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Your reference

83/AL/263

Our reference PLANNING DEPARTMENT
DACORUM DISTRICT COUNCIL
APP/A1910/G/86/24

Date

Ack.

C.B.O.

D.P.

D.C.

B.C.

Admin.

File

30 JAN 87

Received

- 2 FEB 1987

Comments

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 53
LAND AT HICKS ROAD, MARKYATE, HERTS - BUILDING 4A AND 4B
APPEAL BY SHAROSE PROPERTIES LIMITED AND H G HEGBOURNE AND SONS LIMITED

1. I am directed by the Secretary of State for the Environment to refer to your clients' appeal against the determination, given under Section 53 of the Town and Country Planning Act 1971 by the Dacorum Borough Council, that the proposed extension to Building 4A and 4B, Hicks Road, Markyate, would constitute or involve development for which an application for planning permission is required under Part III of the 1971 Act.
2. The written representations made in support of your clients' appeal and those of the Council have been considered. A Planning Inspector has visited the site and has furnished a description of it. A copy of his report of the site visit is annexed to this letter.
3. For the Council, it was submitted that having regard to the size and volume of the proposed extension, and the fact that it would be visible from outside the industrial estate, the external appearance of the appeal premises would be materially affected. Additionally, although there was no dispute that the appeal building was used for the carrying out of an industrial process, it was contended that there was some doubt as to whether the proposed development would be carried out by an industrial undertaker because there was no evidence that Sharose Properties Limited (one of the joint applicant companies) were themselves carrying out any industrial process on the appeal site. Third, there was doubt as to whether the boundary of the curtilage of the premises of the undertaking was the boundary of the whole of the industrial area or some other more restrictive boundary. The Council concluded, therefore, that planning permission was required for the proposed extension to Building 4A and 4B as not all of the tests set out in Class VIII.1 of Schedule 1 to the Town and Country Planning General Development Order 1977 (as amended) would be satisfied.
4. In support of your clients' appeal it was argued that the percentage increases in existing buildings envisaged by the General Development Order were substantial and it followed that any addition which made full use of the tolerances would of itself be substantial. In this particular case the Architect had followed the precise plan and elevational form of the existing building and it was submitted that, handled in this way, the proposed extension would not materially affect the external appearance of the premises. You stated that H G Hegbourne and Sons Limited were industrial undertakers principally engaged in the reconditioning of industrial machinery and the appeal building was where the work was carried out. Sharose

Properties Limited were a development and property holding company and were the owners of the whole industrial estate, including the appeal building. Hegbournes occupied the building under two leases and would take an addition to their lease and arrange for the construction of the proposed extension with the co-operation of Sharose. Plans of the two leases were forwarded showing the land in the exclusive occupation of Hegbournes. On the issue of the curtilage of the premises, you stated that all occupiers on the industrial estate had rights to make use of the estate roads and other areas used in common. In these circumstances, it was submitted that the boundary of the curtilage must be the "ring fence" around the industrial estate as shown on Drawing 50.114.7.

5. In regard to the issues raised by your clients' appeal, the Planning Inspector's appraisal was as follows:-

"I do not think that the proposed extension would have a material effect on the appearance of the existing building. The design of the proposed development would echo that of the existing structure. Its height would be the same. The existing pitched roof would be extended to cover the new accommodation. The materials to be employed would match those currently visible. At present, the appeal premises have the appearance and character of a bulky industrial building in a predominantly industrial area. I believe that that would still be the case if the proposed development were to be executed. Although the proposed extension would be visible from certain vantage points, it would not be particularly conspicuous, and might well be difficult to distinguish from the existing building. I do not think that it would detract from the appearance of the High Street Conservation Area.

The existing building does not appear to have a clearly defined curtilage of its own. The only obvious property boundary in the vicinity of the site of the proposed extension is the chainlink fence which marks the limit of the industrial estate as a whole. The proposed extension would be more than 5 m from that fence.

In my opinion the existing building is used for industrial purposes. I consider that the proposed extension would fall within the size limits specified in Class VIII.1(iv) of the Town and Country Planning General Development Orders 1977 to 1985".

6. The only matters at issue between your clients and the Council are whether the proposed development would be carried out by an industrial undertaker and whether the proposal would satisfy the requirements set out in provisos (a) and (b) to Class VIII.1(iv) in Schedule 1 to the General Development Order, namely whether the external appearance of the premises of the undertaking would be materially affected by the proposed extension and whether any part of the building as extended would be within 5 metres from any boundary of the curtilage of the premises.

7. Although Sharose Properties Limited, one of the joint applicant companies, are not "industrial undertakers" as defined in Article 2(1) of the General Development Order, the view is taken that H G Hegbourne and Sons Limited, the other joint applicant company are clearly "industrial undertakers" and that it would be open to them to construct the proposed extension under the "permitted development" provisions of Class VIII.1 provided the proposal complies in all other respects with the limitations and conditions attached to that Class.

8. In regard to proviso (a) to Class VIII.1(iv), the view is taken that the phrase "materially affected" is to be interpreted in the literal meaning of these words, namely whether there is any change in the external appearance of the premises which is to be regarded, as a matter of fact and degree in the circumstances as it exists and is proposed to be extended or altered, as a "material" change. In the present case the industrial undertaking concerned is the undertaking of H G Hegbourne and

Sons Limited and the premises occupied by them at Hicks Road, Markyate, comprise Building 4A and 4B and some limited areas of land adjoining the building. On the approach referred to above it is considered, for the reasons given by the Planning Inspector who visited the site, that the proposed extension would not have a material affect on the external appearance of the premises of the undertaking (ie Building 4A and 4B) and consequently that the proposal would satisfy proviso (a).

9. In regard to proviso (b) to Class VIII.1(iv), it is considered that the phrase "any boundary of the curtilage of the premises" does not refer to the boundary of the whole industrial estate but is to be interpreted as meaning any boundary of the curtilage of the premises of the undertaking, the undertaking in question being that of the industrial undertaker carrying out the operations under sub-paragraph (iv) of Class VIII.1. The plans of the two leases which you forwarded with your letter of 5 September 1986 show that the internal service road to the south west of Building 4A and 4B is not included within the areas covered by the leases and you stated that all the occupiers of the industrial estate had rights over this road and other areas used in common. In these circumstances, the view is taken that the service road to the south-west of Building 4A and 4B cannot be regarded as being within the curtilage of the premises of the undertaking of H G Hegbourne and Sons Limited and that the boundary of the curtilage of the premises of that undertaking (on the most favourable assumptions) does not extend beyond the edge of the carriageway of the service road. As the south-western corner of the proposed extension would be approximately 0.7 metre from the edge of the carriageway of the service road, it is concluded that the proposal fails to satisfy proviso (b) to Class VIII.1(iv) in Schedule 1 to the General Development Order and consequently is not "permitted development" by virtue of that Class. Since the development is not considered to fall within any of the other classes set out in Schedule 1 to the Town and Country Planning General Development Orders 1977 to 1985, it is not therefore permitted by those Orders. Accordingly your clients' appeal under Section 53 of the 1971 Act fails.

FORMAL DECISION

10. For the reasons given above, the Secretary of State dismisses your clients' appeal and hereby determines under Section 53 of the 1971 Act that the proposed extension to Building 4A and 4B, Hicks Road, Markyate, would constitute or involve development of the land, and that an application for planning permission in respect thereof is required under Part III of the 1971 Act, having regard to the provisions of the Town and Country Planning General Development Orders 1977 to 1985.

RIGHT OF APPEAL AGAINST DECISION

11. This letter is issued as the Secretary of State's determination of the appeal, but Section 247 of the 1971 Act provides that an appeal against the decision may be made to the High Court on a point of law. Any appeal must be made within 28 days of the date of receipt of this letter (unless a successful application is made to the Court for the period to be extended).

I am Gentlemen
Your obedient Servant



P PASCOE
Authorised by the Secretary of State
to sign in that behalf

JDS

PLANNING DEPARTMENT

C.G.B. Barnard, Esq., M.Sc., Dip.T.P., M.R.T.P.I. Chief Planning Officer

DACORUM BOROUGH COUNCIL,
CIVIC CENTRE, HEMEL HEMPSTEAD, HERTS. HP1 1HH

To Murgatroyds, T.P. Ref: 4/0181/86D
Solicitors,
DX6115,
St. Albans.

Dear Sir,

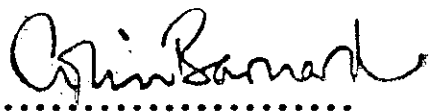
Your application dated 29 January 1986 has been considered under the provisions of Section 53 of the Town and Country Planning Act, 1971, to determine whether planning permission is required in respect of an extension at 4A and 4B Hicks Road, Markyate, Herts.

You are hereby given notice that the proposals set out therein do constitute development within the meaning of the said Act, and therefore do not require the permission of the local planning authority.

- (a) planning permission must be obtained before any such proposals can be carried out
- (b) ~~do not require the permission of the local planning authority.~~

The grounds for this determination are as follows:

The proposed extension will materially affect the external appearance of the premises of the undertaking.

Dated 12 March 1986 Yours faithfully, 

(Chief Planning Officer)

(See notes on reverse)

NOTES

- (1) Any person who desires to appeal -
 - (a) against a determination of a local planning authority under Section 53 of the Act; or
 - (b) on the failure of a local planning authority to give notice of their decision or determination or of the reference of the application to the Secretary of State,

shall give notice of appeal to the Secretary of State within six months of notice of the decision or determination or of the expiry of the appropriate period allowed under Article 7 (6) of the Town and Country Planning General Development Order 1977 as amended, for giving such notice (i.e. 8 weeks from date of receipt of application by Local Planning Authority), as the case may be, or such longer period as the Secretary of State may at any time allow. The notice shall be given in writing, addressed to The Secretary of State for the Environment, Tollgate House, Houlton Street, BRISTOL BS2 9DJ.

- (2) Such person shall also furnish to the Secretary of State a copy of the following documents:-
 - (i) the application;
 - (ii) all relevant plans, drawings, particulars and documents submitted with the application;
 - (iii) the notice of the decision or determination, if any;
 - (iv) all other relevant correspondence with any local planning authority.