The Planning Inspectorate

17 MAY

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Mr S Brooker
Cliff Walsingham & Co
Bourne House
Cores Road
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SL8 5AR

Your Ref: SB/LB/B205/99

Our Ref:

Date: 12 May 2000

Dear Sir

TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) REGULATIONS 1992
KEY LINING

I refer to your letter of 5 May 2000 to Mr Moore, to which he has asked me to reply.

Although the Inspectorate knows of no judicial authority in this matter, the view has long been held that colours, or combinations of colours, whether illuminated or not, do not fall within the statutory definition of advertisement in section 336(1) of the Town and Country Planning Act 1990 (as amended). It is not thought that this could be considered to be a 'device or representation used wholly or partly for the purpose ...'. The Inspectorate considers the word 'device' to mean a heraldic device; and it is not considered that a simple combination of colours could be considered to 'represent' anything in particular. Whilst it may be that this colour scheme may be connected in some way with the company concerned, and may be recognisable as such by some, this is also the case with other well-recognised 'corporate' colours which are not generally considered to fall within the statutory definition of advertisement. Indeed, when the House of Commons debated the proposed amendment to the statutory definition (in Clause 20, as it then was, to the Planning and Compensation Bill 1991), an amendment which sought to include the words 'colour scheme' in section 336 of the 1990 Act was defeated. We consider that this makes clear the intention that colours by themselves should not fall within the statutory definition and are not fall within the statutory definition and are not controllable under the Control of Advertisements Regulations.

I must emphasise that ultimately only the Court can decide this matter.

A copy for this letter has been sent to South Gloucestershire Council.

Yours faithfully

LINDA EMM
Planning Appeals Administration 5

Neon strip lights:

In partly allowing an appeal for various signs at a fast food restaurant, an inspector also gave his interpretation as to whether neon strip lights on the building, constituted an advertisement. The council argued that neon strip lights which had been fixed around the four sides of the building's roof involved development and should be treated as advertisements. The inspector decided that although members of the public might associate the neon lighting with a fast food restaurant, it was not clear that it could be classified as an advertisement. The lighting he observed, did not carry any overt message and in his view it did not constitute an advertisement within the definition of section 336 (1), see Ipswich 17/01/2005 DCS No 056-939-866.



Ipswich: Neon strip lights held not to be an advertisement

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- 9 JUN 1998

Your Ref: JP/280/96

Our Ref: APP/U1620/96/1633

Date: 8 June 1998

Dear Sirs

TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) REGULATIONS 1992
APPEAL: Pizza Hut, Unit 8 Peel Centre, Bristol Road, Gloucester

I refer to the above appeal which has now been with the Inspectorate for a considerable time.

I must first apologise for this delay. Your grounds of appeal raised the question as to whether what was under appeal did constitute an advertisement within the definition in section 336(1) of the 1990 Act. We sent the file to our policy branch but, following a reorganisation of responsibilities, and the moving of that Branch to London, the file went astray. It has only just come to light again, literally at the bottom of a drawer. This delay in dealing with this is very much regretted and is not a true reflection of our normal performance.

We have spoken, and written about the question of coloured banding in the past as to whether it can be said to be an advertisement. Unfortunately, from our point of view, there is no judicial authority on this point. Consequently, the only view we can give is an informal one in the absence of any such authority.

Our informal view is that colour or combination of colours, on their own do not constitute an advertisement within the definition. This is a view that has long been held by us and, in our previous existence, by the Department of the Environment. I accept in the past we have on occasion dealt with these on the basis that the neon banding on the roof of the building formed a surround for the Pizza Hut lettering. Whilst this was not entirely satisfactory solution, it was felt that it was the best way of dealing with the "problem"; and was seen as a way of assisting your clients in what is a grey area.

We are not, as you request, in the position to set any kind of legal precedent in this. Only a Court can consider the matter and give its ruling. All we are able to do is give or informal view. In this case, after very careful consideration of what is being proposed, the conclusion has been reached that what is being applied for here is not an advertisement within the definition in section 336. It is not thought that it can be considered to be a "device or representation used wholly or partly for the purpose...". The word "device" is generally considered to mean an heraldic device; and it is not considered that a simple band of neon, albeit illuminated and coloured, could be considered to "represent" anything in particular. Represent in this context is usually

taken to mean an image or likeness. Nor is it thought that the colour alone could be said to for the purpose of "advertisement, announcement or direction", since that colour may be seen as different things to different people, or nothing at all apart from decoration.

Consequently, it is proposed to decline jurisdiction on this appeal. However, as we have not heard from either party since November 1996, we are not sure whether this is still a live appeal or whether your clients and the Council have resolved the matter amicably. I would, therefore, be grateful if you could let us know the latest position.

A copy of this letter has been sent to the Council, for their information.

Once again, please accept my apologies for any inconvenience the dealy has caused you or your clients.

Yours faithfully

C A MOORE
Planning Inspectorate (AA) 5

The Planning Inspectorate

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16 SEP 1998

Your Ref: MT/EC/340/96

Our Ref: APP/W4705/H/97/0701

Date: 14 SEP 1998

Dear Sir

TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) REGULATIONS 1992
APPEAL: The Rosse Public House, 64 Bingley Road, Saltaire, Shipley
APPLICATION NO: 97/00329/ADV

1. I have been appointed to decide the appeal of your clients, Scottish & Newcastle Retail, against Bradford Metropolitan Council's refusal to permit the display, at the above premises, of two halo-illuminated signs and neon strip lighting. My decision is based on the submitted documents and an inspection of the site.

2. I agree with the general description of the appeal site and its surroundings, contained in your submitted statement. However, I also note the additional detail set out in paragraph 2.1 of the Council's statement.

3. The strip lighting consists of a line of blue neon tubing immediately below the eaves which extends across the frontage and onto both side elevations. There has been much correspondence between the parties prior to the appeal about its status. To date it is unresolved and it therefore falls to me to deal with. The neon lighting is the same colour as that used in the appeal name signs and, for this reason, I accept that it is complementary to them and that its purpose is partly for advertisement as well as for decoration. However, it clearly does not form an integral part of these signs and must be considered as a separate feature.

4. The definition of "advertisement" in Section 336 of the Town and Country Planning Act 1990 is capable of different interpretations. The Council take the view that the strip lighting is a "device which is employed ... partly for the

purposes of advertisement". However, it has been the consistent view of the Inspectorate and its predecessor, the Department of the Environment, that such features are not advertisements within that definition but merely decoration or ornamentation. In the absence of any judicial authority to the contrary, I am not persuaded to depart from this long held view. I therefore conclude that the strip lighting is not an "advertisement " for the purpose of control under the Regulations.

5. The fixing of the neon tubing fittings to the soffits might constitute development and it will be for the local planning authority to consider whether, as a matter of fact and degree, it is development requiring planning permission.

6. Turning to the two name signs, these are similar in design but of different sizes. The one on the front elevation measures 3.5m x 1.6m and the one on the side elevation 2.9m x 1.35m. The signs each comprise individually cut letters with an acrylic purple finish, raised slightly from the stone wall. They would be lit by cold cathode blue halo-illumination.

7. The signs themselves are of an individual and uncompromisingly modern design. Although at odds with the traditional characteristics and materials of the property, I consider that they fit reasonably well onto the stonework and do not look particularly out of place in their non-illuminated form. However, the addition of the bright blue halo-illumination would give them a garish and brash appearance which would be at odds with the restrained character of the building.

8. Furthermore, the premises are in a prominent and sensitive position directly opposite the boundary of the Saltaire Outstanding Conservation Area and with long distance views across the Aire Valley towards Baildon. Although the public house is one of several commercial premises in the vicinity, I consider that the blue light emitted the cold cathode tubes would make the sign on the front elevation stand out stridently in this sensitive location. Its presence would fail to preserve the character and appearance of part of a conservation area which has a very restrained character.

9. The sign on the side elevation faces a residential side street, and I consider that the display of the sign in illuminated form would be particularly intrusive and inappropriate to nearby occupiers.

10. In considering the suitability of the premises for the display of the appeal signs, I have noted your comments about other advertisements displayed in the area. However, Regulation 4(1)(a) enables the Council, or the Secretary of State on appeal, to disregard any advertisements being displayed in a locality, when assessing its suitability for the display of advertisements; and I propose to exercise that discretion in determining this appeal.

11. I conclude, for the reasons set out above, that the display of both signs with this form of internal illumination would be detrimental to the interests of amenity.

12. I therefore decline jurisdiction in respect of the strip lighting and dismiss the appeal in respect of the two name signs.

Yours faithfully

M J SAINSBURY

Advertisement Control Officer

Enforcement notice—section 22 (2) (a) of the Town and Country Planning Act 1971 —whether the installation of floodlights to the exterior of a hotel materially affected the external appearance of the of the building

Royal Borough of Kensington and Chelsea v. C. G. Hotels and Secretary of State for the Environment (Divisional Court of Queen's Bench, Donaldson L.J. and McNeill J., October 17, 1980) [3]

The planning authority served an enforcement notice on the first respondents requiring them to remove floodlights which had been installed on the ground-and first-floor extension of the Prince of Wales Hotel, 16–32, De Vere Gardens, London W. 8. Five ground-floor floodlights had been attached to the wall of the basement area nearest the street. Six first-floor floodlights stood on the balconies formed by the porticoes of the original dwelling-houses and were not attached to the building except by an electricity supply cable.

The inspector allowed the appeal on ground (*b*) stating his conclusion as follows: "I accept that works have been carried out in placing the floodlights on the balconies, or fixing them to the walls of the basement areas and connecting them to the electricity supply, but I do not consider that these works are such as to amount to building, engineering or other operations. In any case the flood-lights are unnoticeable and virtually invisible from the street during daylight, so that they cannot be said to materially affect the external appearance of the building, and are thus excluded from the definition of development by the provisions of section 22 (2) (*a*) of the Town and Country Planning Act 1971.

The planning authority appealed to the Divisional Court.

DONALDSON L.J. said that Mr. Ground on behalf of the planning authority had taken two main points. First of all, he submitted that the inspector and the Secretary of State had erred in deciding that the placing of floodlights on a building in this way did not constitute development and secondly, that the inspector had also erred in holding that the external appearance of the building was unaffected when, although that might be true during daylight hours, the whole purpose of floodlights was to affect the external appearance of the building during the hours of darkness.

He (Donaldson L.J.) would assume, without deciding the point, that Mr. Ground's first submission was correct. Section 22 (2) (*a*) provided "The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land, that is to say—(a) The carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building and (in either case) are not works for making good war damage. . . ."

The works which had been done on this building at most consisted in running electric cables, placing some of the floodlights in position and fixing other of the floodlights in position. On no view had those works, which were the only works, materially affected the external appearance. What materially affected the external appearance, if anything did, was running electricity through the apparatus which had been fixed to or placed on the building. That was not one of the operations which could be, or was claimed to constitute, development. Therefore there was here at most a degree of development which did not affect the external appearance and something done which was not development which perhaps did affect the external appearance. One could not put the two together largely because the Act was never intended to cover this situation. If somebody wanted to cover this situation somebody would have to take additional statutory powers. Meanwhile it was the court's function, as indeed it was the function of the Secretary of State acting in a judicial capacity as he was, to safeguard the freedom of the individual to act in any way that he saw fit consistent with the law. The appeal would be dismissed.

MCNEILL J. agreed.

[3] *P. Ground* (A. Ellery, Borough Solicitor); *J. Hicks, Q.C.* and *B. Mauleverer* (Messrs. Fielder, le Riche & Co.); *Simon Brown* (Treasury Solicitor).