



The Planning Inspectorate

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Council References:
4/0624/96EN & 4/0052/96FL

Our References:

T/APP/G/96/A1910/642992/P3

T/APP/A1910/A/96/272385/P3

Date: 22 JAN 1997

PLANNING DEPARTMENT					
DACORUM BOROUGH COUNCIL					
MR.	MS.	DR.	DC.	RC.	FILE
Received					23 JAN 1997

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78, 174 & SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
LAND AND BUILDINGS ADJOINING AND WEST OF PEAR TREE COTTAGE,
LOWER ICKNIELD WAY, WILSTONE, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine your appeals against an enforcement notice issued by the Dacorum Borough Council and a refusal of planning permission by the same Council, both concerning the above mentioned land and buildings. I held an inquiry into the appeal on 12 December 1996. The evidence was taken on oath. At the inquiry, an application was made by the Dacorum Borough Council for an award of costs against yourself. This is the subject of a separate letter.

2. The details of the enforcement notice are as follows:

- (1) The notice was issued on 13 May 1996.
- (2) The breach of planning control as alleged in the notice is the erection of a timber framed structure, with brick plinth and foundations, in the approximate position marked with a cross on the attached plan.
- (3) The requirements of the notice are:
 - (1) Dismantle the timber framed structure, demolish the brick plinth, and dig out the associated foundations.
 - (2) Remove all materials resulting from the work specified in (1) above, from the site.
 - (3) Backfill the foundation trenches with soil to the level of the surrounding land.
- (4) The period for compliance with these requirements is 1 month.

3. Your appeal against this notice is proceeding on the ground set out in section 174(2)(b) of the 1990 Act as amended by the Planning and Compensation Act 1991 which is that the matters alleged in the notice have not occurred. As the prescribed fees under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989-93 have not been paid to the Secretary of State and the Local Planning Authority within the period specified, the deemed application for planning permission under section 177(5) does not fall to be considered.

4. The development for which the Council has refused planning permission is for the conversion of a redundant agricultural building at the above address to residential use.

5. At the start of the inquiry, submissions were made on behalf of Mr T Foy that he should be regarded as an appellant and be represented as such on the basis of his letter to the Inspectorate dated 27 November 1996. This letter claimed that the Council were estopped from taking enforcement action, a matter I deal with below. I explained to Mr Foy's representative that, since his client did not appeal by 10 June 1996, the date on which the enforcement notice would have taken effect had your appeal not been lodged, he cannot be treated as an appellant for the purposes of these appeal proceedings. I suggested that Mr Foy could be represented as an interested third party to make submissions in support of your appeal. His representative agreed and subsequently questioned you, through me, on matters of fact, cross examined the Council's witnesses and made closing submissions.

Matters concerning the Notice

6. You pointed out in correspondence before the inquiry that a small triangle of land adjoining Lower Icknield Way had been omitted from the land included in the enforcement notice. In my opinion the omission of this area does not affect the validity of the notice and you do not suggest that you have suffered any injustice. The notice therefore requires no correction in this respect. However, as I pointed out at the inquiry, the timber framed structure referred to in the allegation is not marked on the enforcement notice plan by a cross, as paragraph 3 states. It was agreed that I could use my powers to make an appropriate correction. In addition, during my inspection I noted that a small area of land immediately to the rear of Pear Tree Cottage, which is included in the notice, is fenced off and you confirmed that it is not in your ownership. This area is clearly not part of the land occupied with the structure which is the subject of this notice and it was omitted from the site shown on the plans submitted with the planning application now subject of your second appeal. I shall therefore correct the plan accompanying the notice to omit the small area to the rear of the cottage. I am satisfied that this would cause no injustice. Finally, part (3) of the requirements stipulates that foundation trenches are backfilled to the level of the "surrounding land" which is too general a description. The clear intention is that the trenches should be filled to the level of the adjoining ground and if I decide to uphold the notice I shall vary the requirements accordingly.

Allegation of Estoppel

7. Your claim that the Council is estopped from taking action is supported by Mr Foy's statement of 27 November 1996. You contend that the Council were aware of the works being carried out to the barn up to 18 April 1996 and at no time were you told that these did not constitute repair. The Council are not entitled to issue an enforcement notice concerning works they had considered to be acceptable as repairs. In response, the Council state that they tried to take a reasonable view when the initial works were begun since it was clear that the barn required repair, but the works subsequently undertaken went much further than what could reasonably be described as repairs.

8. It has been accepted by the courts that a Council can be held to a representation made by them that planning permission is not required. However, it was confirmed in *Western Fish Products v Penwith District Council* [1978] JPL 623 that it is essential for there to be something in writing which can be interpreted as an application, and a written reply from an

officer who has authority to give it. I have carefully examined the various letters I have been given in support of your claim but I find nothing from you or Mr Foy which can be interpreted as an application. There is no letter which described the work you proposed to undertake or which asked whether this required planning permission. It is clear that a meeting between the planning officer, Mr McFarland, and Mr Foy took place on the site on 29 March 1996 when work was being undertaken on the roof. The officer's letter of 24 April 1996 confirmed that the corrugated sheet roof covering had been removed and the slates were being removed. I am prepared to accept that the officer confirmed verbally at that meeting that repairs to the roof did not require planning permission. But a verbal statement of this kind cannot fetter the Council's discretion to take subsequent enforcement action if it appears to them that the works actually undertaken go beyond repair. Whether their opinion on this matter is correct is a separate issue which I deal with later.

9. As to whether the Council were aware of the works taking place, whilst Mr McFarland denied that he had visited the site between 29 March 1996 and 19 April 1996, the date of issue of the first enforcement notice which was later withdrawn, the enforcement officer Mr Watkins visited the site on 4, 15, 17 and 18 April 1996, taking photographs on each occasion. The Council were therefore aware that works were being undertaken from 29 March 1996 but they had no drawings or description of the work in progress to enable them to reach any conclusions as to whether this required planning permission. I acknowledge that the Council could have written to you after the first visit by the enforcement officer on 4 April 1996, requesting you to confirm the nature of the work being undertaken. However, I do not consider that their failure to do so can be construed as a consent for those works or in any way to fetter their power to take action.

10. I note that you were sent a copy of the planning officer's report to the 18 April 1996 committee, recommending that permission be granted for the conversion of a redundant agricultural building to residential use. However, the committee had not considered the matter at that time and a recommendation in a report is not equivalent to a planning permission. I accept that the letter advised you to cease work if it was directly related to the conversion but this cannot be interpreted as a consent to carry out any other work simply because you claim it was not for the purposes of conversion.

11. Taking all of these matters into account, I find no evidence that the Council issued either a written or a verbal determination that planning permission was not required for the works which were undertaken. I therefore find no basis for your claim of estoppel against the Council.

The appeal on Ground (b)

12. You argue that all evidence and photographs taken after 19 April 1996, the date the enforcement notice was served, should be ignored and the Council made no submissions on this point. I consider it self-evident that the breach of control alleged in the notice must be shown to have occurred at the time the notice was issued. The Council cannot rely on later evidence to prove that the alleged breach had taken place. However, the first notice was withdrawn by the Council and the appeal which I am considering relates to the second notice issued on 13 May 1996. For the purposes of this appeal I shall therefore consider only the evidence available at that date and photographs SW1-59 which were taken by the enforcement officer on or before 2 May 1996.

13. You maintain that the building on this site is not new and that the works which have been undertaken are repairs necessitated by the extremely dilapidated condition of the original barn. In support of this view you submit letters from a scaffolding contractor, a builder and a valuer. The Council argue that the structure which is now on the appeal site is substantially a brand new building. Its dimensions and form of construction are new. It has a new brick plinth and foundations, new timber walls, new cladding and a roof at a new height and pitch.

14. The scaffolding contractor states in his letter that he did not see the barn demolished. However, this statement is based on observations from the road whilst driving past the site. It is evident that he never entered the site whilst work was in progress other than to erect scaffolding. The tarpaulins shown in the Council's photographs covered much of the scaffolding and effectively screened the barn from Lower Icknield Way. This would have made it difficult to judge the nature or extent of the works being undertaken from the road and casts doubt on visual impressions gained from a passing lorry. The weight that can be attached to your evidence is also reduced since, on your own admission, you rarely visited the site and were unable to give evidence from personal knowledge of the work.

15. By contrast, the enforcement officer entered the site and inspected the work closely, as it progressed, on several crucial occasions. I have no reason to doubt the accuracy of his evidence. Although it is not possible to tell from photographs SW1-5, taken on 4 April 1996, whether the original foundations had been removed, he states that there was new concrete trenching where the base for the walls would have been. Later photographs show new foundations and all the brickwork I saw during my visit appeared to have been recently constructed, mostly with new brick. The builder who carried out this work states that he repaired the brickwork and replaced badly deteriorated bricks. But the value of this evidence is lessened by the lack of opportunity to question the person concerned in order to establish the precise extent of the work he undertook and whether this involved complete removal of the original brick plinth and foundations. In the circumstances I place reliance on the enforcement officer's evidence on oath which is supported by a photographic record and was borne out by my visual inspection. This evidence confirms that the foundations of the building have been rebuilt, even though some of the original bricks may have been reused.

16. I am also satisfied that photographs SW1-5 demonstrate that virtually the whole of the barn's timber walls had been removed by 4 April 1996. No vertical timbers or wall cladding can be seen in these photographs and I consider it highly unlikely that any were hidden by the tarpaulins erected around parts of the structure. The enforcement officer stated that he could clearly see that there were no walls and I do not doubt his evidence. The later photographs taken on 18 April 1996, SW13-23, show that new timber framework for the walls had been erected, mostly using new timber. Whilst the framework had been painted with a black bituminous paint by the time of my visit, my examination of the structural timber in the walls confirmed the view of the Council's building control officer, that the great majority of this is new. Some of the wooden cladding on the west elevation appeared to be reused timber but most of it is new; all of the cladding on the other partially clad elevations is new. The builder who provided a written statement carried out no timber work and there is no evidence from the person who undertook any of the work to the walls or roof of the former barn. Your valuer does not express any opinion as to whether substantial demolition has taken place or if the existing structure is new. He does, however, confirm that a considerable amount of new timber has been used. Consequently, I am satisfied that the available evidence shows conclusively that the timber framed walls of the present building are not original but are the result of almost complete rebuilding, in the main with new timber.

17. Turning to the roof, the Council maintain that this is completely new and significantly higher than that of the original barn. It was argued for Mr Foy that the building had partly subsided due to flooding of the culvert running immediately west of the barn, causing it to lean, which is not in dispute. It is also suggested that the increase in height is due to the fact that the barn has been repaired so as to bring it back to the vertical, thus restoring it to its original height.

18. The line of the original roof is visible on the gable end brickwork of Pear Tree Cottage, in spite of the application of black bituminous paint. I was able to examine this brickwork closely during my visit which enabled me to confirm that the present eaves level of the roof is some 10 brick courses above its former height, as shown on photographs SW40 and 48. The enforcement officer stated that the height of the ridge on 4 April 1996 was some 8 brick courses below the string course on the chimney breast of the adjoining cottage; the ridge now meets the chimney just below this string course, as on photograph SW33. I fail to see how such a substantial increase in height, approximately 1 metre, can be interpreted as restoring the barn to its original level. Even if the roof had been rebuilt at its new level using only the original timbers, and the photographs and my inspection confirm that mostly new timber has been used, the walls have obviously been increased in height by around 1 metre to the new eaves level. It cannot sensibly be argued that such a major change can be accounted for by the correction of structural problems due to subsidence. The evidence shows irrefutably that the present roof of the building is at a substantially higher level than that of the former barn and that the height of the walls has been increased correspondingly.

19. The photographs taken by the Council in your opinion do not show that the entire roof was removed, as they claim, and you argue that photograph SW16 shows the original roof plates and roof timbers to have been in place on 18 April 1996. I accept that this photograph and SW11 appear to show the original roof timbers still in place at the western end of the former barn. But SW14, 15, 22 and 23 in particular demonstrate that the eastern half of the roof adjoining the cottage had been completely removed by 18 April 1996. You also pointed out, when questioning the enforcement officer, that photograph SW56, taken on 2 May 1996, showed the roof structure supported at a different level from that shown in SW16. I agree with your interpretation and in my opinion this is a crucial point. These two photographs demonstrate, to my mind quite conclusively, that the roof has been completely rebuilt at a new, substantially higher level.

20. There is no dispute that the original barn needed repair and the Council's building control officer accepted in cross examination that, on the basis of your photographs, substantial work was required. It would be reasonable for these repairs to have involved the underpinning of foundations and the replacement of crumbling brickwork, rotten timbers and damaged roof covering. However, where the work extends to the removal and reconstruction of the walls, foundations and roof of the original building, as in this case, it can no longer be described as repair. The Council's evidence and photographs provide a clear record of the work which has been carried out to the former barn. I am satisfied, on the basis of this evidence and my inspection, that the work which has been carried out goes far beyond anything that could reasonably be interpreted as repair. In my judgement the original barn has been replaced with a structure which is substantially higher and which has newly constructed foundations, walls and roof. I conclude that, as a matter of fact and degree, the structure which is the subject of this notice amounts to a new building. The development referred to in the allegation has therefore taken place and the appeal on ground (b) fails.

The Section 78 Appeal

21. The development plan is comprised of the 1991 Hertfordshire Structure Plan Review and the Dacorum Borough Local Plan adopted in April 1995. These direct development to the 3 main towns in the district whilst permitting small scale development within certain villages. Wilstone is one of these but the appeal site lies well outside the village boundary, where development is restricted by Policy 5 to that required for certain defined uses which do not include residential. However, the policy allows the appropriate re-use of redundant buildings and such proposals are more specifically dealt with by Policy 100. The surrounding countryside is given particular protection by its designation as a Landscape Conservation Area, within which Policies 89 and 91 require proposals to make a positive contribution to the landscape; those which are insensitive or visually obtrusive will be resisted.

22. These policies generally follow those established at national level for the protection of the countryside, as set out in Planning Policy Guidance Note 7 (PPG7). The guiding principle in the wider countryside is that development should benefit the rural economy and maintain or enhance the environment. Specific encouragement is given to the re-use and adaptation of existing rural buildings for new commercial, industrial or recreational uses in order to reduce demand for new building in the countryside.

23. The Council argue that planning permission cannot be granted for a conversion since the original agricultural building has been demolished and such a permission cannot therefore be implemented. In my opinion the appeal must be considered on the basis of the circumstances which existed at the date of the application, 15 January 1996. There is no dispute that the original barn existed at that time. The application specifically states conversion and the accompanying plans do not contemplate demolition. Indeed, the elevational drawing refers to "slate roof as existing". The application must therefore be considered as one seeking permission to convert the barn which stood on the appeal site on 15 January 1996. Since this has been replaced by a new structure, in the light of the judgement in *Hadfield v Secretary of State for the Environment and Macclesfield Borough Council [1996] QB 19* a planning permission to convert the original barn could not be implemented. However, it is to my mind insufficient to refuse planning permission on this basis alone and the application should be determined on its merits.

24. From the foregoing, my inspection of the site, my reading of all the representations and the submissions presented at the inquiry I consider the main issues relevant to my determination of this appeal are whether the conversion proposals accord with the development plan and national policies for the re-use of buildings in the countryside, and the effect upon the character and appearance of the surrounding rural area.

25. National and development plan policies differentiate proposals for new buildings in the countryside from re-use in recognition of the fact that the latter may have no harmful effect on the character of the surroundings. But the quality of rural buildings varies considerably and not all are capable of retention without substantial alteration or rebuilding. Failure to differentiate such buildings from those which are genuinely capable of re-use would encourage applications ostensibly for conversion but which in reality would amount to the erection of a new building. This would be contrary to national policy stated in PPG7, that the countryside should be protected for its own sake and that building in the open countryside should be strictly controlled.

26. Annex D of PPG7 emphasises the need to examine applications for change to residential use with particular care. Paragraph D5 makes it clear that proposals for conversion to dwellings may need to be considered in the same way as applications for new houses in the countryside, particularly where the building is unsuitable for conversion without extensive alteration, rebuilding or extension. In the previous appeal in 1996, the Inspector found the original barn to be worthy of retention in the terms of the criteria in Local Plan Policy 100. Criterion (c) of that policy requires the building to be of a substantial nature and worthy of retention. In my opinion subsequent events, specifically that in undertaking works which you describe as repairs it was found necessary to demolish and rebuild virtually the whole of the building, demonstrate conclusively that the original building was not substantial for the purposes of Policy 100. Furthermore, in line with paragraph D5 of PPG7, the fact that the former barn has been almost completely rebuilt means that the proposal cannot fall within national policy for the re-use of buildings in the countryside. The application must therefore be considered as if it were for the erection of a new dwelling on the appeal site.

27. Such a proposal is clearly contrary to Policy 5 of the Local Plan, and national policies, since you do not put forward any evidence of agricultural or other need which would justify the erection of a new dwelling on this site which lies well outside the recognised limits of any settlement. This prominent site is exposed to view from the main road and from many locations in the surrounding countryside, particularly the elevated banks of the neighbouring reservoir. I consider that the creation of a dwelling here, with its associated domestic curtilage and paraphernalia, would be out of keeping with the rural character of the locality. A new dwelling would in my judgement be an urbanising influence which would be harmful to the area's attractive, unspoilt rural landscape, contrary to the objectives of its designation as a Landscape Conservation Area.

28. It was submitted on behalf of Mr Foy that the existing building is an improvement on the original dilapidated barn and is thus of benefit to public amenity. But comparisons with the previous building on the appeal site are in my opinion of little relevance since it no longer exists. Even if the original materials were available, the act of re-erecting the building would be operational development requiring planning permission, which has not been granted. In any event, the application before me is for the conversion of the former barn, not for the retention of the new structure which now stands on the appeal site.

29. I conclude that the conversion of the former barn would not be in accordance with the development plan or national policies regarding the re-use of rural buildings but would amount to the erection of a new dwelling, contrary to the objectives of national and development plan policies designed to protect this area of countryside. I shall therefore dismiss the Section 78 appeal.

30. I have taken account of all other matters raised but I find nothing to be sufficient to alter my conclusions on the main planning considerations which lead me to my decisions on each appeal.

FORMAL DECISIONS

31. For the above reasons, and in exercise of the powers transferred to me, I determine these appeals as follows:

The appeal under S174 [Department's Reference T/APP/C/96/A1910/642992]
I direct that the enforcement notice:

(a) be corrected by:

- (i) the substitution of the plan attached to this letter for the plan attached to the notice and the substitution of the words "edged black" for "edged red" in paragraph 2; and
- (ii) the substitution of "indicated" for "marked with a cross" in paragraph 3; and

(b) be varied by substituting the words "adjoining ground" for "surrounding land" in part (3) of paragraph 5.

Subject thereto I dismiss your appeal and uphold the notice as corrected and varied.

The appeal under S78 [Department's Reference T/APP/A1910/A/96/272385]
I dismiss this appeal.

RIGHTS OF APPEAL AGAINST DECISIONS

32. This letter is issued as the determination of the appeals before me and particulars of the rights of appeal against my decisions to the High Court are enclosed for those concerned.

Yours faithfully



JOHN DAVIES BSc MRTPI
Inspector

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