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TECHNICAL SERVICES DEPT.	
PLANNING	
29/77	29 SEP 1977
FILE No.	DATE

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Your reference JAB/EMB/Batey  
LPA ref: MKB/EDA/2447/68  
Our reference APP/5252/C/76/2543,  
4718-4724, 1907-1914,  
Date 1915-1922, 1923-1930

23 SEP 77

Sir

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 88  
LAND AT 1 ALBERT STREET, 29-32 AKEMAN STREET AND 64, 65 AND 66 AKEMAN STREET, TRING  
APPEALS BY WILLIAM BATEY & CO (EXPORT) LTD AND OTHERS

1. I am directed by the Secretary of State for the Environment to refer to the report of the Inspector, Mr F T Cornhill CEng, FIMunE, MRSH, who held a local inquiry into your clients' appeals against 4 enforcement notices served by the Dacorum District Council relating to:-

- NOTICE A: a material change of use of 1 Albert Street, Tring to a use for commercial purposes as a car park.
- NOTICE B: failure to comply with a condition subject to which planning permission was granted on 30 March 1971, in that the storage use thereby permitted at 64, 65 and 66 Akeman Street, Tring did not cease on or before 31 March 1972.
- NOTICE C: failure to comply with a condition subject to which planning permission was granted on 30 March 1971, in that the storage use thereby permitted at 29/32 Akeman Street, Tring excluding the first floor flat (No. 30) and a building at the rear, did not cease on or before 31 March 1972.
- NOTICE D: failure to comply with a condition subject to which planning permission was granted on 30 March 1971, in that the storage use thereby permitted in the building at the rear of 29/32 Akeman Street, Tring did not cease on or before 31 March 1972.

2. The appeals were on the following grounds as set out in section 88(1) of the Town and Country Planning Act 1971:-

- NOTICE A: grounds (a) and (g) but at the inquiry ground (f) was added.
- NOTICE B: grounds (a), (b), (f) and (g) but at the inquiry ground (d) was added.
- NOTICE C: ground (g) but at the inquiry ground (a) was added.
- NOTICE D: ground (g) but at the inquiry ground (a) was added.

3. A copy of the Inspector's report of the inquiry is annexed to this letter. His conclusions are set out in paragraphs 66 and 67 and his recommendation at paragraph 68 of the report. The report has been considered.

## SUMMARY OF THE DECISION

4. The formal decision is set out in paragraphs 16 - 18 below. The appeals succeed in part on ground (b) and the enforcement notices are being upheld, as corrected and varied. Planning permission is not being granted for the development referred to in Notice A, and the condition of planning permission to which Notices B, C and D relate are not being discharged.

## REASONS FOR THE DECISION

### NOTICE B - GROUNDS (B) AND (D)

5. The evidence and facts found by the Inspector, which are accepted, show that in 1956 Nos 64, 65 and 66 Akeman Street were rated as dwellings and the building behind No. 64 as a store. In 1963 No. 64 was rated as a warehouse and between 1963 and 1973 it was merged with the building at the rear. In 1962 an application by Mr Bartram, a tenant, for planning permission to use No. 64 for storage purposes was refused. At that time it was stated in objection by the owners, the present appellants, to be required for residential purposes and also that prior to the time Mr Bartram took over the tenancy, less than 4 years ago, the house had been used for residential purposes only. In 1964 the appellants made application to use No. 64 for storage and to demolish the properties and redevelop with flats, but did not proceed with either application. The land was then stated to be used as domestic residences. However in 1971 planning permission was given on appeal, following the Council's refusal of a planning application submitted in 1970, to use the whole of the site, 64-66, for storage conditional upon the use ceasing on or by 31 March 1972. A further application to continue the storage use was refused in April 1972 and in July 1975 permission was refused on appeal to continue the use. At the 1975 inquiry the appellants claimed that there was an established use right for storage at No. 64.

6. In support of the appeals on grounds (b) and (d) it was submitted that the warehouse at the rear of No. 64 had always been a separate building from Nos 64-66 and had been used as a warehouse since before the appointed day. It was claimed that the building had an established use as a warehouse; no planning permission was therefore required for its use for storage purposes and there had been no breach of planning control. There was an existing right to use it for storage which could not be taken away by the 1971 temporary planning permission. It was submitted that your clients had started to use the front and rear of No. 64 for storage purposes in 1962 and therefore ground (d) must succeed since the use began before 1964.

7. On grounds (b) and (d) of the appeals the issues before the Secretary of State are whether or not the planning permission has been exercised and, if so, whether the particular condition set out in the enforcement notice has been breached as alleged.

8. The claim of an established use of the site is considered in the first instance. In evidence it was stated that the building at the rear of No. 64 had been used as a warehouse since the appointed day; that your clients had started to use the front and rear of No. 64 for storage purposes in 1962 and that there had never been any distinction between the warehouse at the rear and front of No. 64. It was claimed in written evidence that prior to occupation by Mr Bartram about 1958 the dwelling at No. 64 had been occupied for residential purposes only. On Plan C, dated 1974, submitted as indicating the premises used, No. 64 is shown shaded blue, divided into 2 parts by a line of red dashes and endorsed in red 'front' on the part facing Akeman Street and '64 rear' on the part along Albert Street. Nos 65 and 66 are uncoloured on Plan C and although they are now in use for storage purposes they were in residential use in 1962 and there is no evidence to show that they were in fact

in use for storage purposes before 1964. In support of ground (a) of this appeal it was suggested that the only sensible use for them was as an extension of the established use at No. 64. Although there is no evidence to show the actual use of the warehouse at the rear of No. 64 on the appointed day it has been used for storage purposes since 1956, so it had become immune from enforcement action before the temporary planning permission was granted in 1971. By 1962 the dwelling at the front of No. 64 was probably also in use for storage purposes and the view is taken that in 1962 there was a material change of use of the dwelling from the former use for residential purposes to a use for storage constituting development for which planning permission was required but not obtained. Similarly when Nos 65 and 66 began to be used at a later date for storage purposes there was a material change of use from a residential use for which planning permission was required but not obtained. Since the breach of planning control in respect of the dwelling at No. 64 occurred before 1964 the use of the front and the rear of No. 64 for storage purposes was established. However it is not considered that the onus of proof has been discharged to show that the use of Nos 65 and 66 began before 1964.

9. In the present case planning permission was applied for and granted, after appeal, in 1971 for the use of Nos 64-66 and 29-32 Akeman Street for storage purposes subject to the condition that the use should cease on or before 31 March 1972. The validity of conditions which restrict the past user of land has been considered in the High Court in a number of cases. In the case of *Mounsdon v Weymouth and Melcombe Regis Borough Council* (1960) (11 P & CR 103) it was held that a condition restricting the number of caravans on a site could not restrict the existing use right to station caravans established prior to the grant of planning permission. On this basis a conditional planning permission need not be acted upon if there are existing use rights and in such circumstances the continued use of the site would not be in breach of the conditions. It is considered therefore that the 1971 planning permission was not implemented in respect of the premises at No. 64 Akeman Street. In *Kingston-upon-Thames Royal London Borough Council v Secretary of State for the Environment* (1974) (1 All ER 193) it was held that a condition could restrict the past user provided that it was reasonably related to the development for which permission was granted. In the more recent case of *Newbury District Council v Secretary of State for the Environment* (1977 JPL p.373) it was held that a condition requiring the demolition of pre-existing buildings at the end of a specified period was not sufficiently related to a grant of planning permission for a material change of use of those buildings. In the case of *Penwith District Council v Secretary of State for the Environment* (1977 JPL p.371), it was held that where planning permission was granted for a new building within the curtilage of an existing factory conditions controlling noise emissions from the existing buildings were sufficiently related to the development. Construction of the proposed new building would permit a more intensive use of the existing building. In the present case it is not considered that the condition attached to the 1971 planning permission relating mainly to the use of additional sites for storage purposes was sufficiently relevant to the land which already had an established use for those purposes to be valid in respect of that land. It is concluded therefore that the conditional planning permission of 1971 is not enforceable in respect of the premises at No. 64 Akeman Street. The blue area as indicated on Plan C will accordingly be excluded from the effect of Notice B and the appeal on ground (b) succeeds to that extent. It is considered that the condition was valid and reasonable insofar as it applied to the premises at Nos 65 and 66 Akeman Street and since the condition has not been complied with the appeals fail on grounds (b) and (d) in respect of that part of the appeal site.

NOTICES A, B, C AND D - GROUND (A)

10. In his conclusions on ground (a) the Inspector made the following comments:-

"The appellants' business has expanded and flourished along this part of Akeman Street, which has a mixed commercial/industrial/residential nature, since it started there in 1958. The business has become firmly established and has branched out from the premises where it is being carried on lawfully onto sites A, B, C and D where it is being carried on in breach of planning control, unless it is decided that this is not the case at No. 64 and the building to its rear. The issue is whether the appellants' business, which is largely of an export nature and provides local employment, should be allowed to continue to carry on beyond its main premises at the appeal sites, contrary to the provisions of the development plan and the non-statutory town centre map.

This matter has been considered previously in relation to sites B, C and D when the appeals were decided in 1971 and 1975. There seems to be no material change in circumstances since the later decision. The appellants have been aware since 1971 that the use of sites B, C and D for storage was for a short temporary period and the objections to the continuation of the use were emphasised in 1975. They have had ample opportunity to make alternative arrangements but do not appear to have done so, and I am not convinced that suitable alternative premises are not available. To allow the use to continue would be prejudicial to the realisation of the aim that the area should ultimately become primarily residential, which is a desirable objective although it may take many years. The storage use of these sites does not lead to a large amount of activity, nevertheless it must detract to some extent from the residential environment to the south and west. The buildings are dilapidated and of unattractive appearance but those on sites B and C will probably remain there, even if they are not used for storage, until such time as they are redeveloped, therefore no immediate gain in appearance is likely. Nevertheless, their redevelopment will probably take place that much quicker. Taking all these matters into account planning permission should not be given for the continuation of the storage uses.

The car park use of site A arises because the area which should be used for parking at the works in accordance with the planning permissions given is now used as an extension to the machine shop. There is no justification for accepting the use of site A on that score. It has resulted in the commercial activity associated with the appellants' works extending further into the surroundings and in this case into a street which is predominantly residential in character. The site adjoins the appellants' works on one side and a builder's yard on another but it also adjoins dwellings and the access is over a residential road. The use for car parking must create some noise and activity which reduces the residential environment. The appellants' contention that the use of the site reduces parking in the streets is a doubtful argument because the cars should be parked on the area allocated at the works. In the interests of the preservation of the residential character this intrusion should not be allowed to continue."

The Inspector recommended that all 4 enforcement notices be upheld and that in respect of Notices B, C and D the conditions of planning permission which have been breached be not discharged. These conclusions and recommendation are accepted.

11. It is therefore proposed to uphold the enforcement notices, refuse planning permission for the development to which Notice A relates, and to refuse to discharge the conditions of planning permission to which Notices B, C and D relate.

#### NOTICES A AND B - GROUND (F)

12. With regard to the appeals against Notice A on ground (f) the Inspector concluded as follows:-

"Enforcement notice A is directed towards a change of use but the requirements are directed also to the remedying of the operation of laying the tarmacadam surface to the car park by removal of that surface, which would itself be an operation. That is an excessive requirement and should be deleted from the notice."

13. These conclusions are accepted. It is also considered that the requirement to reinstate the land as a garden in requiring land to be used for a particular purpose exceeds what may be required under the provisions of section 87. The requirements will be varied accordingly.

14. As regards Notice B it is not considered that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control.

#### NOTICES A, B, C AND D - GROUND (G)

15. On ground (g) it is agreed with the Inspector that the period for compliance in respect of Notice A, as varied, is reasonable. It is also agreed that your clients' suggestion that the period of compliance should be extended to 5 years is unacceptable in view of the time they have already had to seek alternative accommodation following the Secretary of State's refusal to grant planning permission on appeal in 1975. However to enable your clients to take action to seek alternative premises it has been decided to extend the compliance period to 12 months.

#### FORMAL DECISION

##### NOTICE A

16. For the reasons given in paragraphs 9-13 and 15 above the Secretary of State hereby directs that Notice A be varied by the deletion from the requirements of the word "and" at the end of sub-paragraph (i) and the whole of sub-paragraph (ii).

##### NOTICES B, C AND D

17. For the reasons given in paragraphs 5-15 above the Secretary of State hereby directs that Notices B, C and D be varied by the deletion from the requirements of the word "three" and the substitution therefor of the word "twelve" and that Notice B should also be varied in the first recital by the deletion of the words "No.1" and the deletion of the word 'red' and the substitution therefor of the word 'black' and by the substitution of the plan attached to this letter for the plan attached to the notice.

Subject thereto the Secretary of State upholds all 4 enforcement notices, refuses to grant planning permission for the development to which Notice A relates, and refuses to discharge the conditions of planning permission to which Notices B, C and D relate.

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#### RIGHT OF APPEAL AGAINST THE DECISIONS

19. This letter is issued as the Secretary of State's determination of the appeals. Leaflet A, enclosed for those concerned, sets out the rights of appeal to the High Court against the decision and the arrangements for the inspection of the documents appended to the Inspector's report.

I am Sir  
Your obedient Servant

MISS E TREANOR

Authorised by the Secretary of State  
to sign in that behalf

ENCS