



# Department of the Environment and Department of Transport

Common Services

Room 1410 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct line 0272-218 938

Switchboard 0272-218811

Council Ref 4/0359/86E

CHIEF EXECUTIVE  
OFFICER

7 OCT 1986

File Ref. ....  
C/O 7/10  
Cleared .....

Whitby and Richardson Ltd  
8 Great Road  
HEMEL HEMPSTEAD  
Hertfordshire

Your reference DJW/GJW		18082	
Our reference		Ack.	
C.P.O.	T/APP/A1910/C/86/629/P8	Date	File
		3 OCT 86	
Received 7 OCT 1986			
Comments			

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9  
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981  
APPEAL BY YOURSELVES  
LAND AT 8 GREAT ROAD, HEMEL HEMPSTEAD, HERTFORDSHIRE

1. 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 Borough Council concerning the above mentioned land. I have considered the written representations made by you and by the Council, and also those made by an interested person. I inspected the site on 15 September 1986.
2. a. The date of the notice is 21 January 1986.
- b. The breach of planning control alleged in the notice is that after the end of 1963 the land coloured yellow on a plan attached to the notice has been developed by the making of a material change in its use from residential to garage use without the grant of planning permission required for that development.
- c. The requirements of the notice are to cease the use of the land coloured yellow for garage use and to restore the land coloured yellow to its condition before the unauthorised change of use took place.
- d. The period for compliance with the notice is 3 months.
- e. The appeal was made on the grounds set out in Section 88(2) (a), (b), (c) and (h) of the 1971 Act as amended.
3. Great Road is a residential road running roughly north and south. Apart from the appeal site at No. 8, it is developed in the main with detached and semi-detached houses and bungalows, which have gardens front and back. At No. 8 there is your petrol filling station and motor repair garage, at which the sale of cars also takes place. To the north at No. 10 there is a bungalow and then a 2-storey house at No. 12. To the south at No. 6 there is another 2-storey house.
4. On the front of the appeal site there is a forecourt with petrol pumps and at the back of the forecourt there is a building containing offices, a showroom and workshops. At the rear of the site there is a yard, which extends northward behind the back garden of No. 10 to the southern boundary of the back garden of No. 12. The yard also extends southward for a short distance into the back garden of No. 6. The land coloured yellow on the plan attached to the notice, which for ease of reference I call the "yellow" land, is a small rectangular area with a concrete surface in the north-west corner of the yard. The back garden of No. 12

adjoins its northern side and the back garden of No. 10 adjoins its western side. On both the northern and western sides of the "yellow" land there is a 2 m high lapboard fence.

5. The following facts relating to the legal issues are not in dispute. The main part of the land at No. 10 Great Road has been a motor repair garage since at least the 1930s. The dwelling at No. 10 was built in about 1937. The "yellow" land is now used for the parking of motor vehicles in connection with your garage business at No. 8.

6. The main points advanced in support of your appeal on grounds (b) and (c) are as follows. There has not been a breach of planning control because no buildings have been erected on the "yellow" land. There has been no material change of use because the parking of vehicles on the land not on display for sale, hire or reward is similarly appropriate to residential property as to a business property.

7. The main points made by the council in respect of grounds (b) and (c) are as follows. A number of applications for planning permission for various proposals at No. 8 have been submitted in the past. Up to 1974 plans accompanying the applications showed the "yellow" land to be part of the back garden of No. 10 and this was confirmed by an aerial photograph taken in November 1972. A further aerial photograph taken in May 1980 showed the "yellow" land to be excluded from the back garden of No. 10 and to be part of the garage land at No. 8. This latter arrangement was also shown on a plan accompanying an application for planning permission made in 1985. As the "yellow" land was previously used as a residential garden, its use for parking cars in connection with a commercial garage is a material change of use requiring planning permission. The evidence indicates that the change of use took place between 1974 and 1980 and is therefore subject to planning control.

8. In dealing with grounds (b) and (c) I do not accept your submission that there has not been a breach of planning control because no buildings have been erected on the land. In Section 87 of the 1971 Act (as amended) it is stated that there is a breach of planning control if development has been carried out without the grant of planning permission and from Section 22(1) of the Act it is clear that development means not only the carrying out of building or other operations but also the making of a material change of use, as is alleged in this case. I also reject your proposition that there has been no material change of use because the parking of vehicles not on display for sale, hire or reward is appropriate both to a residential property as well as to a business use. I take the view that the parking of a vehicle in the garden of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse as such would be a residential use, but that the parking of a vehicle on land used for a commercial garage in connection with the garage use would be a commercial use, which would be different from a residential use.

9. In this case, bearing in mind the legal implications of the facts, I conclude from the evidence supplied by the council that on the balance of probability at some time between 1974 and 1980 the use of the "yellow" land changed from that of a residential garden to a commercial garage use, by virtue of being used for the parking of vehicles connected with your garage business, and that in fact and degree this was a material change of use amounting to development within the meaning of Section 22(1) of the 1971 Act. The carrying out of such development required the grant of planning permission under the provisions of Section 23(1) of the Act and, as none was obtained, a breach of planning control took place. It follows then that the matter alleged in the notice does constitute a breach of planning control and that the breach has taken place. Your appeal on grounds (b) and (c) consequently fails.

10. As to the planning merits, it was evident to me during my inspection that Great Road is a pleasant place in which to live. It is a quiet road with little traffic and the majority of the properties in it are attractive and well maintained. In such a setting your garage/petrol filling station is out of place. Visually it impinges unfavourably on the street scene and the noise and activity generated is likely to disturb local residents and generally make this part of Hemel Hempstead a less pleasant place in which to live. I consider therefore that in the interests of good planning any significant expansion of the garage business on this site should be resisted.

11. With the foregoing in mind, my inspection of the site and surroundings, and the representations made, indicate that in considering your appeal on ground (a) my decision turns on whether the use enforced against is likely to increase to a significant degree the damage caused by the garage to local residential amenities. Whereas at the time of my inspection there were no vehicles parked on the "yellow" land, I note from a decision letter (T/APP/A1910/A/85/042580/P2 of 28 August 1986) concerning an appeal against a refusal of consent heard on 10 July 1986 that the Inspector saw 5 vehicles parked on the "yellow" land then; the appeal, which was dismissed, was against a refusal of planning permission for the use of the garage forecourt for the display of vehicles for sale. My conclusion is that adding to the area occupied by your garage by including the "yellow" land, with its capacity to accommodate up to 5 cars, is likely to allow the business to expand to a material degree. This in turn is likely to damage local residential amenities significantly in the manner I have already described, even if the "yellow" land were to be screened and its use restricted by the imposition of the conditions of consent suggested in the representations made.

12. I acknowledge that the development enforced against assists in the running of a small business, which merits encouragement and support. I have therefore taken into account the provisions of Circular 22/80, particularly those sections dealing with small businesses, and Circular 14/85. I find however that, whilst acknowledging the general presumption in favour of allowing applications for development, there is nevertheless in this case a sound, relevant and clear-cut amenity objection, which mitigates against allowing the development enforced against to continue. As I have therefore decided not to grant the planning permission sought, your appeal on ground (a) fails.

13. In considering your appeal on ground (h), I am not convinced by your argument that you require more time than the 3 months allowed for compliance in order to find other land for the parking of cars. It is evident from the decision letter of the previous appeal dated 28 August 1986 that there is adequate space for parking on the land occupied by your garage, excluding the "yellow" land, now that planning permission has not been granted for the use of the forecourt for the display of vehicles for sale. From the information before me I am satisfied that the 3 months allowed in the notice is a reasonable period in which to cease the garage use of the "yellow" land and to restore it to its former condition as part of a residential garden. I am therefore not extending the period for compliance with the notice and so your appeal on ground (h) fails.

14. In my deliberations I have taken account of all the other issues raised, but find that they are not sufficient to outweigh the considerations leading to my decision.

#### FORMAL DECISION


15. In exercise of the powers transferred to me, and for the reasons given above, I hereby dismiss your appeal, uphold the enforcement notice and refuse to grant

planning permission on the application deemed to have been made under Section 88B(3) of the 1971 Act (as amended by the Act of 1981).

RIGHT OF APPEAL

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

I am Gentlemen  
Your obedient Servant

A handwritten signature in dark ink, appearing to read 'J E Stevens', with a long, sweeping horizontal stroke extending to the right.

J E STEVENS OBE BE CEng FICE  
Inspector