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Department of the Environment

Room 1411

Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct line 0272-218 914

Switchboard 0272-218811

Council reference T411/PEC/4/0666/77

4/1259/77E

R Perrin Esq MRTPI
Cruickshanks
Rye House
London Road
HIGH WYCOMBE
Bucks HP11 1BZ

Your reference

37/75/RP/JMC

Our reference T/APP/5252/C/77/4413/G4

T/APP/5252/A/77/10949/G4

Date

16 MAR 1979

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
APPEALS BY MR R A POWELL
LAND AT JUSTA FARM, LITTLE HEATH, POTTEN END, BERKHAMSTED

1. I refer to the 2 appeals, which I have been appointed to determine, against an enforcement notice served by the Dacorum District Council, and against a refusal of planning permission by that Council, concerning the above mentioned land. I held an inquiry into the appeals on Wednesday 11 October 1978.

2. a. The date of the notice is 25 August 1977.

b. The breach of planning control alleged in the notice is that after 31 December 1963 the said land (edged red on the plan attached to the notice) has been developed by the making of a material change in the use thereof to use for residential purposes or intended residential purposes by the placing and keeping thereon of a residential caravan (mobile home) in addition to the continued use of the land for agricultural purposes without the grant of permission required in that behalf under Part III of the Town and Country Planning Act 1971.

c. The requirement of the notice is to discontinue the use of the said land for residential purposes or intended residential purposes by removal of the said residential caravan (mobile home).

d. The period for compliance with the notice is 2 calendar months.

e. The appeal was made on grounds 88(1)(a), (b) and (f) but at the inquiry ground 88(1)(b) was withdrawn.

3. a. The development for which planning permission was refused is for a mobile home to be used in connection with the running of the farm, and the application was for temporary permission.

b. The reason for refusal was that the site is without notation on the County Development Plan where there is a presumption against further development unless it is essential in connection with agricultural or other special purposes. No justification has been proven in this case to warrant a departure from this principle.

4. As the application concerned in the Section 36 appeal should have been advertised but was not it was suggested by the Department by letter dated 26 April 1978 that the section 36 appeal be considered on the basis that it had arisen from an application made under Article 5(1) of the Town and Country Planning General Development Order 1977 for planning permission to change the use of the land to use of land for the stationing of a caravan only. The suggestion was accepted on behalf of your client and by the Council, and I have accordingly considered that appeal from that standpoint.

THE SITE AND SURROUNDINGS

5. Justa Farm is a holding of 16 acres of land of roughly rectangular shape with 2 separate yards each having a frontage to Little Heath Lane. The mobile home is in the yard at the lower level in the south-eastern corner where there is a new large agricultural building comprising a hay storage and calf rearing unit, a large old nissen building used for general storage and a small brick built office building. In that yard also the foundations are prepared for another large agricultural building and a smaller one. In the yard at higher level in the north-western corner there is a large but dilapidated barn in use for hay storage, a stable block in use for calf rearing, a building used as a workshop, a poultry unit and a new brick building proposed for egg grading and packing. When I inspected the site there were 15 calves about 6 weeks old in the lower yard, about 30 of about 2 weeks in the upper yard and some half dozen about 9 months old grazing in the field.

THE MAIN ARGUMENTS FOR YOUR CLIENT

6. He purchased Justa Farm in 1972 having been tenant for a while. At first he raised calves there while living in Hemel Hempstead but lost a good many calves that way. He placed the mobile home there in the Spring of 1977 and had lived there ever since as his only place of residence. It was placed there for that purpose.

7. He had purchased Justa Farm with the object of farming it full-time and as a base for his agricultural contractor's business. It was a holding of only 16 acres and had 2 yards so that it had to be farmed on an intensive basis. It had always been an independent 16 acre unit.

8. His agricultural contractor's business comprised cutting out hedges, tree felling, fencing, haymaking, harvesting, ditching, moving cattle, wiring up fencing, installing troughs and tractor driving. He had 2 tractors, 2 diggers, 3 or 4 trailers, elevators, haymaking equipment, mowing machines, a cattle lorry, 4 ordinary lorries, and a number of long based trailers. The plant was based at Justa Farm but a good deal of it at any time was kept at other farms where it was being used.

9. The agricultural contracting business had to date enabled the holding at Justa Farm to keep going and provided the necessary funds for investment in buildings. The farm had now become a viable unit and when the programme of investment in buildings was completed it would be more than simply viable.

10. He had placed the mobile home on the farm and lived in it because he had been placed in an intolerable position by the Council. Over the years from 1974 he had made a number of applications for permission for a permanent dwelling or a caravan for a temporary period on the land. Full details of the agricultural need had been supplied yet every application had been refused. The most unsatisfactory aspect of the whole matter was that the Council had made each decision without obtaining an appraisal from the County Land Agent.

11. Fortunately the Secretary of State had secured the comments of the Agricultural Development and Advisory Service, expressed in Mr Chamberlain's letter dated 14 June 1978, and your client's case could now be considered on a proper footing. The Council had made it plain on enough occasions that as far as planning policy was concerned a dwelling on the site was perfectly appropriate as long as it was essential to the agricultural use, and the test for assessing agricultural need was clearly set out in the Annex to Circular 24/73. All that was required therefore for determination of the present case was consideration of your client's agricultural claims in the light of the criteria of Circular 24/73.

12. Apart from the 16 acres at Justa Farm he had the use of parcels of land at Northchurch, Bovingdon and Tring, and had now been offered 40 or 50 acres at Redbourn. There was more land available at Little Gaden if he needed it. He did not have legal security of tenure on any of that land but there was no question of him ever being short of land because he had such a good understanding and relationship with the farmers he contracted with. He could always rely on 120 acres of land elsewhere if he needed it. Some of it was some distance from Justa Farm but the older stronger animals needed little supervision. He bought standing crops and put contractors in to harvest them. They were then carted away for sale except any he needed for himself, and he rented barns on other farms for storage of produce.

13. Both yards at Justa Farm were in a derelict state when he took the property over, and his method of operation was enabling him to restore it and develop it into an intensively farmed going concern. When he first went there the yards were ungated and unsurfaced, and walls were down. Already the yards were unrecognisable and investment was continuing. In the upper yard a stable block had been made good for use for rearing up to 35 calves, a poultry shed for 1,000 birds had been put up, a brick-built packing shed was nearly completed, and concrete paving had been put down. In the lower yard the new building had cost him £12,000 and the one now under way would cost him £14,000. Both of those buildings had been approved for grant by the Ministry of Agriculture.

14. So far he had taken out only about £50 per week for his own living and ploughed the rest back into development of the holding. He had found it extremely difficult before going to live on the holding and in those days had lost 2 successive batches of calves as the result of a salmonella outbreak. After going to live there he had been able to raise 3 batches of 60 calves per year, and for the past 18 months it had been 300 per year. He made about £10 per head by rearing, and also reared calves for others at a similar profit. The capacity for calves at Justa Farm with all buildings completed would be 300 calves.

15. Mr Chamberlain had made it clear in his letter that the enterprise was viable. It was suggested that it would only remain viable so long as the additional land remained available but that was not the case at all. If all feed and bedding had to be bought in the result would be a reduction in profitability but the enterprise would remain viable. There was no likelihood whatever of loss of the other land in any case; it was far more likely that if he should need even more land that also would be readily available.

16. Mr Chamberlain had made it quite clear that it was necessary for someone to live on the holding. Calf rearing needed expert care and he supplied that expertise. A sick calf needed immediate injections. The agricultural contracting kept him away much of the day but he was there for feeding in the morning and evening and usually managed to call in at mid-day. With all buildings completed and the enterprise in full swing he would probably take on a stockman. Constant attendance was needed also from the point of view of security. If houses in the vicinity became available they would cost at least £20,000 and he could not consider an outlay of that nature as well as building up the farm.

17. In terms of Circular 24/73, all the criteria was satisfied in the present case. Firstly, the enterprise was viable. It was now and would be even more so when all the buildings were completed. Secondly, labour was available and it was taken on as and when it was needed. Thirdly, it was necessary for only one to live on the holding, and that was all that was proposed. Finally, there was no living accommodation on the holding apart from the mobile home. The case had been made on the basis of purely the calf rearing enterprise but the agricultural contracting was after all an agricultural concern in itself. Those activities were very much in the interests of the countryside and the national economy. It should be of some significance in the case that valuable agricultural plant and machinery was kept in the lower yard as well as valuable stock.

18. The permission sought for the mobile home was after all only for a temporary use. A temporary permission would provide the opportunity for your client to prove that his enterprise was a viable one. It was hoped that it had been proved already but even the Council could be satisfied in a few years, then perhaps a permanent dwelling would be allowed.

19. The notice went too far in requiring removal of the mobile home. The breach was residential use, and discontinuance of the use was sufficient to remedy the breach. If the mobile home was simply stored on the land the storage use would be simply an ancillary use not sufficient to affect the planning status of the land. It would not amount to development. That view was supported by an opinion expressed on page 66 of the 1978 Journal of Planning and Environmental Law in relation to a Ministerial decision in 1974 under Reference APP/2339/C/73/913.

THE MAIN ARGUMENTS FOR THE COUNCIL

20. The appeal premises lay beyond the boundary of the Metropolitan Green Belt within an area shown without notation on the County Development Plan but within an area in which in accordance with a modification made by the Secretary of State when approving the first review in 1971 only such development as would be appropriate within the green belt was permitted. Residential policy in rural areas was also considered in "Hertfordshire 1981" a non-statutory review of the development plan adopted by the local planning authority in 1972 and in that policy document green belt policy was adopted as the means of achieving the aim of retaining and protecting the rural character of the county. In the submitted County Structure Plan the appeal site was shown within a proposed extension to the Metropolitan Green Belt.

21. Development Control Policy Note No. 4 made it clear that applications for caravans to be used for agricultural workers' accommodation should be treated in the same way as applications for permanent dwellings and that applications for farm dwellings in rural areas should be accompanied by evidence of need to offset general planning objections. Criteria for assessing need was set out in the policy note and in Circular 24/73. Need in the context of the policy note and the circular related to the need of a farming enterprise rather than that of an owner or occupier. An annex to the circular drew attention to the fact that accommodation could not normally be justified on agricultural grounds unless the farming enterprise concerned was viable. Viability could be defined as offering a competent farmer the prospect of a sufficient livelihood.

22. The appellant now based his case solely upon the contentions that the mobile home was necessary to the enterprise at Justa Farm, and that the enterprise was viable now and would become even more so. History had shown however that in the past 5½ years numerous statements of proposals and intentions for the agricultural use of Justa Farm had been put forward by the appellant and on his behalf but there had been little evidence to show that they had been implemented. As stated in Circular 24/73 more

expressions of intention were insufficient to justify agricultural exceptions to green belt policy. Until such time as the appellant could demonstrate beyond doubt that a permanent and viable agricultural use existed at Justa Farm the Council's view would remain that planning permission for a dwelling or mobile home should be refused.

23. Apart from the fundamental presumption against the establishment of new residential units in areas subject to green belt policy the appeal site was in an open and substantially unspoilt area of countryside and although there was a hedge along the southern boundary to Little Heath Lane the mobile home was visible from the bend in the road and particularly so from the public footpath which crossed the site. The mobile home on the appeal site harmed the visual amenity and character of the locality, and re-positioning or screening would do nothing to remove the fundamental objection.

24. In the view of the Council the criteria suggested in Circular 24/73 were not satisfied in the present case. No evidence had been put forward in support of the claim that a viable enterprise was in operation at Justa Farm. It was found necessary to rely on land elsewhere for bedding and feed and the appellant had no security of tenure on any of that land. It was clear that the appellant relied upon his agricultural contracting business for his living and that the holding in itself at Justa Farm was not viable. It was not agreed moreover that there was any suggestion in Mr Chamberlain's letter that it was necessary for anyone to live on the holding itself. If he had considered it necessary for someone to live there he would have said so. He had said it was desirable that someone be housed within reasonable proximity.

25. As far as the Council was concerned removal of the mobile home from the site was necessary to complete remedy of the breach of planning control. The view expressed in the Journal and referred to on behalf of the appellant was the view of a Surveyor, not a lawyer. In the Council's view a material change of use would be involved if a mobile home was placed on agricultural land to be stored there. The argument in any case was of relevance in the present case because the appellant's mobile home was placed on the land to be lived in and he was living in it in breach of planning control. For complete remedy of the breach he had to stop living in it on the appeal site and remove it from the site.

26. The appellant must have been prepared to run his calf rearing enterprise at Justa Farm and use the holding as a base for his other business without living there because he placed the mobile home on the land knowing that previous applications for a dwelling and a caravan had been refused. He had made no attempt at the inquiry to present a picture of the proportional profitabilities of his 2 enterprises and had not been able to present a break-down of income when asked to do so under cross-examination, but it was significant that the contracting business occupied virtually the whole of his working day.

THE MAIN ARGUMENTS FOR THE INTERESTED PERSON

27. If the appellant had seriously intended a farm business at Justa Farm and considered that living there was necessary to the business he should have settled the accommodation aspect before commencing the farming. There had been 2 properties on the market but no attempt had been made to secure either of them. One of them had been right next door to Justa Farm.

28. From her observations the appellant was not proficient in the care of livestock, and notwithstanding the sums purported to have been spent on the property it was still of untidy run-down appearance.

MY CONCLUSIONS

29. As the breach of planning control alleged in the notice amounts to the making of a material change of use from use for agricultural purposes to use for those purposes and the purposes of a mobile home for residential use, the ground (a) appeal and deemed application in respect of the notice fall to seek planning permission for the mobile home to be kept at Justa Farm for residential use on a permanent basis. The section 36 appeal however seeks planning permission for the mobile home to remain as a residential unit on a temporary basis.

30. From my inspection of the appeal premises and the surroundings and consideration of the representations made I am of the opinion that a case has not been made for the mobile home to remain on the holding on a permanent basis. The site is in an area quite justifiably being treated as if already a part of the Metropolitan Green Belt for development control purposes. The mobile home can be seen from a part of the road and from a public footpath and appears as an alien feature in a rural scene. No firm evidence has been produced as to the viability of Justa Farm as a holding in itself and it has not been suggested on behalf of the Agricultural Development and Advisory Service that the calf rearing enterprise is viable now or requires a person to be housed on the holding itself. I am of the opinion moreover that a mobile home is not suitable to serve in the manner of a farm house on a permanent basis, and do not consider that planning permission should be granted for this mobile home to remain permanently.

31. It was made clear at the inquiry under the section 36 appeal however that your client is seeking only a temporary consent for the mobile home in the hope that in due course it might be possible to obtain permission for a permanent dwelling in its place.

32. I take the view that a proposal to erect a permanent dwelling on the holding in the future could only be considered on the basis of a proven case as to the viability of Justa Farm as an agricultural holding in itself and very firm evidence as to the need for a dwelling on the holding itself to sustain that viability. I consider it relevant however that Justa Farm is a holding of only 16 acres but has 2 yards. Your client has improved buildings and erected new ones, and is investing considerable sums in the erection of the larger sheds for which grant aid has also been allowed by the Ministry of Agriculture, Fisheries and Food. The Agricultural Development and Advisory Service has suggested that with all projected buildings completed the holding could accommodate 300 head of cattle and could be a viable enterprise in itself on that basis.

33. It appears to me that your client is striving to turn a small agricultural unit formerly of little account into a worthwhile unit of some significance. He has worked hard to that end and ploughed the proceeds of his agricultural contracting business into the development of Justa Farm. I can see that it is of great advantage to him to live there but avoid the expense of a permanent dwelling while engaged upon the dual purposes. In particular I consider that development of Justa Farm to the extent proposed by your client sufficient to justify the retention of the mobile home for a limited period.

34. In all the circumstances therefore I consider it reasonable to grant planning permission for the mobile home to remain temporarily but having regard to the location of the site and the weight of general planning objection against a mobile home in such a location feel that the period should be limited to 5 years. Again I feel it should be emphasised that the eventual replacement of the mobile home by a permanent dwelling could be considered only on the basis of a case proven as to viability of the holding and need for a permanent dwelling on it. I have considered all other matters raised but they do not outweigh those considerations which have led me to my decision.

FORMAL DECISION

35. For the above reasons and in exercise of the powers transferred to me I hereby allow the Section 88 appeal, direct that the notice be quashed and grant planning permission for the mobile home to remain at Justa Farm for residential use subject to the condition that at the expiration of a period of five years from the date of this permission the use hereby permitted shall cease and the mobile home shall be removed from the land. I also allow the section 36 appeal and grant planning permission for the retention of the mobile home to be used in connection with the running of the farm subject to the same condition as attached to the section 88 appeal.

RIGHT OF APPEAL AGAINST DECISION

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

37. This letter does not convey any approval or consent required under any enactment, byelaw, order or regulations other than section 23 of the Town and Country Planning Act 1971.

I am Sir
Your obedient Servant



R H MOODY BSc CEng MICE
Inspector

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APPEARANCES

FOR THE APPELLANT

Mr R Perrin MRTPI

He gave evidence and called:

Mr R A Powell

- Associate Partner, Cruikshanks.

- The appellant.

FOR THE PLANNING AUTHORITY

Mr H Brown

He called:

Mr D P Noble BA MRTPI
AIAS MRSH

- Solicitor, Dacorum District Council.

- Senior Assistant Planner,
Dacorum District Council.

INTERESTED PERSONS

Mrs J Marsh

- No. 1 Little Heath Cottages,
Little Heath, Potten End,
Berkhamsted.

DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- Documents 2-7 - Letters from interested persons.
- Documents 8-12 - Correspondence put in by Mr Perrin in relation to the justification for the mobile home at the premises.
- Document 13 - Letter from Cruikshanks to the Council subsequent to the 1977 application, setting out the need for the mobile home at Justa Farm.
- Document 14 - Agricultural Development and Advisory Service Appraisal, June 1978.
- Document 15 - Land Agent and Valuers Department Appraisal, November 1974.
- Document 16 - Ministry grants, agricultural buildings at Justa Farm.
- Document 17 - Copy of the notice and list of persons notified.

PLANS

- Plan A - The notice plan.
- Plan B - Land use plan.
- Plan C - The site in relation to the wider area.
- Plan D - The application plan.
- Plan E - Layout of buildings in the Upper and Lower Yards at Justa Farm.

Department of the Environment
Tollgate House
Houlton Street
Bristol BS2 9DJ

Rights of Appeal

Under the provisions of section 245 of the Town and Country Planning Act 1971 a person who is aggrieved by the decision given in the accompanying letter to grant permission on the deemed application may challenge its validity by an application made to the High Court within six weeks from the date when the decision is given. The grounds upon which an application may be made to the Court under section 245 are:-

1. that the decision is not within the powers of the Act (that is, the Secretary of State has exceeded his powers); or
2. that any of the relevant requirements have not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

"The relevant requirements" are defined in section 245 of the Act: they are the requirements of that Act, the Tribunals and Inquiries Act 1971 (or any other enactment replaced thereby), and the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts.

An appeal against the decision given in the accompanying letter on the enforcement notice appeal may be made to the High Court on a point of law under the provisions of section 246 of the Town and Country Planning Act 1971. Any appeal must be made within 28 days of the date of this letter (unless the period is extended by the Court).

A person who thinks he may have grounds for challenging the decision should seek legal advice before taking any action.

Inspection of Documents

Any person notified of the decision given in the accompanying letter may apply to the Secretary of State in writing within six weeks of the notification to him of the decision for an opportunity of inspecting any documents, photographs and plans listed in the notification. Any application should be sent to the address from which the decision was issued, quoting the Department's reference shown on the decision letter and stating the date and time (in normal office hours) when it is proposed to make the inspection. At least three days' notice should be given, if possible.