The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0117-987-8927
Switchboard 0117-987-8000
Fax No 0117-987-8769
GTN 1374-

Fladgate Fielder, Solicitors
Heron Place
3 George Street
LONDON
W1H 6AD

Your Ref:
DPD/13701-001
Our Ref:
T/APP/A1910/A/95/254161/P2

Date: 10 APR 1996

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 AND SCHEDULE 6
APPEAL BY COUGAR ENTERPRISES LIMITED
APPLICATION NO: 4/0135/95

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the Dacorum Borough Council to refuse planning permission in respect of an application for a boating marina comprising a 56-berth basin with ancillary building, car parking, landscaping and new vehicular access on land adjoining Northchurch Service Station, London Road, Cow Roast, Tring. I held a local inquiry into the appeal on 17-19 January 1996. I visited the appeal site itself on 19 January, and viewed the site from the surrounding area on 14 March 1996.

2. After the application was submitted but before it was determined by the Council, amended plans were submitted, reducing the scale of the proposal to 40 marina berths. Of these, it is intended that 20 should be residential. The application form itself was not amended. However, I am satisfied that the Council's decision was taken on the amended scheme for a 40-berth marina, and shall deal with the application on that basis.

3. Having heard and read all the evidence and representations, and visited the appeal site and its surroundings, I take the view that the main issues in this case are as follows:

a) whether or not the appeal proposal constitutes appropriate development in the Green Belt and, if not, whether there are any very special circumstances sufficient to outweigh the strong presumption against inappropriate development in the Green Belt;

b) the effect of the appeal proposal upon the landscape of the Chilterns Area of Outstanding Natural Beauty (AONB).

4. The statutory Development Plan for the area comprises the Hertfordshire County Structure Plan Review 1992, and the Dacorum Borough Local Plan which was adopted in 1995. Together these locate the appeal site within the Metropolitan Green Belt. Structure Plan Policy 1 excludes, except in very special circumstances, all but those forms of

development which it lists as appropriate. These include *'small-scale facilities for participatory sport and recreation'*, but do not include development for residential purposes. Policy 16 states that subject to Policy 1 and where it is acceptable in environmental terms, *'medium and low intensity leisure development will normally be permitted ...in the river valleys between towns, ... within visually damaged or unfarmable areas with good accessibility to the urban fringe'*.

5. Local Plan Policy 3 states that *'very small scale building which is necessary to sustain an acceptable use will be permitted provided it has no adverse impact on the character, function and appearance of the Green Belt'*. Local Plan Policy 24 states that *'proposals for residential moorings...will be treated as though they were for residential buildings and will therefore be subject to the same policies and criteria'*.

6. The appeal site lies directly alongside the offside bank of the Grand Union Canal. Local Plan Policy 78 protects and promotes the Grand Union Canal as a recreational and environmental resource. Local Plan Policy 107 states that *'development adjoining the Grand Union Canal will be expected to make a positive contribution to the canalside environment'*.

7. The appeal site also lies within the Chilterns Area of Outstanding Natural Beauty (AONB). Here, Local Plan Policy 90 reflects Structure Plan Policy 2 in stating that *'the prime planning consideration will be the preservation of the beauty of the area, and any development proposal which would detract from it will be refused. Wherever development is permitted it will be on the basis of its satisfactory assimilation into the landscape'*.

8. Following representations by British Waterways, including an objection to Local Plan Policy 24, the Council approved Supplementary Planning Guidance (SPG) in September 1995, entitled 'The Location of Recreational Marinas or Mooring Basins and Residential Moorings on the Grand Union Canal'. This non-statutory guidance indicates that a grouping of 30 boats is the maximum to qualify as 'small-scale' for the purpose of Development Plan policy. The guidance also emphasises that the Development Plan treats residential moorings as buildings, but states that *"proposals for a limited number of residential moorings, especially those arising from the British Waterways moratorium of 1991 will be acceptable within and at the edge of urbanised areas"*.

9. On the first issue, conventional canal-boats are large craft. I consider 30 such boats, massed together in a marina, to be a generous maximum for a 'small-scale' development. Though you question the viability of a 30-boat marina, you have not advanced sufficient financial evidence, in my view, to support your argument. Whilst the proposed recreational element of 20 boats would be small-scale and therefore appropriate, the appeal proposal also includes an inseparable element of 20 permanent residential moorings. Cowroast is a small settlement and not an urbanised area. The proposal does not therefore benefit from the recent SPG concession on residential moorings. Moreover, whatever their purpose, the 20 residential moorings would push the proposed development significantly beyond the 30-boat 'small-scale' limit. I therefore conclude that on account of both its scale and its nature, the appeal proposal is inappropriate in the Green Belt.

10. Inappropriateness in itself constitutes harm. In this case the harm would be magnified by the extension of existing development south-eastwards into the narrow belt of open land which separates the hamlet of Cowroast from Dudswell and Berkhamsted. Moreover,

residential activity would not be seasonal but would continue throughout the year as a permanent encroachment upon the Green Belt.

11. You contend that there are very special circumstances which would favour the proposal. Faced with increases in numbers and congestion among residential canal boats, British Waterways intends to use its new powers under the British Waterways Act 1995 to stop the unauthorised mooring of residential boats on the Grand Union Canal. The House of Lords has expressed concern that residents of unauthorised boats should not suffer hardship when displaced from their existing moorings. In response, British Waterways (BW) has given 2 separate undertakings to the House. For people who registered by October 1991 on a list known as the 'moratorium', BW will make reasonable efforts to secure suitable residential moorings. For those unregistered but identified by October 1994, and known as the 'unauthorised' boats, BW will find a mooring, though not necessarily for residential use.

12. There are not enough residential moorings to accommodate the boats to be displaced. It was agreed at the Inquiry that there are 17 'moratorium' boats in Dacorum and the vicinity. Existing permissions for residential moorings would accommodate all but 7 of these. Of the known 'unauthorised' boats at least 13, and probably more, are residential boats. Your client's own survey work suggests that many boat-dwellers are tied to the locality through employment and schooling and wish to remain there, on residential moorings.

13. You offer a S106 unilateral undertaking which allows British Waterways, until 1998 or 12 months from the date on which the marina becomes available (whichever is the longer period), to introduce 'moratorium' boat-owners to the proposed marina berths at discounted BW rates which are to prevail for a minimum of 5 years. During that period, your client would not offer any of the 20 residential moorings to any boat owner not registered on the moratorium or introduced by British Waterways.

14. The proposal would include substantially more residential berths than are necessary to accommodate the outstanding 'moratorium' boats in the Dacorum area. Your client's undertaking would allow British Waterways to introduce 'moratorium' boat-owners from outside the locality. The proposed marina would thus import, into a sensitive area of Green Belt, a significant proportion of canal residents whose personal ties would not necessarily be with the locality but with places elsewhere on the Grand Union Canal, or on the wider canal network. There would be no guarantee that those 'moratorium' boat-owners currently resident in Dacorum would take up places, or remain, in the new marina. Furthermore, the S106 undertaking does not provide for the 'unauthorised' boat-owners, for whom British Waterways has not in any case undertaken to find a residential mooring.

15. The proposal would undoubtedly assist BW in clearing the canal of linear residential moorings, and in fulfilling its own undertaking to the House of Lords. However, the 'reasonable efforts' which that undertaking requires have to be made within the limits of planning legislation and policy. Neither statutory nor emerging Development Plan policy identifies congestion caused by linear moorings as a specific problem in planning terms. Insofar as there might be a problem, the appeal proposal in my view represents only a partial and uncertain solution. Boat-owners will have had a period of advance warning, and immunity from removal, of at least 5 years. Furthermore, the available evidence suggests to me that hardship is equally if not more likely to be caused by the cost of the new legal requirements to upgrade the physical condition of their boats.

16. I have therefore arrived at the conclusion that the very special circumstances which you advance in favour of the proposal are not in themselves compelling, and that, on balance, they are not sufficient to outweigh the strong presumption against inappropriate development within the Green Belt together with the additional harm which I have identified.

17. On the second issue, the appeal site lies at the foot of an attractive valley in the Chiltern Hills AONB. At the level of the valley floor, the proposed development could be largely screened from public view by the high earth mounds which follow the site frontage to the A4251 and the south-eastern boundary, and by the adjacent development to the north-west. However, following the well-trodden footpaths on the hillside to the north-east, I found there to be many places from which the appeal site can be clearly seen. The appeal site lies at the end of a chain of established and visually intrusive car-related businesses extending outwards from the hamlet of Cowroast. Large buildings and ranks of vehicles on display announce the car showrooms. Lacking the highly reflective surfaces of cars, and lying low in the water, the neighbouring canal boats of the existing Cow Roast marina are nevertheless surprisingly visible from the hillside on account of their large size and bright colouring.

18. The appeal proposal would introduce a substantial area of massed canal boats, parked cars and hard surfaces. It would extend the existing chain of development much further into the rural area. In my view the proposed canalside landscaping would be inadequate in height and density, even when eventually fully grown, to screen the full depth of the marina from the public footpaths to the north-east. The innermost boats, and in particular the cars parked along the inner edge of the road frontage mound, would be highly visible both from the north-eastern hillside and from the canal towpath. Within the site the demands of 40 canal-boats upon the layout would leave no room for additional landscaping or spot planting on any scale which might otherwise be used to interrupt and screen the mass of the development. I consider that the marina would intrude unacceptably into the rural area. I therefore conclude that the proposal would have a materially harmful effect upon the landscape of the AONB, contrary to statutory policy which aims to preserve it in a state of natural beauty.

19. Other matters have been raised. The appeal site is overlaid by tipped material and overgrown by rough grass. However, in my view its contribution to the openness of the Green Belt and to the character of the AONB does not depend upon its potential for use as agriculture. The existing permission on site, for a pool which would accommodate little more than 1 boat, is not comparable to the appeal scheme. Of the other proposals for residential moorings, none is yet a firm alternative. One is at a very early stage, and I have no evidence that any other has so far resulted in a determination. The appeals cited involve linear moorings and not a marina basin. Archaeological interests could be satisfied through site investigations prior to development. Neither these nor any other matters raised affect the decision which I have reached on the basis of the main planning issues.

20. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

Yours faithfully

S. Holland

SUSAN HOLLAND MA DipTP MRTPI
Inspector

APPEARANCES

FOR THE APPELLANT

Mr Gregory Stone QC	-	instructed by Fladgate Fielder Solicitors.
He called:		
Mr Chris Mitchell BSc CEng	-	British Waterways Manager, Grand Union Canal (South).
Mr Geoffrey Bunyan	-	Arboricultural and Landscape Design Consultant, of Newton Longville, Bucks.
Mr Phillip Plato	-	Mananging Director, Cougar Enterprises.

FOR THE LOCAL PLANNING AUTHORITY

Mr Thomas Hill, of Counsel	-	instructed by the Director of Law and Administration, Dacorum BC.
He called:		
Miss Anna Bochnacki BSc DipTP MRTPI	-	Principal Officer, Development Control, Dacorum BC.

DOCUMENTS

Document 1	-	List of persons present at the Inquiry.
Document 2	-	Council's Letter of Notification and list of persons notified.
Document 3	-	Letters of representation from interested persons.

Documents submitted by the Appellant:

Document 4	-	Appendices to Mr Mitchell's proof of evidence.
Document 5	-	Appendices to Mr Bunyan's proof of evidence.
Document 6	-	Appendices to Mr Plato's proof of evidence.
Document 7	-	General background and technical information.
Document 8	-	Supporting Statement re. planning application 4/0135/95.
Document 9	-	Archaeological Assessment.
Document 10	-	Location of boats registered on the Moratorium List.
Document 11	-	Information on residential boats outside Dacorum BC.
Document 12	-	Copy of S106 Unilateral Undertaking.

Documents submitted by the Council

Document 13	-	Appendices to Miss Bochnacki's proof of evidence.
Document 14	-	Extract from British Waterways Act 1995.
Document 15	-	Dacorum Local Plan Policy 19.
Document 16	-	British Waterways/NRA Boat Safety Scheme documents.
Document 17	-	British Waterways Objection 151 to Dacorum Local Plan.
Document 18	-	Correspondence dated April-August 1991, between British Waterways and Dacorum BC.
Document 19	-	Extract from classified section of 'Waterways World'.
Document 20	-	Information on Willowbridge Marina, Milton Keynes.

PLANS

Plan A	-	Application Plans
Plan B	-	Plan and overlay showing 30-boat marina.
Plan C	-	Location plan showing proposed site for marina at New Mill, Tring.
Plan D	-	Local Plan Proposals Map extract showing proposed marina site at New Mill.

PHOTOGRAPHS

Photograph 1	-	Photographs submitted by Mr Bunyan
Photograph 2	-	Photographs submitted by Mr Plato.

TOWN AND COUNTRY PLANNING ACT 1990

DACORUM BOROUGH COUNCIL

Application Ref No. 4/0135/95

Cougar Enterprises Ltd
P O Box 94
Tring
Herts
HP23 5SR

Geoffrey Bunyan Associates
31 Drayton Road
Newton Longville
Milton Keynes
MK17 0BH

DEVELOPMENT ADDRESS AND DESCRIPTION

Adj Northchurch Service Station, London Road, Cow Roast, Tring

BOATING MARINA, ANCILLIARY BUILDING, CAR PARKING & ACCESS

Your application for ***full planning permission*** dated 09.02.1995 and received on 10.02.1995 has been ***REFUSED***, for the reasons set out on the attached sheet(s).

Director of Planning

Date of Decision: 01.06.1995

(ENC Reasons and Notes)

REASONS FOR REFUSAL
OF APPLICATION: 4/0135/95

Date of Decision: 01.06.1995

1. The site is within the Metropolitan Green Belt on the Dacorum Borough Local Plan wherein permission will only be given for 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 proposed development is excessive in scale and inappropriate in a Green Belt.

   (i) The proposed basin, car parking, access road and new buildings cannot be described as a small scale facility for participatory sport and recreation.

   (ii) The proposal to incorporate twenty residential moorings within the site is contrary to policies within the Development Plan and insufficient justification has been put forward to outweigh the harm to the area that would result if permission were granted.

2. The adopted Dacorum Borough Local Plan shows the site to be within the Chilterns Area of Outstanding Natural Beauty wherein the policy of the local planning authority seeks to preserve the appearance of the area, encourage agriculture and conserve wildlife by the restriction of further development having particular regard to the siting, design and external appearance of buildings. The proposed development is unacceptable in the terms of this policy.