

Your ref – 13

Your ref –

Date 19 October 2016

Mr Jason Seed  
Dacorum Borough Council  
Planning and Regeneration  
Civic Centre  
Marlowes  
Hemel Hempstead  
Herts HP1 1HH  
By email: [REDACTED]

Dear Sirs

**Application Reference: 4/02514/16/FUL**  
**104 High Street Berkhamstead HP4 2BL**

We have been instructed by concerned neighbours who object to the proposal for the reasons set out in this letter.

Under reference 4/03329/15/FUL the Council refused to grant retrospective planning permission for essentially the same proposal as now before it, a mixed use A1/A4, quoting failure to comply with policy CS12. There was no appeal. So the obvious question is why the outcome should be any different this time.

The application plans show a greater area edged red than hitherto (under the refused 2015 application). But the proposal still seeks retrospective material change of use from A1 to a mixed-use A1/A4, not just the building (now all its internal floor space) but all of its external land shown on the site plan that we are instructed had no earlier use, it was unfenced open land.

The external area marked A4 captures just "courtyard" but there is no practical means of control to prevent the "hop garden" and the rest of the outdoor space being put to that use.

In terms of the internal floor space, on the ground floor the small area to the rear of the shop marked "mixed A1/A4" is, we are instructed, in practice, the bar. Patrons buy their drinks here and either consume them internally anywhere they wish and/or go to outside. The first floor plans, with all the floor space again edged red, suggests that the front part will be "A4" only but the legend refers to "tasting tutelage" and "storage" (the former we are instructed is bogus). The reality entails the internal floor space within the whole of the building being put to A4 use. The same applies to the external space. We are instructed that the actual proportion of A4 and A1 in terms of functional use as witnessed are 90%/10% respectively. Lip-service is being given to A1 use. There would be no practical power to enforce any condition to function as a shop. Patrons holding drinks obtained from the bar go outside unless the weather is bad. This is no different to any other bar/pub in terms of the functional use of this land.

The reality on the ground is that this applicant, in seeking to continue A4 trading, is labelling it a mixed A1 use but it is a ruse to secure A4 consent. There is no proper justification before the Council to depart from its previous decision in reliance upon policy CS12(c). The concerns in respect of disturbance to surrounding properties is a real one – we are told of significant noise and disturbance from the outdoor use. The Applicant does not propose anything materially different in this application that would overcome the earlier finding of demonstrable significant harm. Moreover NPPF requires development be sustainable. NPPF9 states that development involves seeking *positive improvements to the quality of the built natural and environmental historic environment, as well as in people's quality of life including but not limited to improving the conditions in which people live, work, travel and take the leisure.* NPPF10 makes clear *plans and decisions need to take local circumstance into account so that they respond to different opportunities for an estate achieving sustainable development in different areas.*

On the facts, it cannot be said that the proposal to use open land for alcoholic consumption, outdoor music entertainment, the usual noise, fumes (smoking etc) taking place achieves sustainability requirements. The consumption of alcohol in an outdoor environment inevitably entails noise and disturbance. We are instructed that there is an awning erected and there are patio heaters. Accordingly the Applicant has demonstrated outdoor drinking and entertainment is part of their modus operandi. We are also instructed that the current outdoor uses in this heritage site have lasted late into late evening, far beyond the hours presented to the Council in the application form. It is not realistic to believe, with this applicant's gung-ho history to date, there would be adherence to the proposed hours, or even shop hours e.g. closing at 18:00 daily we understand the Town Council has suggested.

There is genuine concern that the LPA is sympathetic to this Applicant after spending out on noise insulation. But [1] that has no bearing on the outdoor use impacts and [2] that expense is merely part of the commercial risk in the same fashion as the un-authorized use. The application paints a false positive picture in respect of impacts. We are instructed that the noise is loud and persistent late on. It is difficult to discern any "public" benefit (NPPF 133-135) – only private benefit to the Applicant.

Given that this is a retrospective application for an unlawful use, if the current proposal is refused, the Council is requested to take enforcement action to secure the cessation of A4 use.

