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CHIEF EXECUTIVE
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17 FEB 1989

File No.
 Refer to *CPA 17/2*
 Cleared

Mr R M Gold
 33 Hunting Gate
 HEMEL HEMPSTEAD
 Herts
 HP2 6NX

Your reference *1 FEB*
2) DA
 Our reference *3) RB.*
 T/APP/A1910/A/88/102379/P6

Date **16 FEB 89**

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
 APPEAL BY MR P C HALL
 APPLICATION NO: 4/0085/88

1. I have been appointed by the Secretary of State for the Environment to determine the above appeal against the decision, by the Dacorum Borough Council, to refuse planning permission for the erection of five tunnel buildings for intensive rabbit production on land adjacent to the sewage works, London Road, Markyate, and for the use of the land for the stationing of a mobile home. I have considered the written representations made by you and by the Council, and those made to the Council by the Markyate Parish Council and other interested persons. I inspected the site on 17 January 1989.
2. As the right of appeal is vested in the applicant for planning permission I propose to treat this appeal as having been made by Mr Hall alone, even though the appeal form names Peter Charles and Donna Anne Hall as joint appellants.
3. Before considering the merits of your client's scheme I will deal with your submission that the proposed tunnel structures, being agricultural buildings, could be erected without the permission of the local planning authority under the provisions of the General Development Order. The Order now in force is the Town and Country Planning General Development Order 1988 which, by virtue of article 3 and Part 6 Class A of Schedule 2, grants permission for certain agricultural buildings. However, the schedule makes it clear that development is not permitted by Class A if it would consist of the erection of a building to be used for the accommodation of livestock, and the building would be within 400 metres of the curtilage of any permanent building normally occupied by people (other than a special industrial building or a dwelling or other building on an agricultural unit which is used in connection with agriculture). The proposed rabbit tunnels would be less than 250 m from the curtilage of the Hertfordshire Moat House Hotel to the east of the site, and therefore fall outside the scope of development permitted by the Order.
4. Turning then to the merits of the appeal, I find from my inspection and reading of the representations that the main issue between your client and the Council is whether, bearing in mind the authority's policies for the countryside and for agriculture, the proposed tunnel buildings and mobile home would be so harmful to the appearance or character of the surrounding area that the refusal of planning permission is justified.

5. I accept your interpretation of the judgement in the case of Jones v Stockport Metropolitan Borough [1984] EG 408, to which you draw attention, to the effect that the intensive rearing of meat rabbits is an agricultural use, and that the structures in which such rabbits are kept are buildings used for agricultural purposes. Hence Policy 18 of the County Structure Plan (as it stood when the Council's decision was made) is satisfied, as is Policy 2 of the adopted District Plan, subject to the proviso about the effect on landscape to which I return below. The first Reason for Refusal suggests that viability needs to be demonstrated in order to justify the erection of agricultural buildings, and indeed evidence on this matter has been put in. However, the policies on which the authority rely do not include such a test, and the references to agricultural purposes and agricultural use in the Plans do not seem to me necessarily to exclude land farmed on a part-time or hobby basis, although I realise that in this instance the proposal is intended as a primary source of income. Therefore, in respect of the rabbit tunnels, I can find no conflict with the policies to which the Council refer.

6. Policy 2 does, as I have stated above, contain a proviso regarding the effects of agricultural development on the rural landscape, and the authority's views are made explicit in Policy 24, which seeks to minimise the impact of any development on the countryside. The Council believe that your client's proposal would be unduly prominent, and an intrusion into a stretch of attractive countryside visible from the A5, Old Watling Street and local footpaths. I note the proposals for mounding and hedge planting which form part of the application, and the Council's view that they do not overcome the objections to the scheme on grounds of visual intrusion.

7. However, on careful inspection of the land from the A5 I came to the conclusion that low buildings such as those proposed, sited on the north-western part of the field, would not be readily visible from the road: the site lies below the level of the road and its western end is well-screened because the diversion of the main road from its former line through Markyate has in effect created a double hedge. From Old Watling Street I found it difficult to see the part of the site where the tunnels are proposed owing to the vegetation at the top of the bank on the north side of the A5 as well as the hedges to the south. Provided that your client's landscaping proposals are carried out the proposed agricultural buildings would in my opinion be inconspicuous from most public vantage points, and I therefore see no reason why permission for them should be refused.

8. The Council's policy for new agricultural dwellings, including caravans, is set out as Policy 25 of the District Plan; it is that they should be located in existing settlements unless there is a valid reason for locating a dwelling on the holding, and with regard to your client's proposed mobile home the authority say that the agricultural need for such an additional dwelling in the countryside is unproven. You have produced evidence as to the likely viability of the rabbit-breeding enterprise, and argue that on-site living accommodation is necessary if he is to be able to provide 24-hour security for his stock and his investment.

9. In considering this question I have had regard to the advice given in the Annex to Circular 24/73, which remains extant. The Annex advises that, although it is generally as convenient for farm workers to live in nearby villages as it is for them to live on the farm, where intensive livestock units are being established living accommodation close at hand is often essential; however, it counsels that additional accommodation cannot normally be justified unless the farming enterprise is viable. In this instance

estimates of cost and projections of income by the half-year have been submitted, and whilst these cannot prove that the enterprise would become viable within a reasonable time they are sufficient to show that the proposal has been worked out in some detail; the Council report the Ministry of Agriculture's view that although the unit may never achieve viability, it may possibly become viable in two years. A permanent dwelling would therefore not be justified, but I consider that your client should be permitted to occupy a mobile home on the site for a limited period so that the viability of the proposed business can be put to the test.

10. The Council wish to ensure that the land does not become derelict and an eyesore in the event of the venture failing, and have therefore requested that if permission is granted for the tunnels it too should be for a limited period. Circular 1/85 advises that temporary permission will rarely be necessary for development which conforms with the development plan and should not be applied to buildings intended to be permanent. Nevertheless, in view of the lightweight structure of the proposed tunnels and the virtual impossibility of putting them to any use other than rabbit-breeding, and bearing in mind your client's stated willingness to enter into an Agreement whereby the failure of the enterprise would require the land to be returned to its former condition, I have decided that in the particular circumstances a temporary permission for the whole development would be appropriate. Since provision can be made by condition for the removal of the buildings and mobile home there is no need for the grant of permission to be delayed pending the conclusion of an Agreement under S 52 of the Act.

11. The creation of a new access to the site from the stub of the bypassed section of London Road is an essential part of the proposal, and I consider the proposed landscaping necessary on visual grounds, so that I accept the Council's request for conditions to the effect that both be implemented before the livestock-rearing use commences.

12. In determining this appeal I have taken into account all the points made in the representations but find nothing to outweigh the considerations which led me to the foregoing conclusions.

13. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for the erection of five tunnel buildings for intensive rabbit production on land adjacent to the sewage works, London Road, Markyate, and for the use of the land for the stationing of a mobile home, in accordance with the terms of the application (No: 4/0085/88) dated 19 December 1987 and the plans submitted with it, subject to the following conditions:

1. the buildings hereby permitted shall be removed from the land, and the use hereby permitted discontinued and the mobile home removed from the land, on or before the expiration of a period of five years from the date of this letter;
2. no more than one caravan or mobile home shall be stationed on the land;
3. the buildings hereby permitted shall not be brought into use until a means of vehicular access has been constructed in accordance with the approved plans;
4. the buildings hereby permitted shall not be brought into use until the mounding shown on the approved plans has been carried out;

5. all planting, seeding or turfing comprised in the details of landscaping shown on the approved plans shall be carried out in the first planting and seeding seasons following the occupation of the buildings, and any trees or plants which within a period of three years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

6. the occupation of the mobile home hereby permitted shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290 of the Town and Country Planning Act 1971, or a dependant of such a person residing with him or her, or a widow or widower of such a person.

14. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if approval is refused or granted conditionally, or if the authority fail to give notice of their decision within the prescribed period.

15. Attention is also drawn to the enclosed Note relating to the requirements of the Buildings (Disabled People) Regulations 1987.

16. This letter does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

I am Sir
Your obedient Servant

A handwritten signature in cursive script that reads "Peter Norman".

PETER NORMAN MA MRTPI
Inspector

ENC

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

MR

To P C Hall R Gold
70 Wyngates 33 Hunting Gate
Linslade Hemel Hempstead, Herts
Leighton Buzzard, Beds

Erection of five tunnel buildings for
intensive rabbit production and use of land for
stationing of mobile home;
at Land adjacent to sewage works, London Road,
Markyate.

Brief
description
and location
of proposed
development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated 19.12.87 and received with sufficient particulars on 19.1.88 and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:-

- (1) The site is within a rural area beyond the Green Belt on the adopted Dacorum District Plan wherein permission will only be given for the use of land, the construction of new buildings, changes of use of existing buildings for agricultural or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. The local planning authority is not satisfied that sufficient evidence of the viability of the proposals has been brought forward to justify the erection of the proposed buildings and the stationing of a mobile home on the site, and the development is therefore unacceptable in the terms of this policy.
- (2) The proposed development would constitute an unduly prominent and isolated intrusion into an attractive unspoilt stretch of open countryside and as such would affect adversely the visual amenity of the area.

Dated 25th day of February 19 88

Signed *W. B. B. B. B.*

SEE NOTES OVERLEAF

P/D.15

Chief Planning Officer

NOTE

1. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
2. If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Borough Council in which the land is situated, a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
3. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in s.169 of the Town and Country Planning Act 1971.