14 APR 2008

08/00407/CONDIT

COMPLETE ALL OF THE FOLLOWING SECTIONS

1. **THE SITE (LOCATION AND DESCRIPTION)**

2. **POLICY ISUES (PLAN DESIGNATION)**

3. **OBSERVATIONS**

12.05.08 - Spoke to Mr Knott in response to letter. Have told him that he would be better to sort it out privately and if a counter app' is submitted we are likely to approve it. Also pointed out that if we did permit it he would have to ensure the adverses hours are adhered to as he would also be liable for enf' action. He is aware of this and doesn't want to withdraw

4/6/08 - Description has been altered to reflect the app' & cond' number quoted in the application form. This is the number ~~stated~~ stated as a ref' and should be referred to in description

29 APR 2008

08/004071/COND17

Louise Winson

From: Michael Rice
Sent: 28 April 2008 12:06
To: Louise Winson
Subject: varying hours of operation condition

Hi louise

I've had a look at the issue you raised in your email of 24th

I agree with you that the logical action would be to renegotiate the terms of the lease with his son, if the opening hours in the lease are 7am-10pm

It is, in any case, open to the applicant to operate 10am-3pm within the permitted hours if he so wishes, provided he is not bound by the terms of the lease, which is not a matter for the Council.

The Planning and Compulsory Purchase Act 2004 does give a local planning authority power to decline to determine applications provided certain criteria are met, but this case does not meet those criteria

However, I believe his application constitutes an abuse of the planning process and, as you rightly state, is an attempt to deal with problems with his lessee

I would write back to him saying that the Council is minded not to determine any such application because he is entitled to operate fewer than the permitted hours and does not need to have the condition amended. Also point out to him that his ability to operate fewer hours will, of course, be dependent on the terms of the lease of the property, and, if these terms enable his lessee to operate from 7am-10pm, then the Council cannot change those arrangements

hope this is helpful
Mike

14 APR 2008 08/00407/CONDIT

Please Ask For: Mrs Louise Winson
Direct Dial/Ext: 01455 255898
Direct Fax: 01455 619897
Email: louise.winson@hinckley-bosworth.gov.uk
Your Ref:
Our Ref: LW
Date: 1st May 2008

Mr J Knott
The Gatehouse
Cadeby Lane
Cadeby
Nuneaton
CV13 0BA

Dear Mr Knott

Re: Application for Variation of Hours – The Gatehouse Bed & Breakfast

I refer to your recent application to vary the hours of operation of the tearooms at the Gatehouse Bed and Breakfast, Cadeby Lane, Cadeby.

After consulting with the Council's Legal Services section, I am writing to inform you that the Council is minded not to determine the application. This is because it is possible to operate fewer than the permitted hours without having the condition amended, subject of course to the terms of the lease agreement with your tenant which is a civil matter over which the Borough Council has no jurisdiction. To use the planning process to seek those changes, which are essentially of a private contractual nature is an abuse of the planning system and I would urge you on this basis to withdraw the application.

It is not the role of the Planning Authority to become involved with private disputes, which is clearly the case in this instance. It is far more appropriate for the matter to be resolved between yourself and your tenant following appropriate legal advice.

I shall look forward to your written confirmation that the application is withdrawn

Yours sincerely

On behalf of Tracy Darke
Planning Development Services and Policy Manager

Louise Winson

From: Michael Rice
Sent: 12 May 2008 14:52
To: Louise Winson
Subject: RE: Hours of operation issue

noted-thanks

From: Louise Winson
Sent: 12 May 2008 14:49
To: Michael Rice
Subject: FW: Hours of operation issue

Hi Mike,

Thank you for getting back to me so quickly, I have discussed it with Chris Merriman who agrees that we should go down the route you have suggested.

Thanks again,

Louise.

From: Louise Forman
Sent: 12 May 2008 14:31
To: Louise Winson
Subject: FW: Hours of operation issue

From: Michael Rice
Sent: 12 May 2008 14:26
To: Louise Forman
Subject: Hours of operation issue

Hi Louise,

I've been giving some thought to the issue. It is difficult to find an easy solution because the approach by the applicant is somewhat topsy-turvy. You would normally expect him to apply for an extension of the hours of operation, arguing that the current hours are too restrictive. He is, however, arguing that the hours should be more restrictive

My advice, which is subject to seeing the original report, minute and correspondence, is that a way forward may be as follows;

I assume he is appealing under s.73 to vary the existing condition? If not, then my advice would also apply to an application for permission under s. 70

HBBC, in considering whether to amend the existing condition under a s. 73 application, or to impose a condition restricting the hours to those requested under s 70 application has to have regard to Circular 11/95 dealing with the use of planning conditions

The key paragraphs, in my view, are paras 34, 35 and 42

As you know, these paras deal with the reasonableness of conditions, and a condition may be ultra vires and

therefore unlawful on the grounds of unreasonableness even if it is precisely worded and within the Council`s powers

It may be unreasonable because it is unduly restrictive. Para 35 cites the example of an ultra vires hours of use restriction which would have made it impossible for the occupier to run his business properly

Para 42 is helpful in the current case, in that it states that an unreasonable condition does not become reasonable because the applicant suggests it or consents to its terms (my underlining) The reason given is that the condition will normally run with the land, and may, therefore, still be operative long after the applicant has moved on; it must always be justified on its planning merits

I have your note that the application will need to go to committee because of the number of objections; on reflection, it is no bad thing if it`s going to committee, as a dsecision can be taken which gives the message to the applicant and will help officers if he comes back again

I would suggest that the report to committee contain a summary of the background of the dispute between the applicant and his son, in so far as that is public knowledge, and that the request be assessed against the criteria set out in paras 34, 35 and 42 of Circular 11/95; that this is cross- referenced to when the condition was originally inserted, and the reasons given at that time, with a recommendation that the request be refused on the ground that the proposed condition is unreasonable.

The applicant then has a right of appeal against the reusal; we should defend that and ask for costs; with regard to this last point, keep a note of all your conversations with him where you have endeavoured to persuade him to drop it

Sorry it`s so long; hope it`s helpful

Mike

The reason for original cond was considered acceptable. Therefore imposition of a further condition restricting the hours, unreasonable and unnecessary.

Louise Forman

From: Louise Winson
Sent: 20 May 2008 14:45
To: Louise Forman
Subject: FW: Hours of operation issue

From: Michael Rice
Sent: 20 May 2008 14:25
To: Louise Winson
Subject: RE: Hours of operation issue

Louisa,

Happy to have a meeting; my initial thoughts on your email are that the Committee needs to think through the potential implications of granting the application, and to take a sensible view.

If the committee grants permission, the applicant will expect the council to enforce the restricted hours. If the tenant has a contractual arrangement with the applicant, allowing him to operate longer hours, then he, (Tenant), will resist the council`s efforts to enforce the condition, and it is fairly certain, given the circumstances, that the council will need to take enforcement action; there will, inevitably, be an appeal, and the decision will be taken by a Planning Inspector

If the council refuses the application, (and I come to grounds and reasons later), then the applicant may appeal, in which case we are at the position in the preceding paragraph much earlier, and without the time and expense involved in taking enforcement action. If we can, (and I need to check the relevant circular) I would also advise we pursue costs against the appellant in those circumstances. He may, of course, back off, if we don`t give permission.

My view would be that we make it clear that the application is unusual in that an applicant would normally seek to extend hours, not reduce them

Whilst the position is a bit back-to-front, I am of the view that the principles and guidance set out in Circular 11/95 are relevant to this situation, notwithstanding that it is not the local planning authority which is seeking to impose more restricted hours.

Para 35 states that a condition may be unreasonable because it is unduly restrictive, and if the council was seeking to impose the condition, then I believe it would be challengeable, on the grounds that it would make it impossible for the tenant to run his business properly.

It is difficul,t therefore, to see how the council can accede to a request from the applicant which would be a challengeable decision if it were to impose such a condition in other circumstances

Para 42 is particularly helpful, in that it states that an unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms. It would be perverse for the council to grant permission in these circumstances

The applicant has the ability, if he wishes, to seek a reduction of the hours in any future lease or sale of the land.

I would conclude in your report by stating that if an application had been submitted for use of the premises for the use to which they are now put, and the council, in those circumstances , had sought to impose a restriction on the terms suggested by the applicant, then that condition would have been challengeable given the advice in 11/95

Hope this helps

Mike

From: Louise Winson
Sent: 20 May 2008 12:48
To: Michael Rice
Subject: RE: Hours of operation issue

Hi Mike,

As discussed, please find attached the committee report for the hours of operation condition. There is some concern that there is no planning grounds for refusing the application and it has been suggested that we may nave to approve it with a note to applicant that if the hours were breached, it would not be expedient to take action as we have previously approved longer opening hours.

Can we have your advice please? I think Tracy would like to set a meeting up over here about it if necessary.

Thanks,

Louise

From: Michael Rice
Sent: 12 May 2008 14:52
To: Louise Winson
Subject: RE: Hours of operation issue

noted-thanks

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Sent: 12 May 2008 14:49
To: Michael Rice
Subject: FW: Hours of operation issue

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Sorry it's so long; hope it's helpful

Mike

Cathy Horton

From: Simon.Hale@ellis-fermor.co.uk
Sent: 21 May 2008 17:08
To: Cathy Horton
Subject: RE: Cadeby Tea rooms

Good afternoon,

Mr Knott Senior's comments are at odds with the written views of his own solicitors, Spearing Waite and his own barrister. They have acknowledged that Mr Knott Junior does have a lease and Mr Knott Senior has gone so far as to offer Mr Knott Junior a renewal lease under the terms of the Landlord and Tenant Act 1954. Mr Knott Junior has been in exclusive occupation and has paid rent and service charges due under the lease.

There is some dispute between the parties over the exact length of the current lease. Mr Knott Senior believes the term will expire in April 2009 and Mr Knott Junior believes that the term will expire in April 2015.

It is unfortunate that Mr Knott Senior should now make representations to you which are completely contradictory to the written correspondence of his solicitors and the terms of his own Section 25 Notice.

Yours

Simon Hale

From: Cathy Horton [mailto:Cathy.Horton@hinckley-bosworth.gov.uk]
Sent: 21 May 2008 16:41
To: Simon.Hale
Subject: RE: Cadeby Tea rooms

Mr Hale

I have spoken to Mr Knott Senior who claims that his son does not have a lease, but a subject to contract document signed in 2000. I was hoping for clarification from your client.

Cathy Horton

From: Simon.Hale@ellis-fermor.co.uk [mailto:Simon.Hale@ellis-fermor.co.uk]
Sent: 21 May 2008 16:23
To: Cathy Horton
Subject: Cadeby Tea rooms

Good afternoon,

We are instructed by Mr R Knott, the current tenant of the above tea rooms.

It is our client's understanding and belief that he has the benefit of a 15 year lease which commenced on 12th April 2000.

Yours faithfully,

Ellis-Fermor & Negus

Ellis-Fermor & Negus

Regulated by the Solicitors Regulation Authority

Partners names available on request

Ripley Office
5 Market Place, Ripley, Derbyshire, DE5 3BS
Tel: 01773 744744 - Fax: 01773 570047

Long Eaton Office
35 Derby Road, Long Eaton, Nottingham, NG10 1LU
Tel: 0115 972 5222 - Fax: 0115 946 1152

Beeston Office
2 Devonshire Avenue, Beeston, Nottingham, NG9 1BS
Tel: 0115 922 1591 - Fax: 0115 925 9341

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ELLIS-FERMOR & NEGUS

Please consider the environment before printing this email.

Spoken to Mr Knott Senior who states Son does not have a lease, but a informal agreement

21/05/2008

21 AUG 2008

The Gatehouse
Cadeby Lane
Cadeby
Nuneaton
Warks CV13 OBA

19th August 2008

Dear Sir/Madam

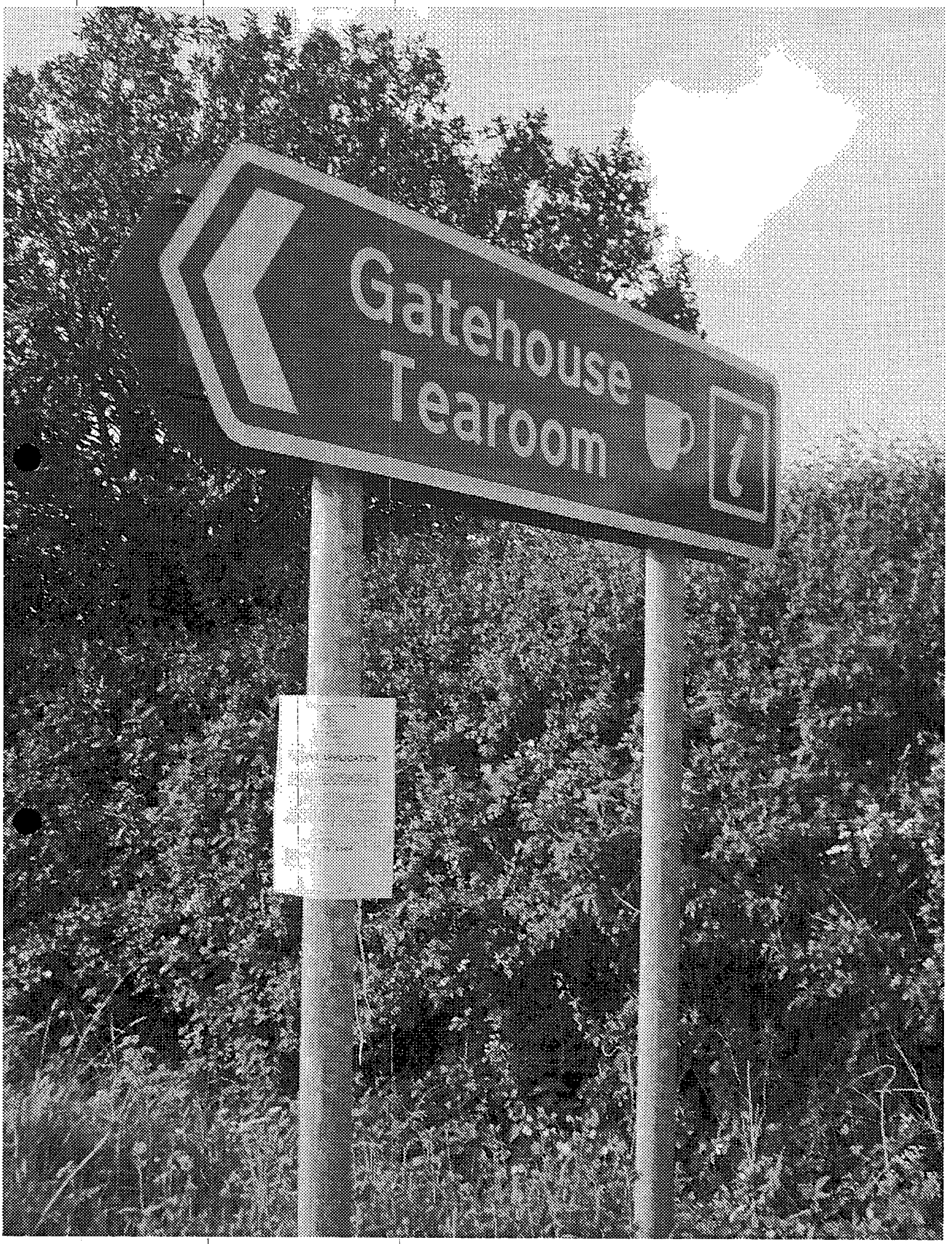
Please find enclosed documents numbered 1 ~~-~~ 10

Yours sincerely

John Knott

DEVELOPMENT SERVICES
21 AUG 2008
RECEIVED

cc JoE
cc UBBC
cc SSKnott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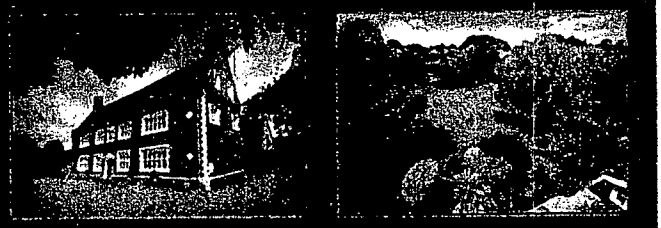

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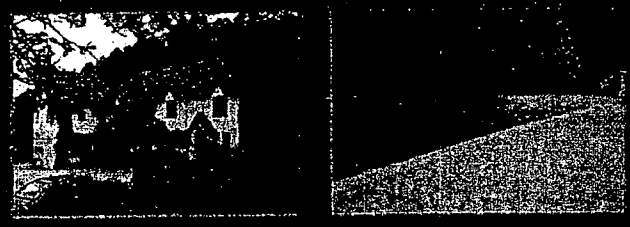

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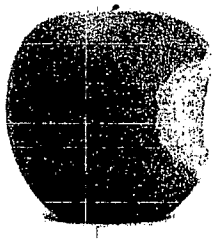

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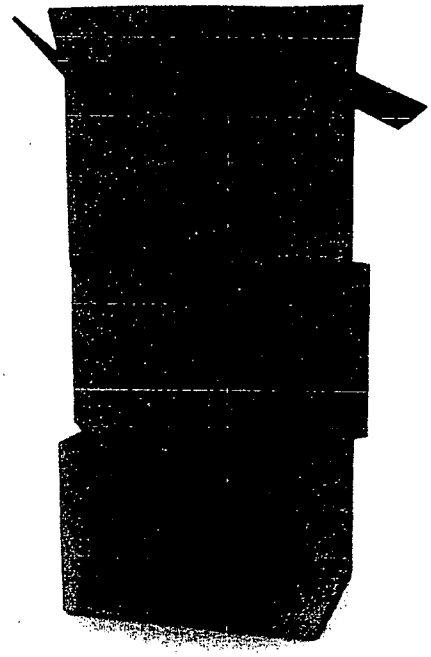

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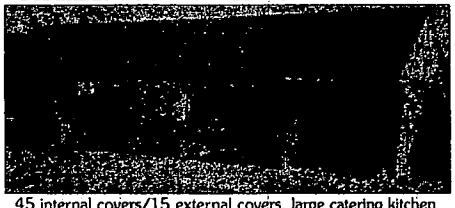

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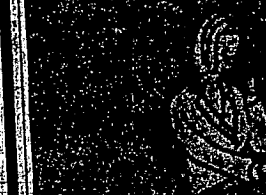

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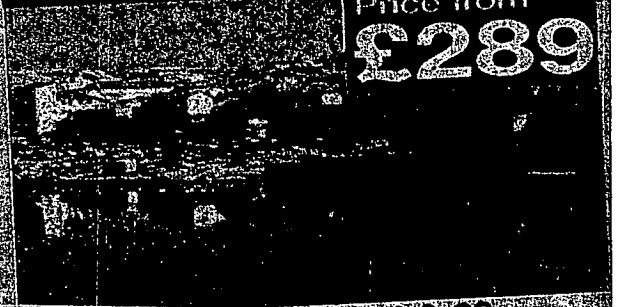

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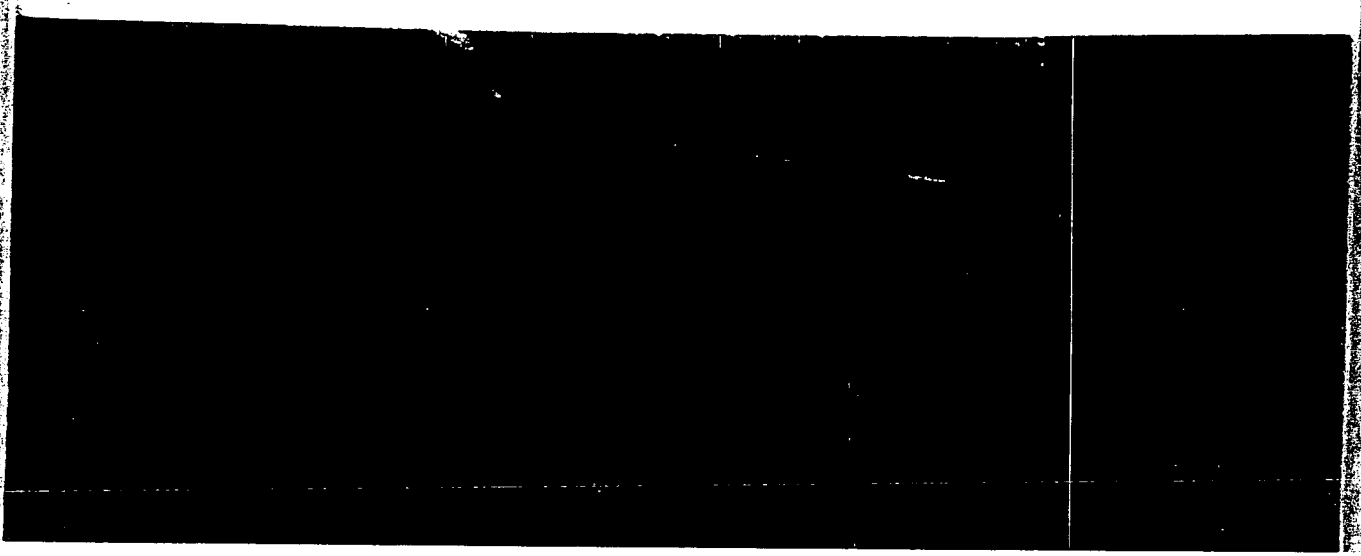

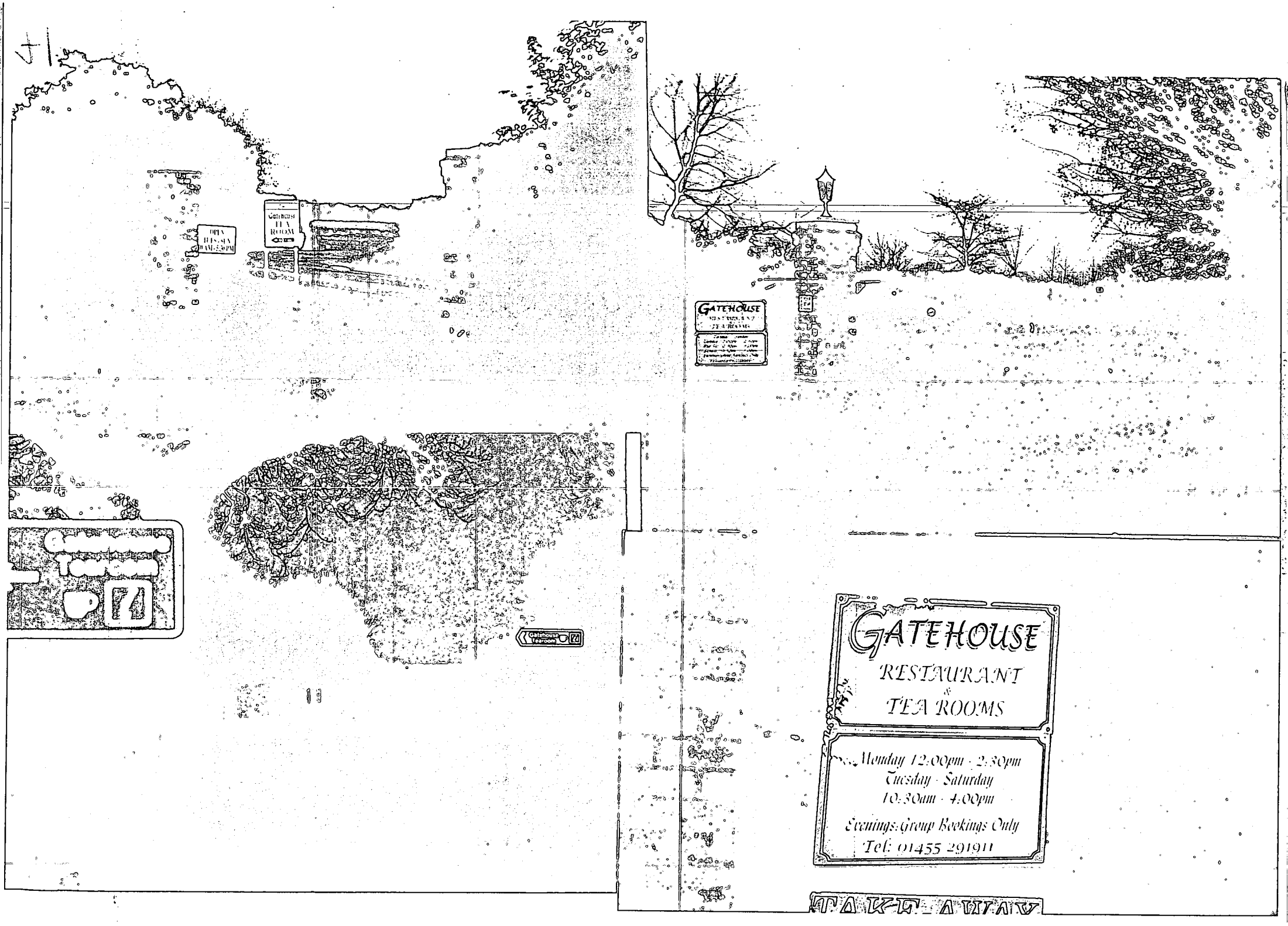
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