



Appeal Decision

Inquiry held on 27 June 2000

by David Rusdale BA Dip

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

DoP	ED	DP	DC	EC	SS
Rec'd. 08 AUG 2000					File
Comments: TP MRTPI					
PLANNING DEPARTMENT DEC					Date

The Planning Inspectorate
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07 AUG 2000

Appeal Ref: APP/A1910/X/99/1034063

Land adjacent to Northchurch Service Station, London Road, Cow Roast

- 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 made by Cougar Enterprises Ltd against the decision of Dacorum Borough Council.
- The application (ref:4/00528/99/LDP), dated 12 February 1999, was refused by the Council by notice dated 25 June 1999.
- The application was made under section 192(1)(b) of the 1990 Act as amended.
- The development for which a Certificate of Lawfulness is sought is formation of a boat lay-by and alterations to vehicular access to be used for the mooring of boats.

Summary of Decision: The appeal is dismissed.

The Main Issues

1. Planning permission was granted by notice dated 1 August 1974 for boat lay-by and alterations to vehicular access at the appeal site, reference no.4/14/74. The permission was granted subject to conditions, including the standard condition requiring commencement of the development within 5 years of the date of the permission. Later in 1974 excavations were started on the site, but were not completed.
2. The basis of the appellants' case is that the development of the boat lay-by and vehicular access shown on Drawing no.GBA2398.01D dated August 1998 would constitute a completion of the development granted and started in 1974, and therefore would be lawful. The Council argues that the excavations and the development shown on Drawing no.GBA2398.01D are considerably more extensive than that permitted by planning permission no.4/14/74; therefore the excavations are not and the proposed development would not be, lawful.
3. The main issues to be determined in this case are, firstly, what was granted by planning permission 4/14/74 and, secondly, whether the proposed development shown on Drawing no.GBA2398.01D can benefit from that permission.

Planning Permission No.4/14/74

4. The decision notice for this permission states "the Council hereby permit the development proposed by you in your application dated 13th December 1973 and received with sufficient particulars on 8th January 1974 and shown on the plan(s) accompanying such application...". Thus the planning permission incorporated by reference the application and accompanying plans. The application and plans therefore form part of the permission.

5. There are 2 plans on the Council's files; both stamped as being "plan referred to in consent", "Date 1 Aug 1974" and "T.P. Ref. No 4/14/74". The first stamped plan is a location plan at 1:2500 scale that simply shows the extent and location of the application site, which is a field, some 8400 sq. m in area according to the application form. The second stamped plan is more detailed and shows the layout of the proposed development. It is the appellants' case that there was another plan that amended or replaced this second plan, but that this has been inadvertently destroyed. According to the appellants, this amended plan showed the development granted by planning permission no.4/14/74 and Drawing no. GBA2398.01D is a reasonable interpretation of that plan.
6. The Council referred to the case of *Slough Borough Council v. Secretary of State for the Environment* [1975] JPL 1128 which confirmed earlier rulings that in construing a planning permission which is clear on its face, in general regard may only be had to the planning permission itself; and it is not appropriate to consider extrinsic evidence in construing the permission unless the permission is ambiguous or its validity is questioned. Neither of these exceptions applies in this case. But, if there were another plan that showed the development permitted, rather than that on the Council's file, it would form part of the planning permission by incorporation by reference. In these circumstances, I consider that it is appropriate to consider the extrinsic evidence to establish on the balance of probabilities whether there was such a plan.

The Layout Plan

7. The stamped layout plan shows a proposed boat lay-by measuring 35 feet (10.7m) deep and 45 feet (13.7m) wide. It is set back from the edge of the adjoining canal by 5 feet (1.5m). Its access to the canal is 20 feet (6.1m) wide at the canal edge and 25 feet (7.6m) wide at the edge of the proposed lay-by. The area of the proposed lay-by shown on this plan (about 147 sq. m) is less than the 195 sq. m mentioned in section 3 of the application form. However, as the plan clearly shows the dimensions of the proposed lay-by, I consider that it should be given precedence in terms of interpreting the development applied for. The same would apply if I find that there was a further plan as claimed by the appellants.
8. The stamped layout plan also shows two accesses from the application site onto London Road. These are described on the plan as "A OLD ACCESS" and "B PROPOSED NEW ACCESS". I saw that these access points correspond to the field gates to the site. The notes relating to the access points appear to have been written with a different pen to that used in the rest of the plan, with the letters being significantly thicker and darker. The same pen also appears to have been used by the applicant, Mr Seddon, to sign and date the plan. It is reasonable to assume that the notes, signature and date were added after the preparation of the original plan. There is a dispute whether the plan is dated 11/1/74, as argued by the appellants, or 11/6/74, as claimed by the Council. If it is the former, I agree with the appellants that there is a stronger possibility that there was a subsequent plan that is not on the Council's files.
9. The appellants gave examples of planning permissions on nearby sites where they claim that the approval stamp on plans had been incorrectly applied. But none of these examples were of cases where a plan had been stamped as approved when it did not form part of the planning permission. It would be wrong to conclude from this small number of cases that

there was a significant likelihood that the plans subject to planning permission no.4/14/74 were incorrectly stamped and that a plan subject to this permission has been destroyed. This possibility has to be assessed in the context of the other evidence.

Handwriting

10. Mrs Seddon has confirmed that the handwriting on the stamped layout plan was that of her late husband and she thought that the disputed date was 11/1/74. The appellants have also employed a handwriting expert to advise on the date on the layout plan. In his opinion the disputed figure is clearly intended to be read as a 1, not a 6. However, he goes on to say that because of the inferior quality of the printed copy of the plan on which his opinion is based he has to be circumspect with the degree of certainty expressed. He concludes that there is a preponderance of Probabilities over Possibilities that the disputed figure is a 1 and not a 6.
11. Mrs Seddon and the handwriting expert were not available for questioning at the inquiry. It transpires that they were only shown the layout plan and none of the other examples of Mr Seddon's handwriting in the planning files. In this respect I share the Council's concern that the expert, as well as Mrs Seddon, has not had the opportunity to comment on other documents written by Mr Seddon, such as a letter of his dated 18 May 1974 in which the figure 6 is very similar to the disputed figure on the plan. Additionally, I agree with the Council that the documented history of the progress of the planning application is supportive of the figure being a 6 rather than a 1.

Progress of the Planning Application

12. The application was dated 13 December 1973. At that time planning applications were first registered with the Hertfordshire County Council (HCC) before being sent to the former Berkhamstead Rural District Council (BRDC). The date of the letter from HCC to BRDC enclosing the application, 13 December 1974, is clearly wrong. I agree with the appellants that from the other dates on the letter it should probably read 13 January 1974. The letter states that the application was deemed to have been received with sufficient particulars on 8 January 1974. The location plan that forms part of the planning permission is stamped as being received by HCC on 9 January 1974, the day after it was formally registered. But as this predates the corrected date of the letter from HCC and the date, 17 January 1974, when the letter was stamped as received by the BRDC, it is reasonable to assume that it formed part of the original application considered by the local planning authorities. If the disputed figure on the layout plan is a 1 rather than a 6, it was dated before HCC sent the application to BRDC, but there is no date received stamp on the plan similar to that on the location plan.
13. Whilst the location plan contains no details of the proposed lay-by or altered access, this would not have prevented HCC registering the application with a view to requesting further details. Mr Seddon did not employ an agent and HCC may have taken a more lenient attitude towards the lack of detail in his application compared to the application for the much larger marina proposed nearby. The first written request to Mr Seddon for a detailed plan of the proposed development is dated 15 May 1974, after Dacorum District Council (DDC) superseded BRDC. This letter states that the Regional Controller "requires a plan showing the detail of the lay-by and of any vehicular access to the site". This implies that at that time there was no plan showing such details as part of the application. Mr Seddon replied by letter dated 18 May, enclosing copies of the drawings requested. The next letter

on the Council's file is from Mr Seddon dated 11 June 1974. This refers to a meeting at DDC's offices on the same day and encloses "copies of revised drawings of the cross-over to my field". Whilst there is no mention of the revised plans in the Regional Controller's response of 2 July 1974, it is clear from previous letters that he was awaiting such a plan before commenting and one of his officers was present at the 11 June meeting. He raised no objections to the proposal subject to the imposition of specified conditions. These were incorporated into the planning permission.

14. The details of the proposed access and the lay-by shown on the stamped layout plan are sketchy. But, as I have already noted, Mr Seddon was an unrepresented applicant, and the Regional Controller's concerns about an altered access onto what was then a Trunk Road could be and were adequately covered by the imposition of conditions. What details British Waterways may have needed in terms of granting a licence for access to the canal was not a matter for the local planning authority in determining the application. Moreover, Mr Bunyan's note of this meeting with Mr Seddon on 22 May 1975 indicates that Mr Seddon did not prepare detailed engineering drawings of the "basin and slipway" until after the grant of planning permission. The note also states "it is unfortunate that the present permission was given in the form that it was, with no engineering and landscaping details". This indicates to me that the plan subject to the planning permission was not very detailed, as in the stamped layout plan. This may explain why British Waterways did not object to the positioning of the proposed lay-by within 5 feet (1.5m) of the canal bank.
15. The hand written notes on the stamped layout plan, agreed by the parties to have been written by Mr Seddon, contains the words "DACORUM DISTRICT COUNCIL" and "REF T37/JK/BK5716/74". DDC did not come into existence until 1 April 1974 and this reference was first used in correspondence with Mr Seddon in the DDC letter of 15 May 1974. I do not accept the appellant's argument that Mr Seddon would have referred to DDC over 2 months before it came into existence, even if he had been aware that such a change was to be made. These notes are strong evidence that the plan was dated after 15 May 1974, and not on 11/1/74.
16. I consider on the balance of probabilities that the documented history of the planning application indicates that the stamped layout plan, without the notes and signature in darker ink, was submitted to DCC on 18 May 1974 in response to DDC's letter of 15 May 1974, and the notes and signature in darker ink were added on 11 June 1974 following the meeting with DCC and Regional Controller officers on the same day. There is no indication from the Council's files that any further plans were submitted after 11 June 1974 before planning permission was granted.

Mr Seddon's Intentions

17. It is the appellants' case that it had been Mr Seddon's intention to build a lay-by of the size illustrated in Drawing no. GBA2398.01D, rather than that shown on the stamped layout plan.
18. The planning application form at section 4 states that the proposed lay-by is for "the mooring of my boat or boats" and the form is clear in stating that the size of the proposed lay-by would be "approx. 195 sq. m". In his letter of 1 March 1974 Mr Seddon refers to "mooring my boats" and to him negotiating the purchase of a further narrow boat. But in a letter of 20 March 1974, in response to a letter from BRDC seeking clarification of the

proposal, Mr Seddon confirmed that the lay-by was only for the mooring of one boat. This is the last letter documented in which Mr Seddon clarifies the nature of the proposed development before the planning application was determined.

19. In the report to the Development Control Committee of Dacorum Borough Council in May 1995 in respect of a planning application for the appeal site and in proofs of evidence for the subsequent appeal a Council officer stated that the boat lay-by was intended to accommodate Mr Seddon's 72 foot (22m) long narrowboat and other craft. But there is no mention in the documents in the Council's files dated before the planning application was granted as to the size of Mr Seddon's boat or boats. In particular there is no mention of a 72 foot (22m) long narrowboat in Mr Seddon's letter of 1 March 1974 referred to in one of the proofs. The first mention of it is in Mr Bunyan's notes of his meeting with Mr Seddon on 22 May 1975, some 9 months after the grant of planning permission, at which Mr Bunyan asked Mr Seddon of his intentions for the site. It appears to me that the author of the Committee Report and proofs, who was unable to attend the inquiry because of long term illness, may have gleaned Mr Seddon's intentions from the notes of this meeting. In any event, because the scale of the development proposed in 1995 was substantially greater than that granted in 1974, whatever the outcome of this appeal, the Council officer did not have to delve into the planning history of the site to the extent that is required in the present case.
20. Notwithstanding the above, the appellants argue that DDC would have known that Mr Seddon was seeking permission for a boat lay-by that could accommodate a 72 foot (22m) long narrowboat and that the lay-by shown in the stamped layout was not large enough for this purpose. Mr Seddon may have owned a narrowboat of this length, as suggested in the appellants' conversation with Mrs Seddon. But the documentary evidence does not indicate that DCC was aware of this before it granted planning permission. Whilst the average length of boats on the canal may be about 50 feet (15.2m), the appellants acknowledged that narrowboats as short as 20 foot (6.1m) long used the canal. A boat of this size could be accommodated in the lay-by shown on the stamped layout plan and it was not incumbent upon DDC to query whether a lay-by of this size would be adequate for Mr Seddon's purposes.

Events Subsequent to the Grant of Planning Permission

21. The appellants argue that Mr Seddon's actions after the grant of planning permission and the DDC's response to these also indicate that permission was granted for a lay-by larger than that shown in the stamped layout plan.
22. A letter from Northchurch Parish Council shows that excavations on the site had started before 10 September 1974. Following further enquiries from interested persons, Mr Bunyan had a site meeting with Mr Seddon on 22 May 1975. The note of this meeting states that Mr Bunyan pointed out that "the basin as commenced appeared to be larger than that for which he had been given approval". The note goes on to say that Mr Seddon explained that, following the grant of planning permission, he had had to prepare detailed engineering drawings for British Waterways, "including a larger basin than originally proposed". Mr Bunyan followed up the meeting by writing to Mr Seddon on 3 June 1975 stating that "the basin itself is larger than is shown on the plan submitted with the application". A planning application was requested for these works and for extensive tipping that had taken place on the site. Mr Seddon replied on 8 August 1975. He claims that development at the site had not exceeded the planning permission already granted. But

the letter also states that the plans submitted by his engineering consultant, presumably to British Waterways, show the lay-by to be about 15 feet (4.6m) larger than the plan submitted by Mr Seddon because the engineer considered this was necessary to accommodate the size of boat Mr Seddon was hoping to berth in the lay-by. Referring back to the notes of the meeting on 22 May, the size of boat referred to was 72 foot long (22m). This supports the view that the lay-by shown on the approved plans would not accommodate a boat of this size.

23. In response to Mr Seddon's letter, Mr Bunyan measured the size of the excavated basin. His note of 26 August 1975 states it measured some 51 feet (15.5m) by 54 feet (16.5m) and was located some 20 feet (6.1m) from the canal bank. He wrote to Mr Seddon on 1 September 1975 confirming these dimensions and that the approved basin measured 35 feet (10.7m) by 45 feet (13.7m), that is, the size shown on the stamped layout plan. The letter goes on to say that if Mr Seddon wished to proceed with this larger development a new planning application would be required. There is no record of any written reply from Mr Seddon disputing the dimensions quoted in the letter.
24. DDC subsequently authorised the taking of enforcement action in respect of the excavated basin and the tipping operations. I consider it unlikely that DDC would have authorised such action against the former operation if it had been unclear as to whether the excavated area was larger than that granted planning permission. Whilst Mr Seddon submitted planning applications for the tipping operations at the site, he did not submit a further application for the boat lay-by. In an internal memorandum of 2 November 1976 the Director of Technical Services notes that the planning applications for the tipping operations resolved that matter, and that enforcement action should be limited to the boat basin which was about twice as large as permitted. It was subsequently decided to delay any action until the development was finished. Enforcement action against the lay-by was never taken.
25. Mr Seddon's responses are confused, although he indicates in two instances that the basin excavated in 1974/5 was larger than that granted planning permission. Notwithstanding, the events and exchanges indicate to me that in 1975 the Council was clear that the basin excavated by Mr Seddon was larger than that granted planning permission. Mr Bunyan specifically referred to the size of the lay-by as being the same as that shown on the stamped layout plan. Mr Bunyan was not involved in the consideration of the planning application. But the development was investigated only about 1 year after the grant of permission when the permission and the events surrounding it should have been fresh in the minds of Council officers and members.
26. Mr Seddon appears to have recommenced excavations once his planning applications for tipping had been resolved. But a boat lay-by was never completed and the site and the excavations are now overgrown. The excavated area at the time of my site inspection was as shown on the land survey carried out by Leighton Buzzard Surveys in September 1989. It extends to some 598 sq.m. Mr Seddon may have obtained planning permission for tipping and secured a route for a new sewer across the site that did not impinge on the excavated area. But this does not mean that Mr Seddon believed that the excavated area was the same as that granted in 1974 or that it was in fact. Mr Seddon may simply have been trying to carry out a larger development than that granted planning permission. This is a different situation to that regarding the tipping on the site which had no planning permission at all. The fact that the Council did not subsequently take enforcement action

against the excavations does not establish that it considered that they were lawful. If the excavations had ceased and no harm was being caused to the amenity of the area, it may have felt it unnecessary to take formal action.

Conclusions on Planning Permission No.4/14/74

27. Mr Seddon's intentions appeared to have changed through time and his intentions do not determine what was granted planning permission. I have found that the documented history of the planning application is consistent with the stamped layout plan being dated 11/6/74 rather than 11/1/74. There is no indication of a plan being submitted after 11/6/74 and before planning permission was granted. The actions and statements of DDC officers just 1 year after the grant of planning permission indicate that they were clear that the permission related to the lay-by shown on the stamped layout plan. These findings are a strong indication that the stamped layout plan was the plan subject to the planning permission. Events subsequent to the granting of planning permission do not materially alter the above findings. Given the limited documentation available to the handwriting expert and the qualifications contained in his report, his conclusions regarding the date on the stamped layout plan and the other evidence put forward by the appellants does not outweigh the evidence from the documented history of the planning application and DDC's subsequent statements and actions.
28. I consider that the appellants have failed to establish on the balance of probabilities that there was another plan subject to planning permission no.4/14/74 that has since been destroyed. And I conclude on the same basis that the stamped layout plan dated 11/6/74 formed part of the planning permission.

Drawing No. GBA2398.01D

29. The excavations carried out in 1974/5 were significantly larger than the permitted boat lay-by granted by planning permission no. 4/14/74 and cannot benefit from the permission. The proposed boat lay-by shown on Drawing No. GBA2398.01D is some 611 sq. m in extent. As this is some four times larger than the lay-by shown on the stamped layout plan granted by planning permission no. 4/14/74, the proposed lay-by cannot benefit from this planning permission. For the avoidance of doubt, the proposed lay-by is also significantly different in shape and location to the present excavations on the site, whatever their legal status.
30. I conclude on the balance of probabilities that construction of the boat lay-by and alterations to vehicular access shown on Drawing No.GBA2398.01D would not be lawful.

Conclusions

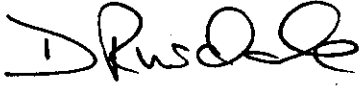
31. For the reasons given above and having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC in respect of the formation of a boat lay-by and alterations to vehicular access to be used for the mooring of boats was well-founded and I shall exercise accordingly 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.

Formal Decision

32. In exercise of the powers transferred to me, I dismiss the appeal.

Information

33. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.

A handwritten signature in dark ink, appearing to read 'D. Russell', with a stylized, cursive flourish at the end.

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr A Fraser-Urquhart Of Counsel, instructed by Cougar Enterprises Ltd

He called

Mr P J Plato FID MIP ARICS

Managing Director of Cougar Enterprises Ltd

Mr G V Bunyan

Principal of Geoffrey Bunyan Associates

FOR THE LOCAL PLANNING AUTHORITY:

Miss A Robinson Of Counsel, instructed by the Director of Law and
Administration, Dacorum BC

She called

Mrs J Ambrose BA(Hons) BTP
MRTPI

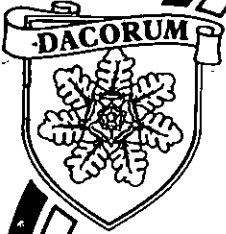
Senior Planning Officer

DOCUMENTS

- Document 1 List of persons present at the Inquiry.
- Document 2 Letter of notification of the Inquiry and list of persons notified.
- Document 3 Letter received in response to the letter of notification.
- Document 4 Appendices 1-7 to the proof of evidence of Mr Plato.
- Document 5 Statutory Declaration made by Mr Bunyan.
- Document 6 Letter from Hertfordshire County Council to Dacorum District Council dated 27 October 1976.
- Document 7 Appendices A-D to the proof of evidence of Mrs Ambrose.
- Document 8 Dimensions of boat lay-by and appeal site submitted by the Council.

PLANS

- Plan A Application Plan.
- Plan B Drawing GBA2398.02 showing levels and cross-sections of the site.
- Plan C Drawing GBA2 (original).
- Plan D Plan of appeal site drawn by British Waterways dated 7 June 2000.



PLANNING

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TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/00528/99/LDP

ADJ. NORTHCHURCH SERVICE STATION, LONDON ROAD, COW ROAST,
TRING, HERTS

FORMATION OF A BOAT LAY-BY AND ALTERATIONS TO VEHICULAR ACCESS
TO BE USED FOR THE MOORING OF BOATS

Your application for lawful development certificate (s.192) dated 12 February 1999 and received on 24 March 1999 has been **REFUSED**, for the reasons set out overleaf.

Director of Planning

Date of Decision: 25 June 1999

REASONS FOR REFUSAL APPLICABLE TO APPLICATION: 4/00528/99/LDP

Date of Decision: 25 June 1999

1. The planning permission for a boat lay-by and alteration to vehicular access is adequately described in the 1974 planning permission ref. 4/14/74 dated 1 August 1974. The current proposals detailed in the Statutory Declaration of Mr. Geoffrey Bunyan dated 9 February 1999 go beyond what the 1974 permission allows and therefore cannot be lawful without a further grant of planning permission.