The Planning Inspectorate

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

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Director of Planning
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Civic Centre
Marlowes
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NP1 1HH

Your Ref: 4/0488/96EN

Our Ref: APP/C/96/A1919/642626 (COSTS)

Dear Sir

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 174 AND 175 (7)
PLANNING AND COMPENSATION ACT 1991
LAND AT PIX FARM LANE, BOURNE END, HEMEL HEMPSTEAD, HERTS
APPEAL BY W F BUTTON AND SON LTD: APPLICATION FOR COSTS

1. I am directed by the Secretary of State for the Environment to refer to the above mentioned appeal and to the application made on behalf of the appellant for an award of costs against your council.

2. I enclose a copy of the Secretary of State's decision on the application. You will see that it has been decided that a full award of costs is justified, and the appellants' agent has been invited to submit details of those costs to you. I also enclose a copy of the guidance note on Taxation procedure.

Yours faithfully

L Ollis

Miss L Ollis
Planning Inspectorate Costs Branch

The Planning Inspectorate

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Your Ref:

Our Ref: APP/C/96/A1910/642626
(COSTS)

Date: 31 January 1997

Dear Sirs

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 174 AND 175(7)
PLANNING AND COMPENSATION ACT 1991
LAND AT PIX FARM LANE, BOURNE END, HEMEL HEMPSTEAD, HERTS
APPEAL BY W F BUTTON & SON LTD: APPLICATION FOR COSTS

1. I am directed by the Secretary of State for the Environment to refer to the Planning Inspectorate's letter of 11 July 1996, confirming withdrawal of an enforcement notice issued on 5 March 1996 by Dacorum Borough Council. The notice alleged a breach of planning control on land at Pix Farm Lane, Bourne End, Hemel Hempstead, Herts, by the change of use of the land without planning permission for:-

(i) use of the land for the storage and processing of reclaimed metal and;

(ii) use of the land for storage of buildings materials and demolition waste including bricks, concrete pavers, timber etc.

2. This letter deals with your clients application for an award of costs against Dacorum Borough Council, made in your letters of 13 June, 25 July, 12 September and 21 October 1996. The Council replied in their letters of 21 August and 25 September 1996. As the full text of all these representations has been made available to the parties, it is not proposed to summarise them. They have been carefully considered.

BASIS FOR DETERMINING THE APPLICATION

3. In enforcement notice appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal. Costs are awarded only on grounds of "unreasonable" behaviour, resulting in wasted or unnecessary expense. Section 175(7) of the Act, inserted by Schedule 4 to the Planning (Consequential Provisions) Act 1990, enables the Secretary of State to award costs in an enforcement appeal case which is proceeding by an

inquiry or hearing, but one of the principal parties withdraws before the arrangements have been formally notified. Paragraph 10 of DOE Circular 8/93, the relevant policy guidance, refers.

4. As to the comments in your letter of 12 September 1996 concerning the relevance to this case of section 322A of the 1990 Act (introduced by section 30 of the Planning and Compensation Act 1991), an authoritative ruling is a matter for the Courts. However, for the reasons stated in the Inspectorate's letter of 8 August 1996, the view is taken that the provisions of section 322A of the 1990 Act do *not* apply in this case. This is because the inquiry date had not been formally notified to the principal parties at the time the enforcement notice was withdrawn on 10 June 1996; and thus "arrangements" had not been made for a local inquiry to be held in accordance with section 322A(1)(a)(ii). The Planning Inspectorate's letter of 6 June 1996 referred to the proposed inquiry date. Confirmation was not sent until 18 June 1996; and this is regarded as the "formal notification" within the terms of paragraph 12 of Annex 2 to DOE Circular 8/93. That would not have been received by the parties prior to the withdrawal of the notice. Nevertheless, the view is taken that jurisdiction to consider the application for costs arises from section 175(7) of the 1990 Act, as stated in paragraph 3 above.

5. The application for costs has been considered in the light of the policy guidance in DOE Circular 8/93, the appeal papers, the correspondence on costs and all relevant circumstances.

REASONS FOR THE DECISION

6. On examination of all the available evidence, the decisive issue is considered to be whether the Council acted "unreasonably" in considering it "expedient" to issue the enforcement notice, worded as it was, thus causing the appellant company unnecessary or wasted expense in appealing against it up to the point of its withdrawal. Particular regard has been paid to relevant policy guidance in paragraph 22 of Annex 3 to DOE Circular 8/93.

7. Local planning authorities (LPAs) are expected to take great care to ensure that enforcement notices which they issue are clear and correctly worded in all respects. It follows that a notice should not be issued without careful attention to detailed drafting. In this case your clients appealed (12 April 1996) on grounds (a), (b), (c), (f) and (g) in section 174(2) of the 1990 Act (as amended). In the grounds of appeal you submitted that the notice was defective because it did not clearly tell the appellant company what they were required to do to remedy the alleged breach of planning control. You gave examples of wording and terms used in the notice which you claimed were obscure; and you argued that the words were so broad as to preclude almost the whole of the permitted use of the site. You said:-

> *"the notice is internally inconsistent and confused ....[and]... is incapable of amendment without prejudice to the Appellants."*

On 10 June 1996, following consideration of the grounds of appeal, the Council withdrew the notice. This preceded formal notification of the inquiry date. On the same day they issued a revised notice specifying the alleged breach of planning control and the compliance requirements in greater detail. A similar appeal (PINS ref: APP/C/96/A1910/643780), which has yet to be determined, was made against the second notice.

8. The Council contend that the changes made in the second notice were not substantive and did not materially alter the allegations. They state:-

> *"it would have been possible .....to have allowed the appeal to continue and request that the Inspector modify the Notice ....It is not accepted that the Notice was technically defective or that it could not have been varied...[it] was withdrawn and modified to minimise time spent at the Inquiry and not for the purpose of further clarification."*

9. Whether or not the notice was capable of variation or correction without prejudice, on appeal, in accordance with section 176(1) of the 1990 Act (as amended), is formally unresolved since the notice was withdrawn; and the Secretary of State has no further jurisdiction in the matter on appeal. However, paragraph 7 of Annex 2 to DOE Circular 21/91 states:-

> *"An enforcement notice must enable every person on whom a copy is served to know exactly what, in the LPA's view, constitutes the breach of control and what steps the LPA require to be taken, or what activities are required to cease, to remedy the breach."*

Although the Council do not accept that the notice was technically defective or incapable of correction on appeal, the view is taken that their withdrawal was an admission, in the particular circumstances, that there was sufficient room for doubt on the matter to justify a withdrawal of the notice and its re-issue in a more accurate and precise form; and it was not "expedient" to have issued the notice, worded as it was, at the outset.

10. The Council responded positively to your claim that the notice was defective by withdrawing it promptly and immediately issuing a revised notice. It is nevertheless concluded that the Council paid insufficient care to detailed drafting at the outset. To this extent, it is concluded that the Council acted "unreasonably" in issuing a defective notice which was later withdrawn.

11. As to whether the withdrawal resulted in wasted expense to the appellants, careful consideration has been given to the Council's argument that the appellants were not unreasonably put to wasted expense because their appeal against the second enforcement notice was on similar grounds to those stated in their previous appeal. It is accepted that much of the work involved in appealing against the first notice would not have been wasted because it would have been relevant to your clients further very similar appeal (PINS ref: APP/C/96/A1910/643780) against the notice issued on 10 June 1996. Nevertheless, the Secretary of State has decided that some quantifiable expense would have been wasted in appealing against the first notice; and an award will be made which corresponds to expenses incurred in appealing against the first notice, less an amount which represents work re-usable in the second appeal. This decision should not be taken to imply any view on the Council's reasons for taking the subsequent enforcement action, the subject of the further appeal.

FORMAL DECISION

12. For these reasons, it is concluded that a partial award of costs against the Council, on the grounds of "unreasonable" behaviour resulting in unnecessary expense, is justified in

the particular circumstances. It will be limited to expense incurred in appealing against the first notice, less an amount which represents work re-usable in the further appeal.

COSTS ORDER

13. Accordingly, the Secretary of State for the Environment, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 174 and 175(7) of the Town and Country Planning Act 1990, and all other powers enabling him in that behalf, **HEREBY ORDERS** that Dacorum Borough Council shall pay to W F Button & Son Limited, their costs of the proceedings before the Secretary of State, limited to their costs of appealing against the first notice dated 5 March 1996, less an amount which represents work re-usable in the further appeal (PINS ref: APP/C/96/A1910/643780) against a second, similar notice issued on 10 June 1996. Such costs to be taxed in default of agreement as to the amount thereof. The subject of the proceedings was an appeal against an enforcement notice issued on 5 March 1996 by Dacorum Borough Council. The notice alleged a breach of planning control on land at Pix Farm Lane, Bourne End, Hemel Hempstead, Herts, more particularly described in paragraph 1 above.

14. You are now invited to submit to Mrs J Custance, Senior Planning Officer, Dacorum Borough Council, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement on the amount. A copy of the guidance note on taxation procedure, referred to in paragraph 5 of Annex 5 to DOE Circular 8/93, is enclosed.

Yours faithfully

J L PARNELL
Authorised by the Secretary of State
to sign in that behalf

GUIDANCE NOTE

DEPARTMENT OF THE ENVIRONMENT
WELSH OFFICE

AWARD OF APPEAL COSTS:

LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)

HOW TO APPLY FOR ADJUDICATION WHEN THE AMOUNT OF AN AWARD OF COSTS IS DISPUTED.

1. If parties cannot reach agreement on the amount of costs to be recovered, either party can refer the disputed costs to a Taxing Officer or Master of the Supreme Court Taxing Office for determination. This process is called taxation.

2. Before any disputed costs can be referred to taxation the costs award must be converted into an order of the High Court.

3. No interest can be claimed on the costs unless and until a High Court order has been made, and interest will only run from the date of such order.

4. Application for taxation is in two stages. The first, described in paragraph 5 below, is to apply to have the costs award made an order of the High Court. The second stage described in paragraph 6 below, is to apply to commence taxation proceedings.

5. The procedure for applying to have the costs award made an order of the High Court, is as follows:-

(a) Write to the Head Clerk, Crown Office, Royal Courts of Justice, Strand, London WC2A 2LL, referring to section 250(5) of the Local Government Act 19972, and enclosing the <u>original</u> of the order of the Secretary of State, or his Inspector, awarding costs. It is no longer necessary to certify a failure to agree costs for the costs ward to be made an order of High Court and establish the right to interest. A prepaid return envelope should be enclosed.

(b) An order making the costs award an order of the High Court will be then sent to you.

6. Once the costs award is made an order of the High Court, proceedings for taxation must be begun within 3 months. The procedure for commencing taxation proceedings is as follows:-

(a) Take or send the original of the High Court order, together with a certified true copy of that order, to the Chief Clerk, Supreme Court Taxing Office, Cliffords Inn, Fetter Lane, London EC4A 1DQ, together with a bill detailing the costs claimed and any supporting papers.

(b) The original of the High Court order will be returned together with the name of the Taxing Officer or Master who will deal with the case.

7. The Taxing Officer or Master may disallow costs and/or interest on such costs in the event of any delay in staring or conducting the taxation.

8. This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek appropriate professional advice.

Footnote

The procedure for taxation is governed by order 62 of the Rules of the Supreme Court (as contained in the Schedule to the Rules of the Supreme Court (Amendment) 1986 (Statutory Instrument 1986/632 (L2)) - available from HMSO Bookshops).