



The Planning Inspectorate

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

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0272-218927 448
Switchboard 0272-218811
Fax No 0272-218769
GTN 1374

PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL							
Consultant Planning Group					Ack.		
Mills Farm House							
ROGATE	D&P	T&CPM	DE	DC	EC	Admin.	File
Nr. Petersfield							
Hampshire							
GU31 5EQ.	Received				1 APR 1993		
Comments							

Gentlemen

Council Reference:
4/0667/92EN
Our Reference:
T/APP/C/92/A1910/618950
Date: 31 MAR 1993

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY SUNJOY LIMITED
LAND AT OLD BRICKFIELDS, SHOOTERSWAY, NORTHCHURCH, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine your clients' appeal against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land. I held an inquiry into the appeal on 19th January 1993 and visited the site on 20th January 1993. The evidence was not taken on oath.

THE NOTICE

2. (1) The notice was issued on 26th March 1992.
- (2) The breach of planning control as alleged in the notice is: without planning permission the formation of a storage compound on the land shown stippled on Plan B by the laying of hard-core and concrete, the stationing of a night watchman's caravan, the stationing of a portable office building used as a site office and the erection of fences, and the change of use of the land shown stippled and cross-hatched on Plan B to use for storage.
- (3) The requirements of the notice are as follows:-
- (i) Remove from the land shown stippled and cross-hatched on Plan B all construction plant, equipment, materials, caravans and portable buildings; and
 - (ii) Remove from the land shown stippled and cross-hatched on Plan B the night watchman's caravan; and
 - (iii) Remove from the land shown stippled and cross-hatched on Plan B the portable office building; and
 - (iv) Remove from the land shown stippled on Plan B all hard-core and concrete; and

- (v) Remove the fences (including gates and posts) surrounding the land shown stippled on Plan B; and
- (vi) Cease the use of the land edged red on Plan A for the storage of construction plant, equipment, materials, caravans and portable buildings, save only for the two buildings edged black on Plan B; and
- (vii) Restore the land shown stippled on Plan B by carrying out the following steps:
 - (a) rip soil to a depth of 450 mm using winged tines at 1 m centres;
 - (b) prepare a seed bed using a harrow; and
 - (c) sow grass seed at a rate of 20 g/sq m, the grass seed mix to be:-
 - 44% "Cascade" Chewings fescue
 - 12.5% Crested dogs tail
 - 12.5% "Ridu" Hard fescue
 - 19% "Highland" Brown top bent
 - 6% Birchfoot trefoil
 - 6% S184 Wild White Clover

All works to be in accordance with British Standard 4428 1989 Code of Practice for general landscape operations.

- (4) The periods for compliance with these requirements are for Steps (i) to (v) above 6 months; and for Step (vii) above 12 months.

GROUNDS OF APPEAL

3. Your clients' appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991, that is to say:

- (a) that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted; and
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach; and
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should be reasonably allowed.

THE SITE AND ITS SURROUNDINGS

4. The appeal site, which lies to the west of Berkhamsted and Northchurch is accessed off Shootersway, a local lane running north-west from Berkhamsted, via an access road some 100 metres long. The Berkhamsted bypass is currently under construction and runs immediately to the south-west of the appeal site crossing, and shortly to cut off Shootersway, about 40 metres west of the access road to the site.

5. The site forms part of a former brickworks comprising mainly tipped and restored land and landfill tipping operations are still taking place on land immediately to the west. There are two large warehouse buildings on the site plus a "portacabin" type building and a caravan all located on the southern part of the site. The westernmost warehouse is rectangular in shape, its longer sides oriented northeast/southwest. It is of concrete block construction with a corrugated pitched roof and there are large sliding doors in each of the longer elevations, part of the south-western end of this building has recently been converted for office use. The warehouse to the east is similarly orientated and is of mainly brick construction with corrugated pitched roof. There is a small two storey extension at the western corner and a single storey lean-to extension along the south-east elevation. Access to this building is via large double doors at its north-east end. The "portacabin" which is the portable office building referred to in the Notice, is located along the south east wall of the eastern warehouse and the night-watchman's caravan is stationed to the east of the "portacabin". At the time of my visit both the caravan and the "portacabin" had the appearance of being disused.

6. Surrounding the buildings is a part concrete and part hardcore hard-surfaced area enclosed by a chain link fence some 2.4 metres high. Both of the warehouses and the land within the compound are used for the storage of builders plant and materials, with the exception of the area of land between the warehouses and immediately north of the eastern building, which the Council accept, is kept clear of stored materials. The land to the south of the fenced compound is not owned by the appellants but is used by them for storage purposes and it is in this area that a large number of "portacabin" type buildings are currently stored.

7. There is some natural screening of the site provided by existing trees and vegetation but the site is partly visible from Shootersway and is particularly exposed from the line of the new bypass. There is no effective screening at all to the north between the site and the recently completed golf driving range. The site is within the Metropolitan Green Belt and the Chiltern Hills Area of Outstanding Natural Beauty.

THE NOTICE

8. At the inquiry I drew attention to the fact that the alleged breach of planning control referred to in the notice comprised both operational development and material change of use. Whilst reference was made to the breach having occurred within the last four years this period only applies to the operational part of the development and the Notice should also have stated that the alleged change of use occurred after the end of 1963. It was agreed that I could use my powers to make the necessary correction without injustice. It was also agreed that the night watchman's caravan and the portable office building are both sited within the stippled area on Plan B attached to the Notice. Again it was accepted that I could, if necessary, correct the Notice without injustice.

The Appeal on Ground (a)

9. From what I heard at the inquiry, read in representations and saw on site it is my opinion that the major issues in this case are firstly, whether there are any very special circumstances that would provide justification for overriding the normally restrictive Green Belt Policies which seek to control development which is not considered appropriate within such areas, and secondly, the effect of the development on the Chiltern Hills Area of Outstanding Natural Beauty.

10. Insofar as the policy background to this case is concerned there is no dispute between the parties that the appeal site is within the Metropolitan Green Belt in an area that is designated as the Chiltern Hills Area of Outstanding Natural Beauty. It is also accepted that the use of land for outside storage purposes within such areas is not considered to be an appropriate use.

11. It is agreed that both of the warehouse buildings on the site benefit from planning permissions for storage use. However both of those permissions are subject to conditions which prohibit the outside storage of materials. In the opinion of the Council the formation of a large hard-surfaced area, the erection of chain link fencing and the stationing and storage of portable buildings as well as the storage of plant, building materials and formwork, are seriously detrimental to the character and appearance of the area.

12. I accept your view that regardless of the outcome of this appeal the use of the two warehouse buildings on the site for storage purposes is likely to continue, albeit subject to a condition prohibiting any outside storage of materials. For those buildings to be used for their approved purpose it is clearly necessary for a hard surfaced area to be provided around those buildings in order to provide a convenient means of access for the vehicles loading and unloading from the buildings. I also accept that in view of the location of the entrances to the buildings it is quite reasonable for the hardsurfaced area to surround both buildings and to be of such a size that a reasonable amount of manoeuvring space is provided. In my opinion the present hard surfaced area within the fenced compound is not unreasonably large in this respect.

13. Your clients have chosen to provide a concrete surface to much of the area of the site enclosed by the compound and this is no doubt admirably suited to their working requirements. However in my opinion it is also much more obtrusive and visually out of place in this area of Green Belt and Outstanding Natural Beauty, than the grass surface which the Council would wish to see in its place. Even so, taking account of the permitted use of the buildings I consider it totally unreasonable to expect the area within the compound to be put to grass as in my view that would effectively deny vehicular access to the warehouse buildings for all but the lightest of delivery vehicles.

14. In these circumstances it is my opinion that it is unreasonable for the council to require anything more than the restoration of the ground to its condition before the concrete surface was laid. It was difficult for me to ascertain precisely what that was although the photographic evidence and what I saw within the trial pit that had been excavated on the site, led me to the conclusion that there was some form of hardened surface that had built up over many years use of the site as a brickworks. Although the photographs appeared to indicate that some sparse rough grass had established itself on the site its appearance was far removed from the greensward that the council would hope to see if the requirements of the Enforcement Notice were to be fully implemented. It is my opinion that the visual appearance of the site would not be improved by restoring the land to its condition prior to the laying of the concrete and that accordingly requirements (iv) and (vii) of the notice are unreasonable. This is a matter that I would normally consider in relation to the ground (f) appeal but because of its importance in the context of my consideration of the ground (a) appeal I have referred to the matter at this stage.

15. In similar manner I now turn to deal with the question of the chain link fencing around the site. I accept that your clients require a secure compound around their warehouse storage facilities and although a small area of land in your clients' ownership does appear to be outside the fenced compound it in the main, serves to enclose the warehouse buildings and hard surfaced area, separating them from land in other ownerships. In these circumstances it is my opinion that if the fence had not been constructed to a height in excess of 2 metres it would have been development permitted by virtue of Class A of Part 2 to Schedule 2 of the Town and Country Planning General Development Order 1988.

16. I do not agree with the council's view that the fencing must be considered as part of the whole development and so there can be no deemed consent under the Town and Country Planning General Development Order 1988. Clearly planning permission is required for the fencing at its present height of 2.4 metres but it is my opinion that if the fence were to be removed as required by the enforcement notice, it could then be replaced by a very similar fence with a height not exceeding 2 metres. In my opinion whilst it might have been reasonable to require the height of the fence to be reduced to 2 metres, such a reduction would not make a material improvement to the appearance of the site, and therefore the existing fence should be allowed to remain.

17. My consideration of the question of the outside storage of materials on the site is therefore considered against the background of permitted storage use of the warehouse buildings and my conclusions that in any event the existing fencing and hard surfaced area within the fenced compound should be allowed to remain. That would leave a form of development which it is accepted, would not normally be considered appropriate in an area of Green Belt and Outstanding Natural Beauty. There is limited screening of the site provided by existing vegetation and the site is open to view from a number of viewpoints with public access. In these circumstances it is clear that the council's wish to secure an improvement of this somewhat degraded former brickworks landscape would be frustrated.

18. Against this background your clients' offer to provide a landscaping scheme in accordance with the details agreed in outline with the council during the inquiry would appear to be of considerable benefit. The more detailed proposals which have been put to me, as agreed, after the close of the inquiry amount in my view, to a special circumstance that deserves careful consideration in this case. Although the benefits to the landscape of the area will take a number of years to take full effect it is my opinion that the implementation of the proposals would lead to some short to medium term benefits as well. These benefits should therefore be offset against the additional harm to visual amenity that would result from permitting a limited amount of outside storage on the site.

19. I have first of all considered the storage of materials and "portacabin" type buildings on the area shown cross-hatched on the enforcement notice. My conclusion is that the landscaping proposals are insufficient to overcome the harm to the character and visual amenity of the area that the storage of materials, and in particular the obtrusive blue painted portable buildings, causes. In my opinion the portable buildings are such an obtrusive feature that they should not be stored anywhere on the site let alone on the area of land outside the fenced compound. Insofar as the cross hatched area of land is concerned your client's ground (a) appeal fails and I shall uphold that part of the notice accordingly.

20. Within the fenced compound (the land shown stippled on the notice) the situation is different. Apart from the portable office building and the night-watchman's caravan, which I will deal with later, most of the materials stored in the open comprise moulds, forms, props and scaffolding used by your clients in connection with their building and civil engineering operations. There is also some overnight storage of civil engineering plant and vehicles. In my opinion, provided the height of stored materials does not exceed 2.5 metres as suggested by the council and accepted by your clients, such materials and plant within the fenced compound, would be adequately screened by the landscaping scheme you have proposed. I consider that the landscaping scheme can be secured by means of a planning condition attached to any planning permission that might be granted and it should not be necessary to rely on any form of legal agreement. However, I agree with the Council's view, expressed in their letter of 18th March, that in this particular case, because of the filled ground in the area, it would be necessary for the planting to be maintained for rather longer than the normal 5 year period. The Council have suggested a period of 7 years and you have indicated that this would be acceptable to your client. I do not consider the suggested condition prohibiting the use of machinery or power tools etc. outside any building to be reasonable or necessary as that would appear to preclude the use of fork lift trucks and other machinery which might be used for loading and unloading materials or moving them around the compound.

21. The overall benefit to the character and appearance of the area that would result from the suggested landscaping scheme can only be achieved by permitting limited open storage of plant and materials within the fenced compound area. In my opinion that considerable benefit constitutes a special circumstance that justifies the grant of planning permission for limited outside storage of plant and materials within the fenced compound notwithstanding the restrictive Green Belt and Area of Outstanding Natural Beauty policies that apply to the site. In my opinion the likely outcome of such action would serve to enhance the visual amenity of the Green Belt and Area of Outstanding Natural Beauty.

22. To that limited extent your clients' ground (a) appeal succeeds and I shall grant a conditional planning permission for that part of the deemed application, accordingly.

23. On behalf of your clients' it was acknowledged that now part of one of the warehouse buildings has been converted for office use, the portable office building within the fenced compound is no longer required for that purpose. It is an obtrusive blue painted building of a similar type to those stored outside the compound and referred to in paragraph 19 above. I have already concluded that the storage of such buildings should not be permitted anywhere on the site, and for this reason I shall dismiss your clients' appeal and uphold the notice insofar as it relates to this building.

24. I have reached a similar conclusion regarding the night-watchman's caravan. That too is an obtrusive building that is detrimental to the appearance of the site. At the time of my visit windows were broken and it did not look to be in regular use. I see no reason why the quite comprehensive closed circuit TV security system that has been installed should not be brought into operation. I understand the problems to which your clients referred, however if the uncertain operation of the equipment is considered to necessitate the presence of a night watchman on the site he should be able to provide an adequate level of service in conjunction with the CCTV system from a base within one or other of the storage buildings.

The Appeals on Ground (f)

25. Your clients ground (f) appeals relate to the requirements to remove the security fencing and the hardsurfacing within the compound area and for the reasons given in paragraphs 12 to 16 above your clients ground (f) appeal in relation to both of these matters succeeds. I shall vary the notice accordingly.

The Appeals on Ground (g)

26. Your clients' Ground (g) appeal now only falls to be considered insofar as it relates to the remaining requirements of the notice. In my opinion 6 months is adequate time for your clients to remove all the stored materials from the area of the land outside the compound and to remove all portable buildings and the office and night-watchman's caravan from the site. The other more onerous requirements will be deleted and conditional permission will be granted for the limited outside storage of materials and plant within the fenced compound area. Accordingly the ground (g) appeal fails.

27. I have considered all other matters but nothing outweighs the considerations that have led to my decisions in this case.

FORMAL DECISION

28. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that the enforcement notice be corrected as follows:-

1. In section 3 of the Notice - The Breach of Planning Control Alleged:- add the words "within the last four years" after the word "fences" in the penultimate line of the section and add the words "after the end of 1963" after the word "storage" on the last line of the section.
2. Delete the words "It appears to the Council that the above breach has occurred within the last four years" from section 4 of the Notice.
3. In Section 5 of the Notice - What you are required to do - delete the words "and cross hatched" from requirement (ii).
4. Delete the words "and cross hatched" from requirement (iii).

I also direct that the enforcement notice be varied as follows:-

1. In section 5 of the Notice - What you are required to do - delete the words "stippled and" from requirement (i).
2. Delete the whole of requirements (iv),(v),(vi) & (vii) and the period for compliance with steps (i)-(vi) from section 5 of the Notice.
3. Insert the following new step (iv): "Cease the use of the land shown cross hatched on Plan B for the storage of construction plant, equipment, materials, caravans and portable buildings and cease the use of the land shown stippled on Plan B for the storage of caravans and portable buildings.
4. After the new step (iv) insert the words "Time period for compliance with steps (i) to (iv); six months from the date this notice takes effect."

Subject thereto, I allow the appeal insofar as it relates to the outside storage of construction plant, equipment and materials within the fenced compound area, and grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act for the retention of the security fencing and the hardcore and concrete surface within the fenced compound and for the outside storage of construction plant, equipment and materials on land within the fenced compound at Old Brickfields, Shootersway, Northchurch, Hertfordshire subject to the following conditions:-

1. All outside storage of construction plant, equipment and materials shall be confined within the fenced compound area.
2. There shall be no outside storage of caravans or portable buildings on any of the land shown edged in red on Plan A attached to the Notice.
3. No items or materials shall be stored in the open so that they exceed 2.5 metres in height above ground level.
4. The agreed landscaping scheme (Plan No. DF11) dated 10/02/93 submitted after the close of the inquiry shall be carried out in the next planting and seeding season after the date of this permission and any trees or plants which within a period of 7 years die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

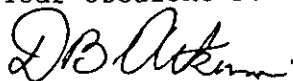
However, I dismiss your clients' appeal and uphold the Notice as corrected and varied insofar as it relates to the stationing of a night watchman's caravan and portable office building within the area shown stippled on Plan B and the change of use of the land shown cross hatched on Plan B to use for storage and I refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act for the stationing of a night watchman's caravan and portable office building within the area shown stippled on Plan B and the change of use of the land shown cross hatched on Plan B to use for storage.

29. This decision does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

RIGHTS OF APPEAL AGAINST DECISION

30. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant



D B Atkinson CEng MICE MIHT.
Inspector


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
TOWN AND COUNTRY
PLANNING ACT 1990


APPEAL 4/0667/92EN
BY SUNJOY LTD.

OLD BRICKFIELDS,
SHOOTERSWAY,
NORTHCHURCH.

Location Plan

 APPEAL SITE

 BY-PASS UNDER
CONSTRUCTION


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SCALE 1:2500
DATE: JAN.1993

DACORUM BOROUGH
COUNCIL
PLANNING DEPARTMENT

