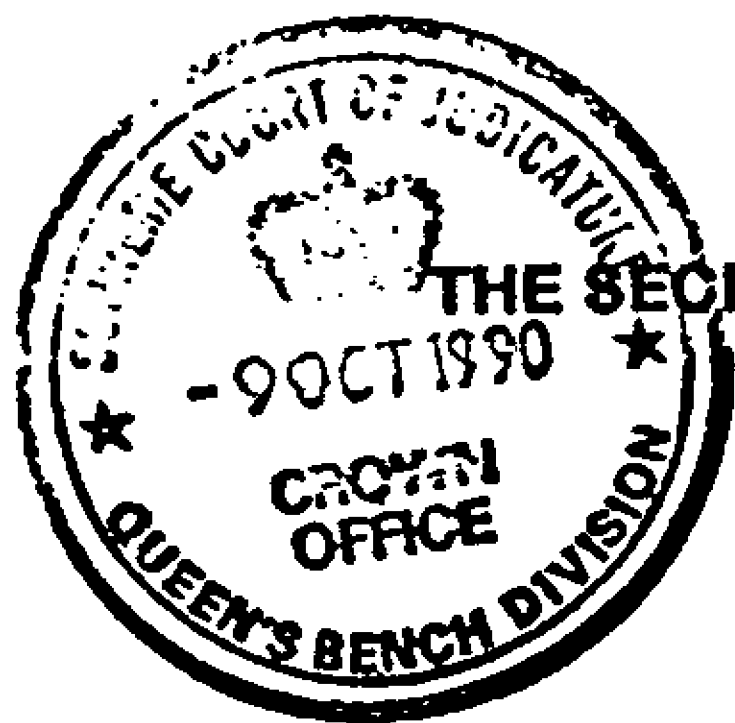
**IN THE MATTER OF LAND AND BUILDINGS AT 91/101 HIGH STREET,  
BERKHAMSTED, HERTFORDSHIRE**

**BETWEEN**

**MIDFAIR PROPERTIES LIMITED**

**Applicant**

**- and -**



**THE SECRETARY OF STATE FOR THE ENVIRONMENT**

**First Respondent**

**DACORUM BOROUGH COUNCIL**

**Second Respondent**

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**NOTICE OF MOTION**

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**TAKE NOTICE that the High Court of Justice Queen's Division at the Royal Courts of Justice, Strand, London WC2A 2LL, will be moved at the expiration of 35 days from the service upon you of this Notice or so soon thereafter as Counsel can be heard, by Counsel on behalf of Midfair Properties Limited for an Order:**

1. That the decision of the First Respondent by letter dated 5th September 1990 whereby the Applicant's appeal pursuant to the failure of the Second Respondent to give notice of their decision within the prescribed period on an application for planning permission for redevelopment with 3/4 storey office buildings (Class A2 and B1 use), basement car park and courtyard garden at 91/101 High Street, Berkhamstead, Hertfordshire and against the failure of the Second Respondent to give notice of their decision on an application for Listed Building consent for the demolition of the Rex Cinema at the same address were dismissed, be quashed.
2. That the costs of and incidental to this application may be paid by the First Respondent or that such order as to costs may be made as the Court may think fit.

**AND FURTHER TAKE NOTICE** that the ground of this application is that the said decision is not within the powers of the above mentioned Act.

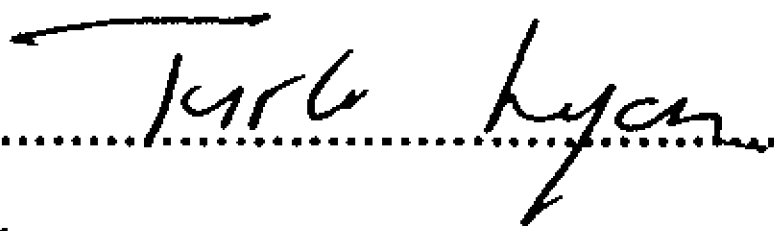
#### **PARTICULARS**

1. The Inspector correctly reported part of the case put forward on behalf of the Applicant at the Public Enquiry held into the said appeals that the Applicant accepted that there were interesting features within the building such as decorative fibrous plaster panels and cornices and original light fittings.
2. The Inspector further found and determined that the internal features contained within the building were of such a quantity and quality and in such a well preserved condition as to warrant the inclusion of the cinema building within the statutory list.
3. The Inspector further correctly reported that it was the case of the Applicant that such interesting features as had been identified namely plaster panels cornices light fittings could be removed and kept for possible re-use or for display.
4. The Inspector erred in reaching his conclusions in failing entirely to consider the Applicant's submission that such features as were of interest could be removed and kept for possible re-use or for display.

5. The Inspector further erred in failing either adequately or at all to consider the balance of advantage in preserving the building in order to preserve the internal features identified as compared with the advantages of keeping the internal features without retaining the building.

6. In the alternative the Inspector failed to explain why he did not consider it appropriate to take account of the Applicant's submission relating to the retention of internal features.

Dated the 9<sup>th</sup> day of October 1990

  
.....  
Solicitor

To the Secretary of State for the Environment  
To the Treasury Solicitor  
To the Solicitor and Secretary to the Dacorum Borough Council

This Notice of Motion was issued by Tarlo Lyons, Solicitors of High Holborn House,  
52/54 High Holborn, London, WC1V 6RU.

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**IN THE MATTER OF THE TOWN & COUNTRY  
PLANNING ACT 1990**

**AND**

**IN THE MATTER OF LAND AND BUILDINGS AT  
91/101 HIGH STREET, BERKHAMSTEAD,  
HERTFORDSHIRE**

**BETWEEN:**

**MIDFAIR PROPERTIES LIMITED**

Applicant

- and -

**THE SECRETARY OF STATE FOR THE  
ENVIRONMENT**

First Respondent

- and -

**DACORUM BOROUGH COUNCIL**

Second Respondent

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**NOTICE OF  
MOTION**

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**Tarlo Lyons**  
High Holborn House  
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