



# Appeal Decision

The Planning Inspectorate  
Tollgate House,  
Houlton Street  
Bristol BS2 9DJ  
☎ 0117 987 8927

PLANNING DEPARTMENT			
DACORUM BOROUGH COUNCIL			
inquiry held on Wednesday 5 January 2000			
DOF	EP	5 C	FILE
by Wendy Hoare LLB Solicitor			
Received 29 FEB 2000			
an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions			

28 FEB 2000

## Appeal 1: T/APP/A1910/X/99/3219

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a lawful development certificate (LDC).
- The appeal is brought by Lisa Munde and Ian Poole against the Dacorum Borough Council.
- The site is located at College Farm, Delmerend Lane, Flamstead, St Albans, Herts.
- The application (ref:4/00335/99/LDE) dated 23 February 1999 was refused by the Council on 27 May 1999.
- The application was made under Section 191(1)(c).
- The use for which a Certificate of Lawfulness is sought is the commercial use of stables, yard and land for livery and stud.

**Decision:** The appeal is dismissed.

## Appeal 2: T/APP/A1910/A/98/300501

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a failure to determine within the prescribed period an application for planning permission.
- The appeal is brought by Lisa Munde and Ian Poole against the Dacorum Borough Council.
- The site is located at College Farm, Delmerend Lane, Flamstead, St Albans, Herts.
- The application (ref:4/01265/98/ROC), is dated 2 June 1998.
- The development proposed is the variation of condition 2 (use for domestic purposes only) of planning permission ref:4/0937/77 (stables).
- The condition in question is as follows: "The development hereby permitted shall be used for domestic purposes only."
- The reasons for the condition were stated to be: "To preserve and maintain the residential character of the property and prevent the establishment of a commercial enterprise which would be inappropriate in this rural area."

**Decision:** The appeal is dismissed.

## Procedural Matters

1. The inquiry into this appeal was held on 5 January 2000 when I also visited the site and surroundings. At the inquiry the evidence was given on oath.
2. For the avoidance of doubt, I should explain that in relation to Appeal 1 the planning merits of the use in dispute is not an issue for me to determine in the context of an appeal under Section 195, which is concerned solely with matters of fact.

## The Appeal Site

3. The appeal sites are located within a rural area about 1.6 km (1 mile) south east of the village of Flamstead. The Lawful Development Certificate appeal relates to land on both sides

of Delmerend Lane and the section 78 appeal relates to the land on the east side of the lane only. The parcel of land on the west side of the lane consists of about 4.86 ha (12 acres) of open fields. On the east side of the lane there is a complex of buildings and a further 7.29 ha (18 acres). To the east of the stables and yard there is a manège with two floodlights attached to the post and rail fencing. The nearest buildings are those positioned on the adjoining site, Hatherly Brake, and Delmerend House on the north side of the valley. The M1 motorway lies to the east and can be seen from the site. There are three private rights of way that converge on the yard and the Appellants are required by covenant to maintain them where they cross the site.

### **The Planning History**

4. On 6 October 1977, planning permission was granted subject to conditions for the provision of a stable block to serve a dwelling called Hatherly Brake. At that time the site was owned by a Mr Faulkner. The application site was located on land adjoining the applicant's home, Hatherly Brake. In October 1978, planning permission was refused for the erection of a hay and machinery store. A further application for a machine and hay store was refused planning permission on 4 January 1979. An application for a covered pen was approved on 6 June 1979. Condition 2 stated that "The development hereby permitted shall be used for domestic purposes only incidental to the enjoyment of the dwelling within the same curtilage and for no other purpose."

5. On 23 August 1979, an application made by a Mr Bennett for a hay and machinery store was refused planning permission. An application for the change of use of the land for the stationing of a mobile home was refused on 3 June 1993. An application which sought planning permission for the erection of a dwellinghouse as manager's accommodation was withdrawn on 27 February 1998.

### **Appeal 1 – The Lawful Development Certificate Appeal**

6. The application for a Lawful Development Certificate was accompanied by statutory declarations made by the Appellants. Mr Poole's declaration attached records of a water rates bill, an electricity bill, a telephone bill, details of insurance, particulars of attendance by a veterinary surgeon and confirmation of the use of the site as a livery stables from a farrier. However, apart from the letter from the farrier, Mr M French, this documentation only relates to the period since 1993. The letter from Mr French stated that he had been shoeing horses on a regular basis for various clients at the site from 1980 to 1990 and for Mr Ian Poole during 1991 and 1992. To the best of his knowledge the site was and always has been a DIY livery yard, certainly whilst he has been a visiting farrier there. The supporting documents also included a letter from the previous site owner Mrs Bennett. This stated that the stables and land were used for private use only during the period since 1980 until 1993 when Mr Poole purchased the land.

7. Lisa Mundee's statutory declaration was supported by 8 additional letters and 14 records of current horses at livery. These included a letter from Michele Thornton which stated that she had kept her horse at livery at the yard during the winter of 1977-78. She was employed as a part-time groom to care for other horses based with the then owners, Mr and Mrs Faulkner. She indicated that though she moved to Somerset in the spring of 1978 her family continued to live in Flamstead and it was quite obvious on return visits that the yard was still operational as a livery yard and stud. The letter from Jacqui Kipping stated that she and her friend Georgina Hesford kept their horses at livery at the site in 1982 for about a year. The rent entitled them to

a stable each and grazing. The owners of the yard were the Bennetts. A letter from Mrs Y Minter stated that to her knowledge the property has always been run as a livery yard. She kept a pony in the yard from 1981 to 1983 and the owner rented out all the stables (12 horses) and continued to do so until the late 1980's. She returned to the yard in 1993 with a different horse. The remaining letters from livery owners and livery records related to the period after 1993.

8. At the inquiry Lisa Munde stated that in 1977 the Council accepted that a stable yard with a pen and necessary storage would be created. She has closed in the pen area and the only other "structure" was the sand surface which has fencing around it. It was her belief that the Council were, or should have been, aware that her predecessors used the site for business from the outset and flouted the "domestic" condition. She believed that it has been going on since 1977. She had previously occupied other land in Delmerend Lane to the south of the appeal site which she had visited every day. From 1990 onwards she had become friendly with the Bennetts. She had attended their house for drinks and Paul Bennett had told her that they had liveries. In 1989, the site was put up for sale. Whilst the property was on the market they rented part of the land and a Mr Richard Ivory grazed the rest with cattle. The cattle would alternate grazing one side of the lane one year and the other side the next. She and Mr Poole rented the land at the site as additional grazing to the land they already owned and used the occasional stable. She did not have her horses at livery at College Farm but paid for stabling as and when they used it say 2-3 days out of a 4-6 week period. At that time there were no liveries on the site.

9. Ian Poole stated that when the Bennett's owned the land he kept horses with them and knew them fairly well. He learned that the stable block was let out to liveries and that the barn had been put up to serve the needs of the livery horses. The conveyancing took some 9 months to complete and during these months they were not on site but throughout the non-active period of conveyancing they intended to use the site for commercial purposes. The evidence of Natasha Pirie was that she had been giving instruction on a freelance basis to owners of horses kept at College Farm for upwards of 5 years. She lived locally at Chequers Hill and knew the area well and had a considerable clientele of local people. The evidence of Jacqui Kipping confirmed her earlier letter that in 1982 she had kept her horse at livery at the site for about one year. She then moved away from the area and kept her horse at various yards.

### **Inspector's Appraisal**

10. Circular 10/97:Enforcing Planning Control Annex 8 advises that by virtue of section 191(2) uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. Section 171B of the 1990 Act specifies the time limits for taking enforcement action and in this case the prescribed period is 10 years from the date of the breach. Circular 10/97 paragraph 8.12 advises that the onus of proof in a Lawful Development Certificate application is firmly on the applicant. The relevant test is the balance of probabilities. The fact that a Lawful Development Certificate may be refused because the onus of proof is not discharged by the applicant does not preclude the submission of a further application if better evidence is subsequently available.

11. The planning history indicates that when the application for the stable building was granted the use of the building was limited to a use for domestic purposes. The officer's report at the time confirmed that the applicant and his wife owned 9 horses which were kept as a hobby and for his family to ride. It stated that "there is no evidence that this is a commercial venture". A similar condition was imposed in 1979 when permission was granted for the covered pen. The

planning application stated that the purpose for which the land and/or buildings were being used was "residential". Following this application the land was sold to Mr Bennett. The stable building and associated land was offered for sale again in 1989. The Appellants' purchase of the stables, yard and land was completed in 1993.

12. Much of the submitted evidence confirms the use of the land for the current uses from 1993 onwards. Although the Appellants suggested that some sort of commercial activity took place during the period of occupation by the Bennetts, in my view, there is no clear evidence of the scale, nature or duration of such an operation. Jacqui Kipping only kept her horse at the site for about a year in 1982 and Mrs Minter did not keep a horse or pony at the yard after 1983 until she returned to the yard in 1993. The letter from Mrs Bennett the owner of the site between 1979 and 1993 confirmed that the appeal site was used purely for domestic purposes as required by the condition attached to permission No 4/0937/77. The direct evidence of the Appellants for the period prior to 1989 was largely based on what they had been told by others including the Bennett family and Michele Thornton. In my judgement, this hearsay evidence was vague and should be given far less weight than evidence supplied from their own personal knowledge. The only documentary evidence to support the stud use prior to 1993 is the letter from Michele Thornton who left her employment at the site in 1978. The letter is unsworn and untested and I do not place undue reliance on it. The letter from Mr French stated that he worked for Ian Poole between 1991 and 1992. However, Lisa Mundee confirmed that during that period they did not keep their horses at livery but rented the land for grazing and only used the buildings for the occasional stabling of horses. Mr French did not provide details of the frequency of his visits to the yard or the level of any livery use. I believe that little weight should be given to the assertion in his letter that the site operated as a DIY yard between 1980 and 1990.

13. In my opinion, the available evidence pertaining to the period prior to the ownership of the site by the Appellants does not confirm the use of the site for commercial livery and stud purposes. They have been unable to provide specific details as to the extent of any commercial use or the frequency or duration of those activities. The Council's own evidence in the form of planning applications forms and officer's notes contradicts the suggestion of a commercial use. The property was on the market between 1989-1993 and the Appellants themselves indicated that the degree of commercial use was somewhat reduced whilst Mrs Bennett was trying to sell. They contended that commercial use rights were not abandoned during this period. I recognise that were the use merely dormant or inactive it could still be "existing". However, I find that any former use was in fact superseded by a further change of use, namely, the mixed use for agriculture and some very small-scale keeping of horses on the land with the occasional use of stabling. It is clear that immediately prior to the purchase of the land by the Appellants there was a wholly different mixed use compared to the situation after they took over. I consider that insufficient evidence has been presented to satisfy me that the use is lawful. I do not find that the Appellant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

### **Appeal 2 – The Section 78 Appeal**

14. The main issue is whether the variation of condition 2 would accord with the development plan Green Belt policies which generally aim to resist inappropriate development in such locations and, if not, whether there are any very special circumstances in this case to justify an exception.

## **The Development Plan**

15. The Hertfordshire Structure Plan Review was adopted in 1998. The review recommended an extension of the Metropolitan Green Belt to include the appeal site. Policy 1 seeks to enable activities and development in Hertfordshire to be carried out consistently with the principles of sustainable development. Policy 5 sets out the presumption against inappropriate development within the Green Belt except in very special circumstances. Policy 18 states that appropriate development will be encouraged under the terms of PPG7 to sustain the rural economy. Policy 47 indicates that proposals to increase and improve sporting, recreation and other leisure facilities will be supported within the context of other policy criteria.

16. The Dacorum Borough Local Plan (DBLP) was adopted in 1997. Policy 3 sets out the Council's policy with regard to development in the Green Belt. Policy 8 states that the Council will expect a high quality of development and sets out those matters which are deemed significant. Policy 76 sets out the criteria to be used to appraise proposals for equestrian facilities. Policy 89 sets out the general landscape strategy of the Council indicating the importance attached to the preservation and improvement of the landscape in the district. Policy 92 relates specifically to the need to improve the character and appearance of those parts of the borough that are designated Landscape Development Areas. Policy 100 concerns the redundant buildings in the countryside and sets out the circumstances under which redundant buildings may be reused. The DBLP is currently under review. The Deposit Draft of the DBLP 1991-2011 has been placed on deposit. Policy 82 provides that new commercial equestrian facilities will not be permitted in the Green Belt unless they can be accommodated in existing buildings and there is no adverse impact on the openness of the Green Belt.

## **National Policy**

17. PPG2:Green Belts sets out a general presumption against inappropriate development within the Green Belt. Paragraph 3.2 advises that inappropriate development is by definition harmful to the Green Belt. Paragraph 3.12 provides that the making of material changes in the use of land are inappropriate development unless they maintain openness and do not conflict with the purposes of including land in the Green Belt. Paragraph 1.5 advises that one of the purposes of including land within the Green Belt is to assist in safeguarding the countryside from encroachment. Paragraph 1.6 details the objectives of the use of land in Green Belts and these include providing opportunities for outdoor sport and outdoor recreation near urban areas.

## **Inspector's Appraisal**

18. The removal of the restrictive condition would enable the land and buildings to be used for the purpose of a commercial livery yard and stud. Local Plan policies seek the protection of the Green Belt. They also recognise that the keeping of horses in the Green Belt can potentially be an appropriate activity. The background to Local Plan Policy 76 and emerging Policy 82 explains that whilst small-scale facilities (e.g. riding stables or livery and associated paddocking) may be appropriate even these facilities are often characterised by overgrazed land, rough shelters, visually intrusive jumps and general untidiness which can have an adverse effect on the countryside.

19. My observations at the time of my site visit confirmed the Council's evidence that the introduction of the use since 1993 has already had a demonstrable impact on the landscape by

reason of the provision of a manege, external lighting, additional fencing, an extension to the barn and the provision of an internal access track. The Appellants submitted that all the items would be appropriate to a yard of this size used domestically. In my view, the materials used are not generally of a scale and type used by "domestic" stables. The Council's photographic evidence clearly shows that there has been a material change in the character of the site since 1993. I find that the existing commercial use has encroached upon the surrounding countryside.

20. In my experience, the commercial use of the site inevitably involves the passage of additional traffic to the land and the parking of vehicles around the buildings on the site. I consider that the additional parking of vehicles generated by the current use has a further adverse impact on the openness of the locality. In my view, the commercial use has had a significant adverse visual impact on the character and appearance of the surrounding landscape and detracts from the openness of the Green Belt. I believe that the removal of condition 2 would be inappropriate within the Green Belt and would be harmful to the visual amenities of the rural surroundings. I conclude that it would materially conflict with the aims of Structure Plan Policy 5 and DBLP Policies 3, 76 and 89.

21. At the inquiry the Appellants drew support from a business plan drawn up by ADAS for a livery enterprise at the site. The livery element would support the stud and utilise the local bridleways as a leisure activity for the owners of the animals. An earlier equestrian dwelling appraisal dated November 1997 found that the site met all the criteria for a temporary permission to enable the business to develop and prove its establishment. Until the Appellants had a proper basis to return to the proposal for a dwelling they could not risk starting any stud work because of the lack of security at the site and the need to be on hand at all times. Whilst I recognise that the stable buildings exist and that equestrian facilities can contribute to the rural economy I believe that the material harm that would be caused to the Green Belt strongly outweighs the factors raised in support of this appeal and I do not consider that those matters amount to the very special circumstances required to justify inappropriate development within such areas.

## **Conclusions**

### *Appeal 1*

22. For the reasons given above I am satisfied that the Council's refusal to grant an LDC in respect of the commercial use of stables, yard and land for livery and stud was well-founded and I shall exercise accordingly the powers transferred to me in section 195(3) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.

### *Appeal 2*

23. For the reasons given above I conclude that the appeal should not, on balance, succeed and I shall exercise the powers transferred to me accordingly.

**Informatives**

24. These decisions are issued as the determination of the appeals before me. Particulars of the rights of appeal against my decisions to the High Court are enclosed for those concerned.



WENDY HOARE LLB Solicitor  
Inspector

## APPEAL DECISION

## APPEARANCES

### FOR THE APPELLANT:

Mr A R Kimber	Geo-Plan Consultants Ltd, 51 Church Street, Theale, Reading ,Berks RG7 5BX
He called	
Lisa Munde	Appellant
Ian Poole	Appellant
Natasha Pirie BA BHSAI	Benet Cottage, Chequers Hill, Flamstead, Herts AL3 8EU
Jacqui Kipping	1 Pietley Cottages, Trowley Bottom, Flamstead, Herts AL3 8DU

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Fraser-Urquhart of Counsel	Instructed by the Solicitor to Dacorum Borough Council
He called	
Anne Davies BA MSc DipTP MRTPI	Head of Planning Enforcement Dacorum Borough Council

## DOCUMENTS

Document	1	List of persons present at the inquiry
Document	2	Copy letter sent by the Council to local people notifying them of the inquiry and circulation list
Document	3	Appendices 1-19 inclusive attached to the proof of evidence of Anne Davies
Document	4	Statutory Declaration of Lisa Munde
Document	5	Statutory Declaration of Ian Poole
Document	6	ADAS Report attached to the proof of evidence of Lisa Munde
Document	7	Letter from Hertfordshire Constabulary attached to the proof of evidence of Lisa Munde
Document	8	Letter from Mr R Selleck attached to the proof of evidence of Lisa Munde
Document	9	Bundle of case extracts submitted by the Council

## PLANS

Plan	A	Enforcement notice plan
Plan	B	Planning application site plans

## PHOTOGRAPHS

Photo	1	Appendices 20 & 21 attached to the proof of evidence of Anne Davies
-------	---	---------------------------------------------------------------------





# PLANNING

Civic Centre Marlowes  
Hemel Hempstead  
Herts HP1 1HH

GEO-PLAN CONSULTANTS LTD  
51 CHURCH STREET  
THEALE  
READING  
BERKS  
RG7 5BX

MISS L MUNDEE & MR I POOLE  
COLLEGE FARM  
DELMEREND LANE  
FLAMSTEAD ST ALBANS  
HERTS  
AL3

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/00335/99/LDE

COLLEGE FARM, DELMEREND LANE, FLAMSTEAD, ST. ALBANS, HERTS, AL3  
COMMERCIAL USE OF STABLES, YARD AND LAND FOR LIVERY AND STUD

Your application for lawful development certificate (s.191) dated 23 February 1999 and received on 24 February 1999 has been **REFUSED**, for the reasons set out overleaf.

Director of Planning

Date of Decision: 27 May 1999

**REASONS FOR REFUSAL APPLICABLE TO APPLICATION: 4/00335/99/LDE**

Date of Decision: 27 May 1999

**1. In the opinion of the local planning authority, insufficient evidence has been produced to demonstrate, on the balance of probabilities, that the stables and yard have been used for commercial purposes or that the land has been used for livery and stud purposes in breach of the condition attached to planning permission 4/0937/77 granted on 6 October 1977 for a period of more than ten years. The use of land and buildings at College Farm, Delmerend Lane, Flamstead for commercial stables, livery and stud is, therefore, not lawful.**