



The Planning Inspectorate

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0117 - 987 8927
Switchboard 0117 - 987 8000
Fax No 0117 - 987 8139
GTN 1374 - 8927
E-mail ENQUIRIES.PINS@GTNET.GOV.UK

Mr R Perrin MRTPE
42 Baskerville Road
Sonning Common
READING
Berkshire
RG4 9LS

16 JAN 1998

Council Reference:
4/0620/97ENA & 4/0704/96
Our Reference:
T/APP/C/97/A1910/646991
T/APP/A1910/A/96/274758
Date:

15 JAN 1998

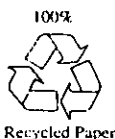
Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MR J BURNS AND A5 FURNITURE
LAND AND BUILDINGS AT THE FORMER CALAFLOW SITE BETWEEN WATLING STREET AND OLD WATLING STREET, FLAMSTEAD

1. I have been appointed by the Secretary of State for the Environment to determine your clients' 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 appeals on 2 and 3 December 1997.

THE NOTICE

2. (1) The notice was issued on 17 March 1997.
- (2) The breach of planning control as alleged in the notice is without planning permission, change of use of land and buildings from B2 industrial use to A1 retail use.
- (3) The requirements of the notice are:
 - (i) cease the use of site for retail purposes;
 - (ii) permanently remove from the site all goods for sale or display;
 - (iii) permanently remove from the site all ancillary goods, equipment and furniture.
- (4) The period for compliance with these requirements is three months.



GROUND OF APPEAL

3. Your client's appeal is proceeding on grounds (a), (b) and (g) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991.

THE APPEAL UNDER SECTION 78

4. The development for which the Council has refused planning permission is change of use of part industrial unit (B2) and land to retail use (A1), internal and external alterations (retrospective).

Preliminary Matter

5. Whilst there is no appeal on ground (f), both parties agreed that the first requirement of the notice should have "the" inserted before "site". I intend to use my powers to effect this correction, as neither party would be prejudiced as a result.

The Appeal on Ground (b)

6. The basis of this appeal is that the part of the enforcement notice land to the east of the site access has never been used for retail purposes. The appellant's evidence to this effect was not disputed by the Council, and it was agreed that this land had been fenced off from the rest of the former industrial site and had remained neglected since the appellant had occupied the site. I consider, as a matter of fact and degree, that this land has not been used for retail purposes. And I intend to use my powers of correction to delete this land from the plan attached to the notice, as I am satisfied that no party would be prejudiced as a result. On the basis of this correction, the appeal on ground (b) fails.

The Appeal on Ground (a) and the Section 78 Appeal

7. The retail floorspace subject to the Section 78 appeal is only 471 sq m, whereas that subject to the enforcement notice is some 1563 sq m. Nonetheless, the parties approached the appeals on the basis that the relevant planning policies applied to both developments with comparable force. The appellants also accepted that the developments did not conform with all of the relevant development plan policies, which are contained in the approved Hertfordshire County Structure Plan Review 1992 and the approved Dacorum Local Plan 1995.

8. I consider that there are two main issues in both of the appeals. Firstly, whether there are any material considerations which outbalance the conflict of the developments with the relevant provisions of the development plan; and secondly, the effect of the developments on highway safety.

9. With regard to the first issue, there are three broad policy areas which are relevant; the loss of employment generating land, development in the rural area and shopping policy. On the first of these, the appeals developments are not encompassed by Policy 64 of the Structure Plan as retailing is not an employment generating activity for the purpose of this policy. Policy 30 of the Local Plan permits the alternative development of an employment generating site if it accords with the development strategy. As the developments conflict with Policy 5 of the Local Plan, see

below, they cannot benefit from Policy 30. Whilst the appeals premises had lain empty for a significant time before your clients' occupation, some of this was during the recession and the owners' current attempts to regain control of the site support their stated intention to lease it for industrial purposes. Consequently, I am not convinced that dismissal of the appeals would necessarily result in the premises remaining unused for a significant period of time and any employment benefits of retaining the present use are liable to be limited.

10. On the second broad policy area, the appeals sites lie within an area designated in the development plan as the Rural Area which lies beyond the Green Belt. Within this area, Policy 52 of the Structure Plan provides that development such as the appellants would not normally be allowed. And retail use is not one of the uses considered to be acceptable in the rural area under the terms of Policy 5 of the Local Plan. However, Policy 5 refers to Policy 100 of the Local Plan, which reflects government advice in providing that the reuse of redundant buildings in the rural area is acceptable subject to certain criteria.

11. The Council considers that the letter from the owners of the site indicates that the building was not redundant when the retail use began. But the fact that the building had lain empty for more than 10 years does not support the Council's argument and Planning Policy Guidance Note 7 (PPG7) advises that evidence that a building is not redundant for its present use is not by itself sufficient reason to refuse permission for a new use. For the purposes of Policy 100, I believe it is reasonable to assume that the building was redundant when the retail use began.

12. With regard to the criteria of Policy 100, I find criterion (a) unclear, as any reuse of a building would result in the displacement of its existing (lawful) use. As the building had been unused for at least 10 years, there appears to be no material conflict with this criterion. Criterion (b) is met. On criterion (c), the appeals building is unsightly and it is detrimental to the landscape of the surrounding area as it augments the visual impact of the commercial uses and major roads in this rural location. But given the unattractive aspect of these uses and your clients' proposals to improve the appearance of the premises, I do not consider that the literal conflict of the developments with criterion (c) is significant, particularly as PPG7 does not distinguish between attractive and unattractive buildings in terms of their conversion to other uses.

13. Turning to criterion (d), the range of appropriate new uses should not be limited to those listed in Policy 5, as Policy 100 refers to additional uses such as tourism, offices and workshops. There is no conflict with considerations (ii) and (iii) of criterion (d). On consideration (i), that appropriate new uses must be acceptable in the location (in accordance with other policies in the Plan), retail use seriously conflicts with Policy 37 of the Local Plan in that the site is not readily accessible to users of public transport and virtually all of its customers rely on private transport. The developments, therefore, do not comply with Policy 100.

14. The Panel for the Examination in Public of the Hertfordshire Structure Plan Review has recommended that the appeals sites should be included in the Green Belt. As this designation has yet to be confirmed, it should not be given substantial weight in these appeals. However, if the sites are included within the Green Belt, this would increase the conflict with Policy 100 as the buildings considered to be acceptable for reuse have to be listed buildings or those which make a positive contribution to the locality.

15. On the third broad policy area, shopping, the development plan is consistent with national advice in seeking to concentrate new development in existing centres. Of those development plan policies which allow for some out of centre retailing, the developments do not comply with Policy 81 of the Structure Plan because they conflict with Policy 52 of the Plan and are not accessible to the general public as a whole; and I have already found that they conflict with Policy 37 of the Local Plan. Since the approval of the Structure Plan, government advice in PPG6 has reinforced the support for existing centres. In consequence, in considering criterion (i) of Policy 80 of the Structure Plan it would be inappropriate to allow the retention of your clients' use if there were alternative sites available.

16. Your clients' operation could be accommodated in a number of existing retail premises within its catchment area. These include the Queensway and Great Mills sites in Luton, and the former Waitrose and Stag Lane sites in Berkhamstead. Whilst these sites may not meet all of your clients' stated requirements, this aim is somewhat idealistic and the requirements do not include any reference to planning policy. Whilst the choice of alternative out of centre sites may be limited, this is not surprising given the emphasis on concentrating retail development in existing centres, and I consider that the appeals developments conflict with criterion (i) of Policy 80. The developments therefore do not accord with the relevant shopping policies in the development plan.

17. In the light of the above, I consider that the conflict of the appeals developments with the relevant policies of the development plan is weighty. In particular, given the government's advice on the location of retail developments in PPG6 and its advice in PPG13 on the need to reduce the reliance on the private car, I consider that the rural location of the appeals sites with their poor accessibility to public transport is a serious shortcoming of the developments.

18. Of the material considerations put forward in support of the appeals, I have already indicated that I believe that there is a reasonable prospect that the site will be reused for industry in the foreseeable future, and this should result in an improvement in the appearance of the site. Even if this does not come about, I consider that the support of the local councillor and some local residents and any benefits in your clients' proposals in terms of avoiding any dereliction of the site and retaining the existing employment is outweighed by the serious conflict with the relevant provisions of the development plan. The advice in paragraph 3.24 of PPG6 that retail development should not be used simply as a mechanism to bring vacant or derelict sites into development supports my view on this. I conclude on my first issue that there are no other material considerations which outweigh the conflict of the developments with the relevant policies of the development plan.

19. On the second main issue, the vehicle parking and turning requirements of the appeals developments could be accommodated within the land under the claimed control of the appellants. Visibility from the existing access is acceptable and the access incorporates a deceleration splay for vehicles turning left into the site. Nonetheless, the access is direct onto the A5 trunk road which has a 60 mph speed limit, it is located near other junctions which result in turning movements and there is no refuge in the road for right turning vehicles. Consequently, any appreciable increase in the number of vehicles using the site is liable to result in increased highway danger.

20. With regard to traffic generation, I share the Council's concerns about the trip rates for a retail use selected from the TRICS database by the appellants' highway consultant, because the store used does not appear comparable to the appeals developments. On the other hand, in their latest letter, the Highways Agency does not object to the development subject to the S78 appeal and states that the existing furniture retail use would not result in a level of traffic which would be detrimental to the trunk road. In the absence of any other detailed evidence about traffic generation and as the retail use could be restricted to that now taking place, I consider that the appeals developments will not materially affect highway safety. However, this conclusion does not outbalance my findings on the first main issue. The appeal on ground (a) and the S78 appeal therefore fail.

The Appeal on Ground (g)

21. The reasonableness of the compliance period should be assessed from the date of my decision letter, not from the date when the appellants started trading. Whilst I accept that there may be difficulties in finding alternative accommodation and that 12 jobs are at stake, I consider that extending the compliance period to 18 months, as you suggest, is not justified. The Council accepts that some relaxation of the compliance period may be appropriate. I agree. In the circumstances, I consider that the period should be extended to 9 months to allow the appellants a reasonable period to seek an alternative site. To this extent, the appeal on ground (g) succeeds.

22. I have taken into account all the other matters raised in the representations, but I have found nothing of sufficient importance to outweigh the material considerations that have led to my decisions.

FORMAL DECISIONS

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

i. **The appeal under S174. Department's Reference T/APP/C/97/A1910/646991.**

I direct that the enforcement notice:

(a) be corrected by:

- (i) substituting the plan attached to this letter for that attached to the notice, and
- (ii) substituting "hatched" for "edged red" in paragraph 2;

(b) be varied by:

- (i) inserting "the" before "site" in requirement (i), and
- (ii) substituting "nine months" for "three months" in the period for compliance.

Subject thereto, I dismiss the appeal, uphold the notice as corrected and varied and refuse to grant planning permission on the application deemed to have been made under S177(5) of the Act.

ii. The Section 78 appeal. Department's Reference T/APP/A1910/A/96/274758.

I hereby dismiss the appeal.

RIGHTS OF APPEAL AGAINST DECISIONS

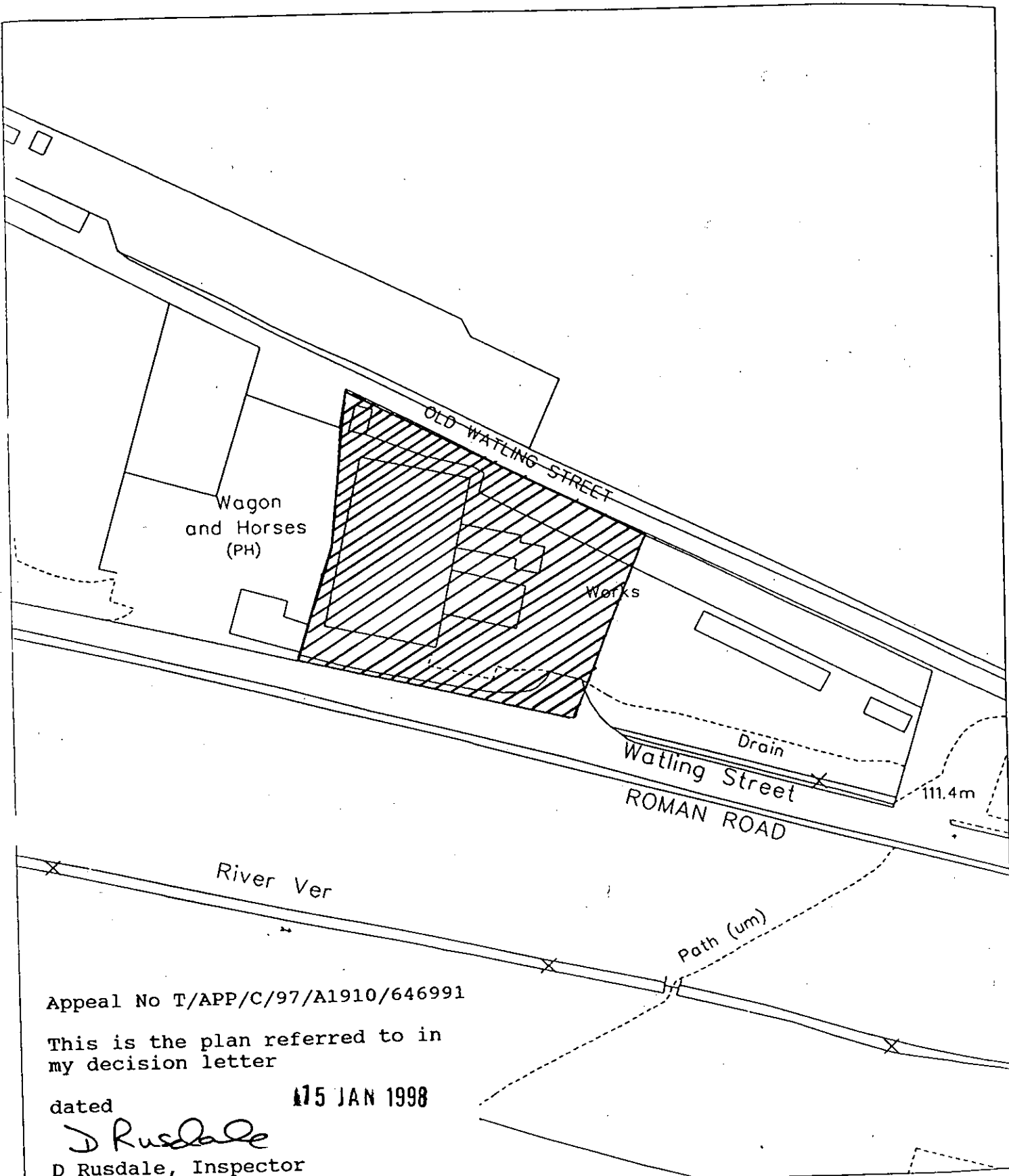
24. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against my decisions to the High Court are enclosed for those concerned.

Yours faithfully



D RUSDALE BA DipTP MRTPI
Inspector

ENC



Appeal No T/APP/C/97/A1910/646991

This is the plan referred to in
my decision letter

dated

15 JAN 1998

D Rusdale

D Rusdale, Inspector



DACORUM BOROUGH COUNCIL
PLANNING DEPARTMENT

Date... 25/03/96

Map Ref: TL0814NW
Scale 1: 1250



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APPEARANCES

FOR THE APPELLANTS

Mr P Hamlin

- Of Counsel, instructed by Paul
Grommett & Co, 9 Argyll Street,
London.

He Called:

Mr R Perrin MRTPI

- Planning Consultant.

FOR THE PLANNING AUTHORITY

Mr T Hill

- Of Counsel, instructed by the Council's
Director of Law and Administration.

He Called:

Mrs A Bochnacki BSc(Econ) -
DipTP MRTPI

Principal Planning Officer.

INTERESTED PERSON

Mr J Taunton

- Ward Councillor.

DOCUMENTS

- Document 1 - Lists of persons present at the inquiry.
- Document 2 - Council's letter of notification of the inquiry and list of persons notified.
- Document 3 - Four letters received in response to the letter of notification.
- Document 4 - Appendices 1-11 to the proof of Mr Perrin.
- Document 5 - Statement from Grimleys submitted by Mr Perrin.
- Document 6 - Letter of 1 December 1997 from Grimleys.
- Document 7 - Appendices 1-12 to the proof of Mrs Bochnacki.

DOCUMENTS (CONT)

- Document 8 - Policies 3 and 90 of the Dacorum Local Plan.
- Document 9 - Letter of 1 December 1997 from the Highways Agency.
- Document 10 - Sales brochure for Unit 1, 2-4 Poynters Road, Luton.
- Document 11 - Sales brochure for B&Q site at Luton Road, Dunstable.

PLANS

- Plan A - Enforcement notice.
- Plan B - Three plans accompanying the planning application.
- Plan C - Plan submitted by Mr Perrin indicating proposed improvements to the appeals sites.