C/1073/MO/P

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CHIEF EXECUTIVE'S OFFICER
25 JUL 1988
File No. 4/0485/87E
Refer to CEO 25/7
Cleared

PLANNING DEPARTMENT DACORUM DISTRICT COUNCIL
Ref.
CEO | DP | DC | DO | Admin | Clerk
Received 25 JUL 1988
Comments

Council's ref: 4/0485/87E

Messrs Savage & Partners
Planning Consultants
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Buckinghamshire HP5 2JB

Your reference
DOE Form 14069 dated 8.3.87
Our reference
T/APP/C/87/A1910/3/P6
Date
21 JUL 88

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEAL BY MR R LAWS DECEASED
LAND AT BIRCHIN GROVE FARM, HALF MOON LANE, PEPPERSTOCK, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine your late client's appeal against an enforcement notice dated 3 March 1987 issued by the Dacorum Borough Council alleging that the land, shown edged red on a plan attached to the notice, has been developed by the carrying out of building, engineering, mining or other operations namely the building of a partially constructed dwelling-house, shown coloured blue on the plan, without the grant of planning permission required for that development. The requirements of the notice are to demolish the partially constructed dwellinghouse and to remove from the land all material arising from such demolition and to reinstate the land to its former condition. The period for compliance with the notice is 9 months. Your late client appealed against the notice under Section 88(2) grounds (d) and (h) and I opened an inquiry into his appeal on 6 October 1987.

BACKGROUND

2. Your client, who was then still alive, did not appear before me and it was stated that he was seriously ill and, because of his condition and need to frequently attend hospital, it had been impossible to prepare a case and an adjournment was requested. The council did not oppose the application. It was further stated on your client's behalf that he realised that he had lost the battle to retain the appeal building as a dwellinghouse but was hopeful of obtaining the council's agreement to it being converted to agricultural use. The appeal under Section 88(2) ground (d) was, therefore, withdrawn. In the circumstances, I adjourned the inquiry to 8 February 1988. I reopened the inquiry on that date and it was stated that your client's health had deteriorated but negotiations had opened with the council concerning the retention of the partially built dwellinghouse as an agricultural building, its use as such to be regulated by a Section 52 agreement, but more time was needed to settle the matter. A further adjournment was requested and the application was supported by the council who confirmed that the future of the building was under consideration as explained. I adjourned the inquiry until 21 June 1988 and reopened on that date when it was announced that your client had died.

3. I was also informed that the negotiations with the council had fallen through because they were prepared to agree only to a time limited permission and insisted that the building must eventuallly be removed from the land. The executors of your

late client's estate wished the appeal to proceed, therefore, and, as the appeal under Section 88(2) ground (d) had been withdrawn only on your late client's understanding that the proposed conversion to agricultural use of the building would go through, they wished to reinstate ground (d) as the principal ground of appeal. Ground (g) should also be added in accordance with the written notice of November 1987. I accepted that the appeal would stand under Section 88(2) grounds (d) (g) and (h) and heard the evidence which was not taken on oath.

SITE DESCRIPTION

4. Pepperstock is a small rural hamlet or off-shoot of the rather larger village of Slip End which lies about 3 miles to the south of Luton and immediately to the west of the M1 motorway. A loose knit group of dwellings, a chapel and a public house form the nucleus of the settlement and Half Moon Lane extends in a generally south-westerly direction from this point. For about ¼ mile it is tarmacadamed and provides access to a scatter of dwellings and several caravan parks but the lane then becomes roughly surfaced and potholed and finally deteriorates into a muddy field access. The appeal site is situated just beyond the termination of the made up road where it lies on the south-easterly side of the field track. It comprises approximately 2.85 ha of rough grassland with a small cabin type dwelling towards the north-easterly boundary, a large corrugated iron Romney hut type building to the rear of this, several smaller structures along the north-easterly boundary and the partly completed chalet-bungalow, the subject of appeal, just within the north-westerly boundary. The building is at present constructed largely of unrendered blockwork, the roof is felt covered and battened, window frames are fitted and sheeted with plastic and door frames are fitted but not enclosed. The upper floor has not been boarded nor has a stairway been installed. At the time of my visit, which was unaccompanied at your request, the building was used for the storage of baled straw and the double garage was half full of stable manure.

YOUR LATE CLIENT'S CASE

5. The material points were: the premises comprised a small agricultural holding of 3 fields of grazing and a range of buildings, one of which had been converted to residential use and in which your late client lived until he died. During his lifetime he had kept cows, a bull, calves, pigs, horses, geese and chickens and although this provided a meagre living it was enough to sustain your client for 7 years of occupation. This contradicted the view held by the local planning authority and the Inspector who heard the earlier appeal that the property was not a viable agricultural unit which justified a permanent dwelling on the site. The present state of construction of the building subject of appeal was that the main fabric was complete with the roof felted and battened. Window frames were installed but not glazed, internal walls were largely in position and timber flooring joists were laid but not the flooring. The building was currently used for the storage of hay and other farm produce and the fact had been noted in the decision letter after the 1987 appeal.

6. In 1980 outline planning permission was granted for the erection of a temporary dwelling on the land and full permission followed in 1981. It was for a 3-bedroom bungalow and the consent was to last for 5 years. In 1986 the council refused to renew the permission for the temporary dwelling and an appeal against the decision was dismissed in 1987. At the same time as the council refused to renew the consent an enforcement notice was issued which sought to have the bungalow removed from the site under the conditions attached to the original authority, ie: that the permission expired on 31 December 1985 and that the development thereby permitted should be removed from the land. The notice was quashed on appeal, however, as the Inspector took the view that the 3-bedroom bungalow without garage, which was the dwelling for which permission had been given in 1981, was not the building partly erected on the

site, which had 4 bedrooms, a double garage and generally a great deal more living space and that, as this building was clearly not related to any of the earlier consents, the conditions attached to those consents could not be enforced. As, however, the appeal was against the council's refusal to permit the retention of the previously consented temporary dwelling together with permitted development works carried out at Birchin Grove Farm and, whatever the merits of the 1985 planning application and the council's refusal of 1986 and the subsequent appeal, the Inspector could have been in error when considering the appeal building.

7. The building was erected without planning permission, no use was ascribed to it under planning regulations, it had no approved planning use and it had never been used residentially. Whatever its appearance, be it that of a half completed house, it now stood on the site as a substantial structure, it was better than most agricultural buildings and it had only been used for agricultural purposes since completed in its present form. Your late client had not abandoned hope of using the building residentially but, in reality, he almost built a house but used it as a barn. As such, the building being erected without planning permission and having been started in 1981 or thereabouts, was in position more than 4 years prior to the date when the notice was issued and was thus immune from enforcement action. The work had been spread over the ensuing years but it was now substantially complete.

8. In the alternative, it was unreasonable to require the complete demolition of the building because the breach could be remedied by converting it to agricultural use. The council resisted this because they feared it might one day be used residentially but it was wrong to refuse a sensible solution for fear of what might happen. They had continuous planning powers to prevent this and, it should be remembered, if the notice was upheld and the building had to be removed it would be permissible to build a barn on the same spot under the Town and Country Planning General Development Order 1977/81. It was within the powers of the Secretary of State to advise the parties that agreement should be reached, as was originally intended, to convert the property to a farm building and not require it to be pulled down.

9. If the planning merits of the situation were considered under the deemed application, it was pointed out that the building had now been on the site for a good many years and it had become an established landmark, none were offended by it and none had complained of its existence. Circular 14/85 was quite specific in saying that permission should be granted for development unless demonstable harm was done to interests of acknowledged importance and, whatever the history of the case or whatever the rights and wrongs might be, no-one would be harmed if it remained. It was a time when agriculture was in decline and the building represented thousands of poundsworth of a man's labour and it was unreasonable to expect it to be destroyed for nothing more than a general policy reason. The site had a background of trees, it was not overlooked and neither the environment nor the interests of nearby residents would be affected if there was a dwelling on the site.

THE PLANNING AUTHORITY'S CASE

10. The material points were: the Hertfordshire County Structure Plan did not include policies directly relevant to development in the immediate area of the appeal site but the Dacorum District Plan was more specific; in particular, the policies concerned with development in rural areas beyond the Green Belt, environmental guidelines for new buildings, the landscape and agricultural dwellings. These policies principally concern the restriction on residential development in the countryside to purposes appropriate to agriculture and other rural interests, the attention to be paid to such as access, privacy, amenity and convenience, the protection of views and skylines, the minimisation of impact on the countryside and the location of new dwellings within existing settlements except where otherwise justified on agricultural grounds. The site had a long and complex planning history. Some 4 previous

applications for a dwelling on the site had been refused as had an application to retain a temporarily permitted dwelling. It had also previously been ruled that the property was not a viable agricultural holding and that an agricultural worker's dwelling was not justified. The notice subject of appeal arose out of earlier enforcement proceedings when the Inspector decided that the notice before him was not properly directed at the building now subject of appeal.

11. The reinstatement of the appeal under Section 88(2) ground (d) would not be opposed but it had been withdrawn by the deceased's solicitor when the inquiry opened on 6 October 1987 who stated quite plainly, and it was recorded, that his client accepted that he had lost the battle to retain the appeal building as a residence and it was disputed that this acceptance of the situation had any direct connection with the then possibility of the conversion of the building to an agricultural use under the protection of a Section 52 agreement. There had been no promise on the part of the council and the matters were not linked. There was no argument that the work on the now partly completed dwelling began in the spring of 1981 but the 4 year period, on which the case under Section 88(2) ground (d) relied, did not begin until the building was substantially completed and it had been accepted in the grounds of appeal in this case and in the written testimony of the 1986 appeal that the works represented a half built house. It followed, therefore, that if the structure was only partially built some parts remain to be completed and although the building of a house involved a number of separate tasks they were all component parts of a single operation, and the whole was not complete until all the necessary works had been carried out. It followed that, even if parts of the operations were themselves completed over 4 years ago, they could be caught by an enforcement notice relating to the whole operation provided the notice was served within 4 years of the completion of the whole development. Howes v S of S and Devon County Council (1984) JPL 439, Ewen Developments v S of S and North Norfolk District Council (1980) JPL 404 and Worthy Fuel v S of S and Southampton City Council (1983) JPL 173 referred. The Building Inspector's records showed that work was spread over the years 1981 to 1985 and the incomplete state of the building was also recorded in the decision letter relating to the 1986 appeal.

12. Section 88(2) ground (g) was added to the appeal after the first hearing was opened in October 1987. Little of substance had been put forward to support this ground of appeal but it seemed that the plea was that the appeal building need not be demolished if consent was given to its retention and conversion to a barn. As the use of any building occupied together with the land used for agricultural purposes did not involve development under the terms of Section 22(2)(e) of the Act, planning permission was not necessary and no action was taken on an application for the conversion of the partially built house to a barn, which was submitted in November 1987, but it was suggested that if the appellant wished to use the building in this way the proposed conversion might be considered if its permanent use was regulated by a Section 52 agreement. Any such agreement would have had to deal with a detailed schedule of works for the conversion of the building, a timescale for carrying out the works and control of the long term future of the building including possible demolition after the appellant ceased to have interest in the site. The schedule of works was not submitted until after the appellant's death, however, and the particular circumstances under which a Section 52 agreement might have been possible no longer existed. Relying on the enforcement notice, therefore, and the terms of Section 87(7)(a) and Section 87(9) of the Act, the steps which were necessary to remedy the breach meant that the land had to be restored to its condition before the development took place and this would necessitate nothing short of the removal of the building and all the material belonging to it from the land.

13. As far as the appeal under Section 88(2) ground (h) was concerned, no reasons had been put forward to show why 9 months was insufficient time to carry out the demolition of the building, remove the demolished materials and reinstate the land.

Lastly, the deemed application; the situation was the same as that when it was dealt with by the Inspector concerned with the 1986 appeal. His principal considerations were the effect of the building on the countryside and whether were were any special reasons requiring someone to live on the holding. On the first point, the Inspector concluded that the impact was so adverse that planning permission should not be granted and on the second point he was of the opinion that there was insufficient reason to justify a permanent dwelling on the holding. Reference was made to the 5-year period of residential occupation which was to demonstrate that the holding could be made viable and to the unsuccessful outcome of the experiment. There had been no change in circumstances on the appeal site since the Inspector came to these conclusions in 1986 and, therefore, the development now subject of appeal should not be approved. If permission was granted, however, an agricultural occupancy condition should be imposed.

CONCLUSIONS

14. In considering the appeal under Section 88(2) ground (d) I have put aside the statement made when I opened the inquiry on 6 October 1987, that your late client realised that he had lost the battle to retain the building for residential purposes and withdrew ground (d), and have looked at the case afresh, giving full weight to every possible argument which might favour your late client's cause. I find, however, that there is little of substance in the submissions made after I had accepted the reinstatement of ground (d) to persuade me that the development concerned is protected by the terms of Section 87(4)(a) of the Act. It was not disputed that although the development began in 1981 the building works were carried out over a period of years and that the structure which now stood on the site was still, to use the description given in evidence, a half built house. It was not challenged that the erection of a dwellinghouse, although it included a diverse range of construction works, was a single building operation and it was not argued that the definable end of the operation was when the building was completed and no reasons were advanced as to why the 4-year period should be calculated from when the development began and not from when it was finished.

15. In the absence of a more closely argued position on this ground of appeal, therefore, I cannot conclude other than that the construction of a dwellinghouse is a continuous operation and that each step in the development puts forward the date when the notice may be served, ie: the 4-year rule under Section 87(4) does not begin while the operations are in progress or are left unfinished. The effective date for measuring the beginning of the relevant period, therefore, is that on which the building was completed and in such a state that it could be used for its designated purpose for 4 years prior to the date on which the notice was served. Furthermore, I am of the opinion that any parts of the building which were themselves completed more than 4 years prior to the date of the notice but which are integral to the development as a whole cannot themselves escape the force of the notice. The council referred to a number of judgements which are relevant to these views and from which I find no good reasons to dissent. Reference was made in the submissions on this ground of appeal to the possibility of the Inspector who dealt with the 1986 appeals being in error when he considered the building involved in this case. The meaning of this statement is somewhat obscure because the identity and history of the partly built dwellinghouse is clear and undisputed and I am unable to find anything in the previous appeal decision letter which can affect my decision, one way or the other, on this ground of appeal. For this and all the foregoing reasons, therefore, I am of the opinion that the appeal under Section 88(2) ground (d) must fail.

16. Turning to the question of Section 88(2) ground (g); I consider that the terms of Section 87(9)(a) are unequivocal in requiring that in order to remedy a breach of planning control the land should be restored to its condition before the development

took place and they do not provide for a negotiated compliance, with the Secretary of State or the person appointed by him to act as adviser, intermediary or third party. The breach of planning control which has occurred in this case is the development of the land by the carrying out of building operations, ie: the erection of a partly built dwellinghouse and, in my opinion, the unauthorised development can be regularised only by the complete removal of the structure. There are no half measures, in my opinion, and any alternative use for the building must be a matter of separate negotiations with the council and the appeal under Section 88(2) ground (g) must fail. No evidence was offered to substantiate the appeal under Section 88(2) ground (h) and I consider it must fail. In the absence of any reasoned arguments to show that more time would be necessary there is nothing before me to suggest that 9 months is not an adequate period in which to demolish the building and remove the materials from the land.

17. On the planning permits of the case, I am mindful of the presumption in favour of allowing development as stated in Circular 14/85 but take the view that it would be a negation of good planning principles and practice to consent to a non-essential development in the countryside unless there were sound reasons for setting aside the policies laid down in the district plan. In this case, the main arguments for the retention of the building were that it had existed for some years and people had got used to it, that none had objected to it and none would be harmed if it remained. It was said to be inconspicuous and that much time and money had gone into its building. These are arguments which could be put forward in almost any circumstances where a relatively secluded rural site was involved and where a great deal of work and materials had been put into an unauthorised development before it came to notice and, if accepted, the restrictions on housing being scattered at random throughout the countryside would become meaningless and unenforceable.

18. I have considered whether there are exceptional features in this case which would warrant the setting aside of the objections to it but none comes to mind. There is no justification for an agricultural worker's dwelling as the holding comprises little more than a few acres of rough grazing and no serious attempt was made to substantiate such a case nor were any other reasons advanced to show that there was a need to meet the requirements of unusual circumstances or personal hardship. On the contrary, there is nothing in the evidence before me to indicate that the site is other than indistinguishable from scores of similar plots on the fringes of small rural settlements in the area and, if planning permission was granted in this case, I consider that the pressures on the planning authority to approve a proliferation of applications for the development of virtually identical land would become almost irresistible. I have also considered whether the strong planning objections to the development could be overcome by attaching regulating conditions to a grant of planning permission but am convinced that such a device would do nothing to alter the fact that the development is a non-essential, sporadic and undesirable incursion into open countryside and, as such, it cannot be allowed to remain. I have further had regard for all the other matters raised in the representations made at the inquiry and have come to the conclusion that none is of greater weight or significance than those factors which have led me to my decision.

FORMAL DECISION

19. For the reasons given above and in exercise of the powers transferred to me I hereby dismiss this appeal, direct that the notice be upheld and refuse to grant planning permission under the application deemed to have been made under Section 88B(3) of the Act.

RIGHT OF APPEAL

20. This letter is issued in determination of the appeal before me. Particulars of the right of appeal against my decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

N BARCLAY FCIArb FBIM FASMC DL
Inspector

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APPEARANCES

FOR THE APPELLANT

Mr V Savage	- Planning Consultant. Messrs Savage & Partners, The Gatehouse, 1 Blucher Street, Chesham, Buckinghamshire HP5 2JB.

FOR THE PLANNING AUTHORITY

Mrs A Walker	- Solicitor, Dacorum Borough Council.
She called:	
Mr D P Noble BA(Hon) MRTPI MIAS MRSH	- Principal Assistant Planner, Dacorum Borough Council.

DOCUMENTS

Document 1:1 - 1:3:	Lists of persons present at the inquiry.
Document 2:	Planning History of Appeal Site.
Document 3:	Building Regulations Progress Report.
Document 4:	T/APP/A1910/C/86/1954-56 & A/86/49592/P6.
Document 5:	Messrs Savage & Partners 20 November 1987.
Document 6:	Dacorum Borough Council 8 June 1988.
Document 7:1 - 7:4:	Residents' letters.

PLANS

Plan A:	Enforcement Notice Plan 3 March 1987.
Plan B:	Enforcement Notice Plan 9 May 1986.
Plan C:	Proposed Conversion of partly built house to Barn.