

4/0723/84 11542



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Council refs 4/1510/83 & 4/0723/84 E/C/PB

CHIEF EXECUTIVE
OFFICER

PLANNING DEPARTMENT
DACORUM DISTRICT COUNCIL
15 JAN 1985

File No.

Refer. 950-17

Clerk C. Admin. File

Your reference

15 JAN 1985

Received

84/AL/120

Our reference

Comments

T/APP/A1910/C/84/1492/P6

Date

and T/APP/A1910/A/84/12589/P6

15 JAN 85

Messrs Murgatroyds
Solicitors
36 Holywell Hill
ST ALBANS
Herts AL1 1BT

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEALS BY STIMPSONS
LAND AND BUILDING AT 33 MARLOWES, HEMEL HEMPSTEAD

1. As you know I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeals. These appeals are against an enforcement notice issued by the Dacorum District Council and against a refusal of planning permission by that council concerning the above mentioned land and building. I held an inquiry into the appeals on 20 November 1984.

2. a. The date of the notice is 11 April 1984.

b. The breach of planning control alleged in the notice is:

i. the change of use of the first floor from residential use to office use;

ii. the change of use of the second floor from residential use to use for the storage of office equipment.

c. The requirements of the notice are:

i. the cessation of the use of the first floor for offices;

ii. the cessation of the use of the second floor for the storage of office equipment.

d. The period for compliance with the notice is 6 months.

e. The appeal was made on grounds 88(2)(a) and (h).

3. The development for which planning permission was refused is the change of use of the premises from residential to offices with ancillary storage.

4. At an early stage in the inquiry it became clear that, whilst the second floor of the appeal building was being used for ancillary storage at the time of issue of the enforcement notice, it is now used as a staff training centre. In my opinion, both the storage and the staff training use are uses ancillary to the main use as offices. This point has been canvassed in correspondence between the appellants and the council, and in its letter of 29 May 1984 (see Document 4) the council confirmed that the principal use of the floor space is for office purposes.

5. In the light of this I questioned the wording of Schedules 2 and 3 attached to the enforcement notice. For the council it was said that it is desirable for these schedules to be amended to refer to office use on both upper floors. You said that a variation to the schedules of this nature would not be prejudicial to your clients. Were it my intention to uphold the notice, I would therefore have varied Schedule 2 by substituting the words 'change of use of first and second floors from residential to office use' for the words therein, and Schedule 3 by substituting the words 'the cessation of the use of the first and second floors for offices' for the words therein.

6. The development subject of the Section 36 appeal is described on the application form as change of use from residential to offices with ancillary storage. In the light of the above 2 paragraphs, I intend to deal with this appeal on the basis of the change of use of the upper floors of the appeal building to offices.

SECTION 36 APPEAL AND APPEAL UNDER SECTION 88 GROUND (A)

7. Turning to the question of whether planning permission for this use ought to be granted, there is a clear policy background against which the developments must be judged. The relevant policies are contained in the recently adopted Dacorum District Plan. Policy 61 of that plan states that planning permission will not normally be granted for any change of use or other development which would result in the loss of satisfactory residential accommodation. Policy 56 makes this policy specific to development for office purposes.

8. Therefore, although the appeal premises are within an area shown on the District Plan Proposals Map as the commercial centre of Hemel Hempstead, wherein, under the terms of District Plan Policy 53 changes of use to offices will normally be granted; and although the appellant firm meets the first criterion of Policy 54, which is a further restriction on the grant of planning permission for offices; in view of Policies 61 and 56, I consider that there must be a presumption against the permission for change of use sought by your clients.

9. In view of these matters, and all the other matters raised at the inquiry, I consider that there are 2 main issues for me to consider in deciding whether planning permission ought to be granted. The first is whether there are particular factors in this case which warrant the grant of planning permission in the face of the policies mentioned. The second is whether planning permission should be given in view of the fact that no provision for off-street car parking can be made by the appellants.

10. A policy report concerning possible uses of the upper floors of premises in The Parade was made to the relevant committees of the council (see Document 17). This concluded that no specific policy for The Parade should be drawn up, and that any proposal should be considered against the District Plan policies on its merits.

11. Whilst Policy 56, dealing with office development which results in a loss of residential accommodation makes no distinction on a qualitative basis, Policy 61, within the housing section of the District Plan, is concerned with the loss of 'satisfactory' residential accommodation. In my view, the quality of a residential unit comprised in the 2 upper floors of 33 Marlowes is a material consideration for me to take into account.

12. In this respect you argue that the flat would not be satisfactorily separated from the ground floor office unit, that the staircase is steep and ill-lit and that there is no private open space effectively available to a residential

occupier. In this you gain support from the appeal decision letter issued in October 1977 under which permission was given for the change of use of the first floor to offices for a period of 5 years.

13. In response, the council asserts that there is a need to ensure the availability of a range of residential accommodation in different locations which can meet a variety of housing demands. In particular there is a need for small residential units (see Document 20). Whilst the council acknowledges that if any of a number of facilities of a residential unit is 'less than satisfactory' that unit may be considered for an alternative use - it regards the upper floors of 33 Marlowes as satisfactory on every count: as regards layout, separate access, private amenity space, off-street car parking facilities and degree of nuisance from heavy traffic.

14. If the council's test of 'any facility being less than satisfactory' is correct, then I would be led to regard the upper floors of the appeal building as open to consideration for another use on that ground. This is because I regard the staircase angle and the private amenity open space as less than satisfactory and the off-street car parking as non-existent. But in my opinion it will often happen that a dwelling has unsatisfactory features whilst remaining a reasonable dwelling. This will depend on the quality of other factors, such as proximity to a major shopping centre, public transport and employment opportunities, etc, and cheapness of rent or mortgage. Excellence in particular features may outweigh poorness in others. On balance I take the view that the 2 floors provide a sufficient number of rooms, of good size, lighting and orientation, and with adequate access to make a reasonably satisfactory dwelling bearing in mind the central location.

15. Against the loss of a reasonable dwelling must be set matters dealt with in DOE Circular 22/80 regarding business activity and small businesses and the need to take account of economic effects. In this context your clients were given a 5 year permission to use the first floor of 33 Marlowes without any reason (so far as it is now possible to ascertain) which justified any exception to policy on the basis of a short-term need. In my view, any reasonable person reading the decision upon which that planning permission was based would be led to believe that had the application been for a permanent change of use it would have been granted. Whilst that permission related only to the first floor, it effectively prevented any reasonable residential use of the second floor.

16. In view of this I have decided that the appellants have not acted rashly in building up the business as they have in recent years based on the use of upper floors. Further, I recognise that the loss of this accommodation would now have very serious consequences on the business, and that equally well placed accommodation would probably be difficult to find, at least in any relatively short-term period.

17. I have concluded that these factors, in the particular circumstances of this case and bearing in mind the location of the premises within the commercial centre, justify overriding the planning policy of retaining residential units in that use.

18. On the matter of car parking, Policy 19 of the District Plan requires that all proposals for development should include provision for car parking based on the council's guidelines (Appendix 6 of Document 16). However, this policy is within a section of the plan relating to guidelines for new buildings, and I take the view that development involving existing buildings must necessarily be considered against the particular existing physical circumstances. Since a residential use of the appeal premises would call for a car parking provision only a little less than that required for an office use of the floor space, and since the

1510/83

DACORUM DISTRICT

Council

TOWN AND COUNTRY PLANNING ACT 1971
(as amended)

Enforcement Notice

Material Change of Use

FILE
1510/83

(b) 33 MARLOWES, HEMEL HEMPSTEAD, HERTFORDSHIRE

Ack.

24 APR 1984

WHEREAS:

(1) It appears to the^(a) Dacorum District Council ("the Council"), being the local planning authority for the purposes of ~~section 87 of the Town and Country Planning Act 1971~~ ("the Act") in this matter, that there has been a breach of planning control after the end of 1963^(c)

on the land or premises ("the land") described in Schedule 1 below.

(2) The breach of planning control which appears to have taken place consists in the carrying out of development by the making of the material change in the use of the land described in Schedule 2 below, without the grant of planning permission required for that development.

(3) The Council consider it expedient, having regard to the provisions of the development plan and to all other material considerations, to issue this enforcement notice, in exercise of their powers contained in the said section 87, for the reasons set out in [the annex to] this notice.^(d)

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken [in order to remedy the breach] ^(e)

within [the period of SIX ^(f) days [months] from the date on which this notice takes effect] [~~the period specified in respect of each step in that schedule~~].^(g)

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88 (10) of the Act, on 1st June 19 84.^(g)

Issued 11th April 19 84.

Council's address —

Civic Centre,
Marlowes,
Hemel Hempstead, Herts.

(Signed) Keith Hunt

(Designation) District Secretary
(The officer appointed for this purpose)

CONTINUED OVERLEAF — P.T.O.

NOTES TO THE LOCAL PLANNING AUTHORITY

- (a) Insert the name of the Council issuing the notice.
- (b) Insert the address or a description of the land to which the notice relates.
- (c) Where section 87(4)(c) of the Act applies insert "and within the period of 4 years before the date of issue of this notice."
- (d) See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 57/81).
- (e) Or, as the case may be, having regard to section 87(7)(a) and (b) of the Act. Where steps are required to be taken for more than one of the purposes provided for in section 87, the purpose for which each step is required should be specified in Schedule 3. Steps may be required as alternatives.
- (f) If a single period is to be specified, by which all the required steps must be taken, insert it here. But if a series of steps is required to be taken, with a different compliance period for each step, the appropriate period should be clearly stated against each step (in columns if more suitable) in Schedule 3.
- (g) The date selected must be not less than 28 clear days after all the copies of the notice will have been served (see section 87(5) of the Act).

EXTRACTS from the TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

Power to issue enforcement notice

87.—(1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then subject to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied and serve copies of the notice in accordance with subsection (5) of this section.

(2) A notice under this section is referred to in this Act as an "enforcement notice".

(3) There is a breach of planning control—

- (a) if development has been carried out, whether before or after the commencement of this Act, without the grant of the planning permission required in that behalf in accordance with Part III of the Act of 1962 or Part III of this Act; or
- (b) if any conditions or limitations subject to which planning permission was granted have not been complied with.

(4) An enforcement notice which relates to a breach of planning control consisting in—

- (a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or
- (b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or
- (c) the making without planning permission of a change of use of any building to use as a single dwelling-house; or
- (d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwelling-house.

may be issued only within the period of four years from the date of the breach.

(5) A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

- (a) on the owner and on the occupier of the land to which it relates; and
- (b) on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.

(6) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.

(7) An enforcement notice shall also specify—

- (a) any steps which are required by the authority to be taken in order to remedy the breach;
- (b) any such steps as are referred to in subsection (10) of this section and are required by the authority to be taken.

(8) An enforcement notice shall specify the period within which any such step as is mentioned in subsection (7) of this section is to be taken and may specify different periods for the taking of different steps.

(9) In this section "steps to be taken in order to remedy the breach" means (according to the particular circumstances of the breach) steps for the purpose—

- (a) of restoring the land to its condition before the development took place; or
- (b) of securing compliance with the conditions or limitations subject to which planning permission was granted, including—
 - (i) the demolition or alteration of any buildings or works;
 - (ii) the discontinuance of any use of land; and
 - (iii) the carrying out on land of any building or other operations.

(10) The steps mentioned in subsection (7)(b) of this section are steps for the purpose—

- (a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or
- (b) of removing or alleviating any injury to amenity which has been caused by the development.

(11) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land, the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.

(12) The Secretary of State may by regulations direct—

- (a) that enforcement notices shall specify matters additional to those which they are required to specify by this section; and
- (b) that every copy of an enforcement notice served under this section shall be accompanied by an explanatory note giving such information as may be specified in the regulations with regard to the right of appeal conferred by section 88 of this Act.

(13) Subject to section 88 of this Act, an enforcement notice shall take effect on a date specified in it.

(14) The local planning authority may withdraw an enforcement notice (without prejudice to their power to issue another) at any time before it takes effect.

(15) If they do so, they shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(16) Where—

- (a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and
- (b) the notice has required the taking of steps for a purpose mentioned in subsection (10)(b) of this section; and
- (c) the steps have been taken,

for the purposes of this Act planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the local planning authority.

Appeal against enforcement notice

88.—(1) A person having an interest in the land to which an enforcement notice relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds—

- (a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;
- (b) that the matters alleged in the notice do not constitute a breach of planning control;
- (c) that the breach of planning control alleged in the notice has not taken place;
- (d) in the case of a notice which, by virtue of section 87(4) of this Act, may be issued within the period of four years from the date of the breach of planning control to which the notice relates, that that period had elapsed at the date when the notice was issued;
- (e) in the case of a notice not falling within paragraph (d) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1964;
- (f) that copies of the enforcement notice were not served as required by section 87(5) of this Act;
- (g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in section 87(10) of this Act;
- (h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made by notice in writing to the Secretary of State.

(4) A person who gives notice under subsection (3) of this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed by regulations under subsection (5) of this section*, a statement in writing—

- (a) specifying the grounds on which he is appealing against the enforcement notice; and
- (b) giving such further information as the regulations may prescribe.

(5) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under this section, and in particular, but without prejudice to the generality of this subsection—

- * (a) may prescribe the time within which an appellant is to submit a statement under subsection (4) of this section and the matters on which information is to be given in such a statement;

*NOTE: The Secretary of State has specified that such a statement must be submitted to him either when the appellant is giving notice of appeal, or within 28 days from the date on which the Secretary of State sends the appellant a notice requiring such a statement to be submitted.

number of spaces in this development involved is insignificant in relation to the parking demand and provision in the immediate locality, I do not regard this as an overriding issue.

19. Having taken account of all other matters raised, including the appeal decision in respect of 33C Marlowes in 1983, the concern expressed by the council at the 1977 appeal decision in respect of the present appeal premises, and the commercial property register maintained by the council, in the light of the considerations set out above I am minded to allow the appeals and grant planning permission. The appeal on ground (h) does not, therefore, fall to be considered.

20. In view of the reasons which have led to my decision, hingeing on the relationship of the present use of the upper floors of 33 Marlowes with the ground floor use, I intend to make the planning permission conditional on their being used only as estate agency offices in association with the use of the ground floor.

FORMAL DECISION

21. For the above reasons, and in exercise of the powers transferred to me, I hereby allow your clients' appeals, direct that the notice be quashed and grant planning permission, on the application deemed to have been made under Section 88B(3) of the Act and that dealt with under Section 36, for the use of the first and second floors of 33 Marlowes as offices subject to the condition that the floor space shall be used as estate agency offices in association with the use of the ground floor of the premises and for no other purpose including any other purpose in Class II of the schedule to the Town and Country Planning (Use Classes) Order 1972.

22.—This decision does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971. Attention is also drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970.

RIGHT OF APPEAL AGAINST DECISION

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

I am Gentlemen
Your obedient Servant

T. J. Kemmann-Lane

T J KEMMANN-LANE JP DipTP FRTPI MBIM
Inspector

ENC

see also 4/1510/83

Location of Appeal Site **33 Marlowes Hemel Hempstead**

Appellant **Stimpsons Eves**

L.A. Ref. No. **4/0723/84E**

Appellants Agent

Secretary's Ref.

Proposal **APPEAL AGAINST ENFORCEMENT NOTICE**

D.o.E. Ref. **APP/A1910/C/84/1492**

Date of ~~Decision~~/Service of Enforcement Notice

11.4.84.

Date Appeal lodged with D.o.E.

? (within 6 months)

Date of receipt of Notice of Appeal by C.P.O.

31.5.84.

Date Secretary notified of receipt of Appeal

6.6.84. & 19.7.84. & 8.10.84.

Date of return of questionnaire to D.o.E.

6.6.84. (within 14 days)

Notification of Public Inquiry/~~Written Representations~~

12.9.84

Date persons notified of Appeal

29.10.84.

Date statement sent to (a) D.o.E.

(min.28 days before P.I.)

19.10.84

(b) Appellant

19.10.84

(min.28 days before P.I.)

(c) Secretary

19.10.84

Date Plans sent to: (a) D.o.E.

(min.28 days before P.I.)

(b) Appellant

19.10.84

(c) Secretary

Date list of persons notified of Appeal sent to: (a) D.o.E.

(min.28 days from P.I.)

(b) Appellant

(c) Secretary

Date/Time of Site Inspection (Written Representations)

20 Nov 1984, 10.00am

Confirm date, time, location of Public Inquiry

**20 NOV 1984, Civic Centre, Hemel Hempstead
Mr. T. Kemman-Lane JP, DipTP,
FRTP, MBIM.**

Date Secretary notified of date etc. of Public Inquiry

Date Committee Room/Hall booked

Date Display Notice received by C.P.O.

Date Display Notice on Appeal Site if required

(min.28 days from P.I.)

Date proof of Evidence sent to Secretary

Decision ALLOWED/DISMISSED/QUASHED

Date: **14.1.85**

Date received by C.P.O. **15.1.85**

Date Secretary notified **16.1.85**

Date Reported to D.C. Committee **31.1.85**

High Court