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Council reference 4/0033/84E

CHIEF EXECUTIVE
OFFICER

9 JAN 1985

File Ref.
Refer to *CPO 9/1*
Cleared

Your reference

Mr G Greco
3 Albert Street
TRING
Herts
HP23 6ALL

1) MB
2) JB
3) JN
4) TEAM 2

Our reference

PLANNING DEPARTMENT
DACORUM DISTRICT COUNCIL

T/APP/A1910/C/84/57/P6

Date Ref.

Ack.

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Received

JAW -9 JAN 1985

Comments

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
LAND AND BUILDINGS AT CLEMENT PLACE, TRING

1. As you know I have been appointed by the Secretary of State for the Environment to determine your appeal. Your appeal is against an enforcement notice issued by the Dacorum District Council concerning the above mentioned land and buildings. I held an inquiry into the appeal on 17 July 1984.

2. a. The date of the notice is 16 December 1983.

b. The breach of planning control alleged in the notice is failure to comply with condition No 1 subject to which planning permission was granted on 17 December 1979 in that notwithstanding the fact that Mr W W Keele has ceased to use the land for the purposes of light engineering (as defined in the Town and Country Planning (Use Classes) Order 1972) and storage the land is still used for light engineering.

c. The condition which is alleged not to have been complied with is: this permission shall not enure for the benefit of the land and the use hereby permitted shall cease when Mr W W Keele ceases to use the garages and building for the purposes referred to in Condition 2 hereof, namely, for the purposes of light engineering (as defined in the Town and Country Planning (Use Classes) Order 1972) and storage, and in particular shall not be used for any purpose within Class IV and X of the Order herein referred to.

d. The requirements of the notice are:-

1. Cease the use of the land for light engineering.

2. Remove from the land all equipment connected with the use of the land for light engineering.

e. The period for compliance with the notice is within one calendar month.

f. The appeal was made on grounds 88(2) (a), (e) and (g).

3. The evidence was taken on oath.

THE SITE AND ITS SURROUNDINGS

4. The appeal relates to a garage workshop building, of about 30 ft by about 20 ft, constructed with walls of brick and concrete blocks, with a corrugated asbestos roof. It is situated in the north-east corner of Clement Place, an open rear yard area lying behind mixed shopping and residential properties fronting the east side of Akeman Street. To the north, beyond the yard, is a private car park, and abutting to the south-east is a new local authority residential development nearing completion for elderly persons, known as 'Oak Lawn'. Bordering the south side of Clement Place are 'Graces Maltings', a former industrial building which has recently been converted into residential units by the Council, but as in the case of 'Oak Lawn' does not have access from Clement Place.

FACTS NOT IN DISPUTE

5. In September 1950 planning permission was granted for a block of 8 lock-up garages on this east side of Clement Place, the application being made by the late Mr W W Keele. In 1955 it came to the planning authority's notice that the northern 4 garages of the block were being used as an engineering workshop and store, the use having commenced in 1952. In December 1955 planning permission was granted for front extensions to the garages, and for their use as an engineering workshop, subject to conditions limiting the use to light industry only, and requiring the use to be discontinued after 31 December 1960. The appeal building, which was formerly 4 lock-up garages was consequently extended. A series of temporary planning permissions were then granted between 1962 and 1976 for the continued use of the appeal building, as, variously, 'an engineering workshop', for 'storage and assembly', for 'storage and light assembly', and 'storage and light engineering'. These were subject to similar conditions limiting the duration of the permission and restricting the use, except that the reasons given in respect of the 1974 planning permission were 'so as not to prejudice the proper development of the site and enable the local planning authority to review the situation', and 'to restrict the use of the property and prevent unsatisfactory extension of that use'.

6. On 17 December 1979 permission was granted subject to the personal condition the non-compliance with which is the allegation of the Notice under appeal, subject to a further condition, Condition (2) that 'the garages and buildings shall not be used other than for the purposes of light engineering (as defined in the Town and Country Planning (Use Classes) Order 1972 and storage, and in particular shall not be used for any purpose within Classes IV and X of Order herein referred to'. The remainder of the original block of 8 garages has recently been demolished. In March 1974 the predecessor local authority reported that the building was at that time occupied by a firm using it for the repair and servicing of motor mowers. In July 1976, the present Council's Enforcement Officer found the building being used for the repair of vehicles, but at the end of August that year the use appeared to have ceased. In October 1983 it came to the Council's notice that you were using the appeal building for car repairs. It was confirmed at the Inquiry that your present use for the repair and maintenance of cars first began in July 1981, but that the use had been carried on by predecessor occupiers, going back to 1970. The Council on 24 November 1983 made the Dacorum District Council (Clements Place, Tring) Compulsory Purchase Order 1983, relating to the south-east part of the appeal premises, the land being required in connection with the construction of elderly persons' dwellings, ie 'Oak Lawn'.

YOUR CASE

The material points are:-

7. Much of the case presented on your behalf at the Inquiry attacked the validity of the Notice, and relied on claims of bias and malefide on the part of the Council in issuing the Notice, and of equitable estoppel, which ought to render the Notice void 'ab initio'. These it is alleged arise from the Council's need to acquire part of the appeal premises in connection with its adjacent 'Oak Lawn' elderly persons' residential development, and to enable your landlord to gain vacant possession of the appeal premises, in connection with his sale of the land to the Council, and in consideration for other land exchanges. This is confirmed by the fact that the appeal premises are the subject of a Compulsory Purchase Order, which has been made expressly for the purpose of gaining possession of part of the appeal premises.

8. It is maintained that Section 87(1) of the Act (as amended) gives the Council power to issue an enforcement notice only 'if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations...'. However, the Council's motives in this instance go beyond these proper planning considerations. It has declared an interest in acquiring and getting possession of the appeal site. This gives rise to both the presumption of, and actual, bias, and either is sufficient in law to render the Notice void, and demonstrates the absence of fairness in the administration of planning policy, and a breach of natural justice. Furthermore, on grounds of equitable estoppel it is contended that the Council were fully aware of the breach, and clearly condoned and supported it. There is clear evidence of this in the letter submitted, dated 29 November 1983, from the Council explaining with an accompanying plan how the appeal premises could accommodate 3 cars, and continue to be used as a workshop for your business.

9. On ground (e) pleaded, it is maintained that since 1955 a light engineering and storage use has taken place at the premises. The statutory register of planning decisions confirms that on 14 December 1955 planning permission was granted to a Mr M H Keele on a temporary basis, and renewed over the years, the last being on 17 December 1979. However, reliable evidence from local residents shows that the personal condition in question was never exercised by the late Mr W W Keele, who died 2 years ago, and in 1979 was some 85 years old. Rates on the premises over the years have been paid by various individuals in fact, although rating information is not available prior to 1962. Mrs Mennell has been resident at No 11 Akeman Street since 1970, and was a tenant of the late Mr W W Keele. She testifies that Mr Keele never occupied the appeal premises over this period, and was elderly at the time the 1979 planning permission was granted. Mr Bass has been employed in a nearby shop, and at times resident at it, since 1974. The late Mr Keele was his landlord and known to him, and he also testifies that Mr Keele never exercised the 1979 planning permission himself.

10. The subject of the personal permission in question, the late Mr Keele, chose, therefore, not to exercise that permission, but continued to sub-let to other individuals. The breach of condition is consequently voidable and does not exist. On the planning history, it is contended that there has been a continuing breach since 1955, when the use of the building for engineering began, and planning permission is not, therefore, required for its continued use by you.

11. On the planning merits of the deemed application under ground (a), the condition should be discharged as a light industrial use has continued since 1955. It has never been exercised by the late Mr Keele, but by a number of different persons instead. The activity carried on by you may be a non-conforming one, but in accordance with Circular 22/80 and the encouragement of small businesses, this fact alone is not sufficient reason in itself for refusing planning permission. There must be specific and convincing objections, yet there are no reasonable grounds of objection to the present use. A valuable service is provided by you, and there are no objections to the activity. On the contrary, there is nothing but support from individuals, a Ward Councillor, and the Tring Town Council.

12. Under ground (g) pleaded, in connection with the steps to be taken to remedy the breach if the notice is upheld, requirement (2) is considered to be excessive. The appeal building has some continued planning use as a garage, and it is unreasonable to have to remove items of equipment connected with light engineering, ie the repair of motor cars. Furthermore, the Council does not contest a continuing storage use, but the effect of requirement (2) is to limit this use and is in consequence excessive.

THE CASE FOR THE PLANNING AUTHORITY

The material points are:-

13. The claims on behalf of the appellant of 'ultra vires' action, bias, malefide, and equitable estoppel in connection with the Notice are considered to be irrelevant to the present appeal and to grounds (a) to (h) of Section 88(2). The breach of the rules of natural justice complained of should be pursued in the High Court, by seeking an order of 'certiorari', following appeal on grounds under the Town and Country Planning Act.

14. On legal ground (e) pleaded, the planning condition was attached to a planning permission granted on 17 December 1979. No such condition was attached to any earlier grant of planning permission. It follows, therefore, that the earliest date on which failure to comply with the condition could have occurred was 18 December 1979. However, for ground (e) to succeed it must be shown that the breach, that is to say the use of the appeal building by a person other than Mr W W Keele, occurred before the beginning of 1964. The appellant has clearly misunderstood the breach alleged, and the ground must fail. However, it has been open to him to make a planning application to continue his present use, or to apply for an Established Use Certificate.

15. With regard to the planning merits, and whether the condition should be discharged, the Council has never accepted that a permanent use of the premises for such purposes is suitable, as it would prejudice the redevelopment of the appeal site itself or the surrounding area. A commercial light engineering and storage use was not considered a use which could be accepted on a permanent basis, because of the undesirable effects on adjoining properties. On the Tring Town Centre Map 1967, the appeal site is shown in 'an area in need of detailed replanning', and the accompanying Report stated that 'expansion of business and industry in the Akeman Street area should be resisted and existing firms encouraged to move... It is proposed that Akeman Street be redeveloped with housing'.

16. Planning permissions granted in 1969, 1972 and 1974 were limited to a period of 12 months or less. In 1976, the Council granted a temporary planning

permission for 3 years to enable the matter to be reconsidered in the context of the Tring Town Plan, then in preparation. By October 1979, the Council was planning schemes for 'Oak Lawn' and 'Graces Maltings', and it was not considered appropriate for the industrial use to continue indefinitely. To make it clear that the Council was not prepared to consider further renewals of the permission, the personal condition in question was imposed, thus making it clear that the use would cease when the late Mr Keele ceased using the garage and buildings. The continued use of the building for light industrial purposes would be seriously detrimental to the amenity that occupants of surrounding residential properties would expect to enjoy.

17. As to ground (g) pleaded, the Council views the storage use also the subject of the 1979 planning permission as ancillary to the light engineering use. Both uses would be lost if the Notice is upheld, although the requirements do not mention the storage use. However, compliance would be difficult to enforce if requirement (2) did not remain.

CONCLUSIONS

18. As to the allegation of bias and malefide, I find that the Council does have an interest in acquiring or gaining possession of part of the appeal premises, and this is, of course, its reason for making the Compulsory Purchase Order. However, and from my consideration of the circumstances as a whole relating to the issue of the Notice, I am not satisfied that the Council's reasons for issuing the Notice are improper, or fail to serve a proper planning purpose, so as to fall outside the scope of Section 87(1) and be 'ultra vires'.

19. Equitable estoppel is also pleaded, but it has consistently been held in judgments that it is inappropriate to introduce into public administrative law from private law such concepts. Lord Scarman has stated that equitable estoppel has no place in the law of planning control (*Newbury District Council v Secretary of State for the Environment; Newbury District Council v International Synthetic Rubber Company* (1980) 2 WLR 379). The Council's awareness of the alleged breach does not, in my opinion, restrict it from either exercising its proper statutory powers against the breach, or the reverse, if as a local planning authority, 'they consider it expedient to do so' in accordance with Section 87(1). The exercise of the power is discretionary. I find that although the letter of 29 November 1983 from the Council suggests how you could give up part of the appeal building and still accommodate 3 vehicles, and that you 'will still be able to carry on his business', this did not estop the Council from subsequently issuing the Notice.

20. I turn now to legal ground (e) pleaded, that the breach of planning control alleged occurred before the beginning of 1964, and that established use rights exist for your present use of the premises, regardless of the 1979 planning permission, with which non-compliance is alleged. The facts show that the series of limited duration planning permissions granted for the use of the building before 1979 were not subject to any personal planning condition at all. The use variously for an 'engineering workshop', 'light engineering', 'assembly' and 'light assembly' was authorised by such planning permissions before the beginning of 1964, and after 1964. For the use to be established in law it must either have been begun before the beginning of 1964 without planning permission and continued since the end of 1964, or, have begun before the beginning of 1964 under a planning permission subject to conditions or limitations which have either

never been complied with or have not been complied since the end of 1963. The latter clearly cannot be so in the present case, and the condition was not imposed until the 1979 planning permission. Similarly, the former cannot apply as the use was in fact begun with planning permission.

21. The facts also show that a 'light engineering' use in broad terms was sanctioned by the series of limited duration planning permissions granted, which was implemented and carried on from before the granting of the 1979 planning permission to which the Notice relates. Nevertheless, that planning permission was subject to 2 conditions which were closely linked. Firstly, the permission was to be exercised only by the late Mr W W Keele for specific purposes only set out in Condition 2. The fact that retrospectively the late Mr W W Keele never exercised the permission does not, in my view, render Condition 1 in question invalid; you as the appellant are not that named person, and must be in breach of that Condition. Furthermore, I interpret Condition 2 as limiting the light engineering use to be exercised by that person to one within the definition of Class III, 'light industry' in the Town and Country (Use Classes) Order 1972, and outside Class IV, ie 'general industry'. However, the repair and maintenance of vehicles cannot, in my view, fall within the definition of 'light industry', and is accepted in planning law as a use either falling within Class IV or being 'sui generis'. It follows, therefore, that you, and your predecessors occupying the building for the same purpose are also in breach of Condition 2 of the 1979 planning permission. For these reasons I find that the breach alleged has occurred, and ground (e) pleaded fails.

22. On the merits of the deemed planning application, I am of the opinion that the principal issue for determination in the case is whether the discharge of Condition 1 in question, and the continuation of your use of the appeal building, would be unduly detrimental to the amenity of adjacent and surrounding residential development. The appeal building now abuts at one end the new 'Oak Lawn' residential development for the elderly, and enclosing and overlooking the south side of Clement Place is the 'Graces Maltings' building, recently converted into residential units. Although there is a frontage of shops at street level to this side of Akeman Street, there is also residential accommodation above the shops backing onto Clement Place, which is relatively small, quiet and intimate in character. In my opinion, it is without doubt dominated by residential development enclosing it, and in this context I find that a workshop, and the use carried on by you in it, is wholly out of place. I appreciate that, in accordance with Circular 22/80, the non-conformity of such a use in a residential area is not sufficient itself to warrant refusal. In this instance, however, I consider that notwithstanding the letters of support there does exist a strong objection on grounds of general and visual intrusion, noise, and disturbance from the comings and goings of vehicles. For these reasons, I find that the use is out of keeping with, and detrimental to, the residential environment now surrounding the appeal building, and especially that created specifically for the use and benefit of elderly citizens, and ground (a) pleaded should also fail.

23. I have also considered ground (g) pleaded, relating to the reasonableness of the steps required to be taken to remedy the breach, but find the requirements of the Notice to be appropriate and proper in the circumstances. However, while not pleaded, I consider, under ground (h), that the period for compliance of one month only is unduly short, bearing in mind the recommendations of Circular 22/80 towards the protection of small businesses subject to enforcement action. In order not to disrupt your business unduly, and to allow time for you to seek alternative premises, I propose to extend the period for compliance to six months.

24. I have taken account of all the other matters raised but consider, however, that they are outweighed by those considerations which have led me to my decision.

FORMAL DECISION

25. In exercise of the powers transferred to me, and for the reasons given above, I hereby direct that the Notice be varied as follows:

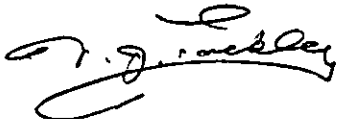
In paragraph 2 lines 2 and 3 by the deletion of the words 'one calendar month', and their substitution by the words 'six calendar months'.

Subject to this variation, I hereby uphold the Notice, dismiss your appeal, and refuse to discharge the condition in question.

RIGHT OF APPEAL AGAINST THE DECISION.

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

I am Sir
Your obedient Servant



D J TACKLEY BSc(Econ) FRTPI
Inspector

ENC

APPEARANCES

FOR THE APPELLANT

Mr K Pegg

- Partner, Auto Cleaning Services, Clement Place, Akeman Street, Tring, Herts.

He called:

Mr M Bass

- Local resident of 13/14 Akeman Street, Tring, Herts.

Mrs M Mennell

- Local resident of 11 Akeman Street, Tring, Herts.

FOR THE PLANNING AUTHORITY

Mr J Vaughan

- Assistant Solicitor, Dacorum District Council.

He called:

Mr D Noble BA MRTPI MRSH

- Principal Assistant Planner, Dacorum District Council.

DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- Document 2 - Notice of the appeal and inquiry dated 25 June 1984.
- Document 3 - Letter dated 4 July 1984 from the Town Council of Tring.
- Document 4 - Five letters dated 4-11 July 1984 from local residents.
- Document 5 - Letter dated 8 July 1984 from Councillor R J Tucker.

Submitted on behalf of the appellant:

- Document 6 - Relevant planning decisions (Town Planning Register Sheets).
- Document 7 - Times Law Report, 7 December 1983, relating to Ynys Mon-Isle of Anglesey Borough Council v Secretary of State for Wales and Another.
- Document 8 - Letter to the appellant's Solicitors dated 29 November 1983 from Dacorum District Council relating to the Dacorum District Council (Clements Place, Tring) Compulsory Purchase Order 1983.

DOCUMENTS (CONT'D)

- Document 9 - Letter dated 16 July 1984 to the appellant from Mr E A Alexander, of Wilkins and Son, Solicitors, Tring relating to a site meeting in September 1983 with officers of Dacorum District Council.
- Document 10 - Documents comprising the Dacorum District Council (Clements Place, Tring) Compulsory Purchase Order 1983.

Submitted on behalf of the Council:

- Document 11 - Planning history.
- Document 12 - Policy background.

PLANS

- Plan A - Attached to the Enforcement Notice under appeal ... 1/2500.
- Plan B - Appeal site; Oaklawn Elderley People's Dwellings; land uses (Council) ... 1/500.