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Council Reference 4/0028/82E

PLANNING DEPARTMENT DACORUM DISTRICT COUNCIL					
Ref.			Ack.		
C.P.O.	D.P.	D.C.	B.C.	Admin.	File
- 9 JUL 1982					
2) JW					
3) JB					

Messrs Clive Travers and Company  
Solicitors  
11-13 Alexandra Road  
HEMEL HEMPSTEAD  
Herts  
HP2 5BS

Your reference  
MVH/JH  
Our reference  
T/APP/5252/C/82/23/G4  
Date

6 JUL 1982

RETURN TO  
MPS FOR  
COMMITTEE  
REPORT.

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9  
APPEAL BY MR E PICCO AND MR H REEVES TRADING AS THE CHIMNEY PIECE  
LAND AT PICCO NURSERIES, LEIGHTON BUZZARD ROAD, HEMEL HEMPSTEAD, HERTFORDSHIRE

- I refer to the appeal, which I have been appointed to determine, against an enforcement notice served by the Dacorum District Council concerning the above mentioned land. I held an inquiry into the appeal on 2 June 1982.
- The date of the notice is 26 November 1981.
  - The breach of planning control alleged in the notice is that the said land has been developed by the making of a material change in part of the land (indicated by a black verge and green hatching on the plan accompanying the notice) to a use for the purpose of retail sales (stone fireplaces) and ancillary showroom, office and storage area without the grant of planning permission required in that behalf.
  - The requirements of the notice are to discontinue the use of the said land for the purpose of retail sales (stone fireplaces) and ancillary showroom, office and storage area and restore the said land to its condition before the said development took place.
  - The period for compliance with the notice is 6 weeks.
  - The appeal was made on grounds 88(2)(a)(b) and (h).
- The evidence was not taken on oath.

SUMMARY OF DECISION

4. The formal decision is set out in Paragraph 28 below. The appeal fails, the notice is varied and upheld but the period for compliance with the notice is extended.

SITE DESCRIPTION

5. The appeal site of just under 2 acres lies on the south-western side of Leighton Buzzard Road in mainly rural surroundings some 2 miles north of the centre of Hemel Hempstead, Hertfordshire.

6. The greater part of the site is occupied by a nursery and garden centre with a bungalow located on the north-western boundary. Towards the south-west corner is a small area containing 2 wooden structures, a wooden shed, a concrete hardstanding and a parking space for up to 4 vehicles.

7. At the time of my inspection one of the structures was in use for the storage of stone, tiles and chimney piece components. The second structure contained a small office and a showroom in which a number of fireplaces were displayed together with a small stock of brass fire irons, coal boxes and similar items. On the hardstanding outside were stocks of stone, paving tiles and sand.

8. About 250 yds to the south-east of the site is a small residential estate and a pumping station. Eastwards is open farm land. Adjacent to the site to the north-west is a gas distribution centre.

#### THE CASE FOR THE APPELLANTS

9. Mr H Reeves was self-employed and had started his small enterprise, known as the Chimney Piece, some 2½ years previously. He now employed 3 persons and a part-time clerk. He had had considerable experience in the design of fireplaces and had designed and installed 300 fireplaces during the period he had been in business on his own account.

10. The fireplaces were constructed in natural materials such as differing types of stone, including marble, and customers could either buy the design and the materials and build the fireplace themselves or the fireplace could be installed by one of the 2 fitters employed.

11. He considered that since, stone, concrete blocks, paving stones, paving tiles and sand were normal sales from a nursery centre his business could be considered as ancillary to the main use of the appeal site. Some materials he sold were for garden and not fireplace use. In relation to the size and sales from the garden centre his business was de minimis.

12. No manufacturing was carried out at the site. A small diamond saw was used solely for cutting stone to the size required for a designed fireplace. Up to 20 tons of assorted stone, 10 cubic yards of sand and about 1 ton of cement, in bags, was held as stock. A 15 cwt Transit van and a 22 cwt Bedford lorry were operated.

13. Alternative premises were extremely difficult to find and those which afforded easy access and an adequate yard for the essential storage of stone and tiles were far too expensive for the type of business that was being undertaken. Some 80% of the business was in the sale of stone.

14. Some expansion of the business could occur but this would not require any extension of the present area at present being used.

15. Mr E Picco had owned and run the garden centre and nursery in which Mr Reeves operated his business for the past 12 years. Most of the materials sold by Mr Reeves for making fireplaces was also sold for garden and other purposes by the centre. The 2 businesses were complementary in respect of stone and similar sales.

## THE CASE FOR THE PLANNING AUTHORITY

16. The appeal site was situated within the Metropolitan Green Belt and shown as such on the approved County Structure Plan and the Dacorum District Plan. Details of the planning history of the nursery and appeal site were submitted. On 28 May 1981 an application for permission to change the use of an existing building on the appeal site to a showroom, general office and storage for the display and sale of fireplaces and associated products was refused.

17. The refusal was based on the grounds that, the site was within the Metropolitan Green Belt wherein permission would only be given for use of land, the construction of new buildings, changes of use or extension of existing buildings for agricultural or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need had been proven and the proposed development was unacceptable in the terms of that policy. Additionally the introduction of an industrial use on the site would be inappropriate in the predominantly rural area in which it was located and the development would be contrary to the provisions of Policies 1, 9 and 48 of the Dacorum District Plan.

18. The land, of which the appeal site formed a part, was a well-established and substantial garden centre engaged in the display and retail sale of plants and shrubs together with a wide range of ancillary garden products. The business operated under the name of The Chimney Piece occupied an area of some 63 sq yds of covered building space and offered a comprehensive fireplace design and advice service to the public. Supporting that service was a showroom area displaying completed fireplaces, a drawing office and equipment to cut and finish stone. The activity carried on was not so small as to be regarded as de minimus.

19. The fact that the appeal activity used a common material with that sold at garden centre premises for walling and other garden uses, was not evidence that that activity was ancillary to a garden centre. The nature of the fireplace business was a separate enterprise unrelated to the garden centre and did not, of necessity need to be located within it. The appeal against the notice under ground 88(2)(b) could not be sustained.

20. The development was not one that was exempted from the relevant policies applicable to the Metropolitan Green Belt and there were no special circumstances that would justify an exception being made. If the retail shop was permitted it could change hands, other classes of goods could be sold and a dangerous precedent would be set.

21. Although the notice specified a period of 6 weeks for compliance there would be no objection to an extension of the period to 6 months.

## CONCLUSIONS

22. I am unable to accept the contention that the business, involving the design of fireplaces, the sale of materials for their construction by customers or the sale and installation of complete fireplaces, can be regarded as ancillary to the normal activities and sales of a garden centre. The 2 enterprises at present being operated from the appeal site are, in my opinion, separate entities having no dependence on each other and the fact that the sale of some materials, such as stone, is common to both is coincidental. From the time, therefore, some 2½ years ago, when the fireplace business was started there was a breach of planning control. Planning permission for the development was required and not obtained and the appeal fails under ground 88(2)(b).

23. On the planning merits of the case I accept that your clients' business does not attract, at present, a significant amount of vehicular or pedestrian traffic. At the same time the nature of the enterprise is such that there is no need for it to be situated in the present location which lies within the Metropolitan Green Belt where necessarily restrictive policies must apply and where there is a presumption against any new development unless for agriculture or similar appropriate purposes.

24. The circumstances pleaded are insufficient to justify an exception being made to those policies and the development cannot therefore be allowed to remain indefinitely in its present location. I take into consideration, however, that your clients' business is a viable one and the livelihoods of 4 persons are now dependant upon its continuation. In view of that and the Government's view, set out in Circular 22/80, that the implementation of policies should be consistent with, and should not frustrate, their intentions for the regeneration of the economy and the encouragement of private business I propose to take the unusual course of extending the period for compliance with the notice to 2 years.

25. Such an extension will give reasonable time for the finding of an acceptable alternative site for the enterprise without undue disruption of the present activities. It also places a finite period for the continuation of the use since, although suspended, the enforcement notice survives.

26. Although ground (g) was not pleaded I have considered it and take the view that the requirement, "to restore the land to its condition before the said development took place" to be too onerous and I propose to delete this from the notice.

27. I have taken into account all the other matters raised at the inquiry but do not find them sufficient to outweigh the considerations which have led to my decision.

#### FORMAL DECISION

28. For the above reasons and in exercise of the powers transferred to me, I hereby direct that the notice be varied by the deletion of the words, "and to restore the land to its condition before the said development took place". I further direct that the words "six weeks" be deleted and the words, "two years" substituted. Subject thereto I hereby dismiss your clients' appeal, uphold the notice, as varied, and refuse to grant planning permission for the development to which the notice relates.

#### RIGHT OF APPEAL AGAINST DECISION

29. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Gentlemen  
Your obedient Servant



P DRAKE-WILKES OBE FRICS FBIM  
Inspector

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