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Date: 26<sup>th</sup> January 2007

# Braintree District Council

**Law and Governance**  
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To: See distribution below

Dear Sir/Madam

**TOWN & COUNTRY PLANNING ACT 1990**  
**APPEAL BY: Mr J P King, King & Co**  
**APPLICATION NO: 06/00732/FUL**  
**SITE: Woodstock, Pods Lane, Dunmow Road, Rayne**

I attach a copy of The Planning Inspectorate's decision letter regarding the above-mentioned appeal.

Yours faithfully



for Head of Law and Governance

Enc

Distribution:

**Planning Services - (Miss S Ennos)**  
Land Charges Officer  
Planning Consultant: M Livingstone  
Councillors: M J Banthorpe, G Butland and M Lynch  
Parish Clerk: Mrs M Whiteside  
Press: Braintree and Witham Times/Halstead Gazette, Editorial Department  
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Essex Chronicle Series Ltd, Editorial Department



# Appeal Decision

Site visit made on 22 January 2007

by **Neil Roberts BA DipTP MRTPI**

an Inspector appointed by the Secretary of State for  
Communities and Local Government

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Date: 26 January 2007

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**Appeal Ref: APP/Z1510/A/06/2026441**

**Woodstock, Dunmow Road, Rayne, Braintree, Essex CM77 6WF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by King & Co against the decision of Braintree District Council.
- The application Ref 06/00732/FUL, dated 2 April 2006, was refused by notice dated 30 May 2006.
- The development proposed is extension of retail opening hours: Sundays and Bank Holidays 10.00am to 4.30pm.

**Summary of Decision: I dismiss the appeal.**

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## Main Issue

1. The main issue is the effect of the development on the level of amenity occupants of nearby dwellings might reasonably expect to enjoy, with particular regard to noise and disturbance.

## Planning Policy

2. There is a dispute as to whether local plan policy RLP39, which relates to the expansion of local firms, is relevant to this case. Whether extension of retail opening hours would constitute expansion of the firm is a matter of semantics. More to the point the wording of the policy is directed at businesses expanding "on to unallocated sites", which seems to me to imply expansion onto an additional area of land. That is not the case here. Be that as it may, as a matter of good development control practice the effects of commercial development on residential amenity should be taken into account in assessing whether a development proposal is acceptable. I shall determine the appeal on its merits on that basis.

## Reasons

3. The appeal site is used as a commercial nursery specialising in trees, with a particular emphasis on the growing and supply of large specimen trees and other 'architectural' garden plants. The site is closely related to a small group of houses on both sides of Dunmow Road and on Pods Lane. The properties most directly affected are likely to be Wales Cottages immediately opposite the appeal site and Old Chapel House on adjacent land to the east. I say that because of the relationship of those dwellings to the customer car park and the points of access and exit.
  4. The specialist nature of the business is such that the number of visits by retail customers is relatively small, surveys indicating a maximum of about 25 daily. I think it reasonable to assume that similar numbers could be expected on Sundays and Bank Holidays if the appeal succeeded. That might be regarded as a relatively small increase in overall retail activity. However, having regard to the close relationship between the car park and neighbouring
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dwellings I consider that the occupants of those dwellings would inevitably experience noise and disturbance on days when they might reasonably expect to have some respite, causing material loss of amenity.

5. I note the reference made to other sites where restrictions on retail opening hours have been relaxed. I do not have the benefit of knowledge of those sites or of their planning background, and have determined this appeal on its own merits. I am also aware that Officers recommended the application for approval. However, that recommendation is not binding on the Council, and in this case I agree with the Council's decision. Although the proposal would create new jobs I attach more weight to the impact of the development on residential amenity.
6. On balance, I consider the noise and disturbance likely to arise from extending the retail opening hours as proposed would cause an unacceptable loss of amenity to local residents.

**Conclusions**

7. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

**FORMAL DECISION**

8. I dismiss the appeal.

*Neil Roberts*

Inspector