



# The Planning Inspectorate

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

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Your Ref:  
REH/Button  
Our Ref:  
T/APP/C/96/A1910/643780  
Date:

Dear Sirs,

**TOWN & COUNTRY PLANNING ACT 1990, SECTION 174 & SCHEDULE 6**  
**PLANNING & COMPENSATION ACT 1991**  
**APPEAL BY W F BUTTON & SON LTD.**  
**LAND & BUILDINGS AT PIX LANE FARM, BOURNE END,**  
**HEMEL HEMPSTEAD**

28 MAY 1997	
PLANNING DEPARTMENT	
DACORUM BOROUGH COUNCIL	
Ref.	
29 MAY 1997	
MCHMS	

1. I have been appointed by the Secretary of State for the Environment to determine your clients' appeal against an enforcement notice issued by Dacorum Borough Council in respect of the above land and buildings. I held an inquiry into this appeal on 15 and 16 April 1997.

2. a. The notice was issued on 10 June 1996.
- b. The breach of planning control alleged in the notice is, without planning permission, the change of use of the land for:
  - (i) the storage and processing of reclaimed metal, and
  - (ii) the storage of building materials including bricks, concrete paving slabs, timber and roof sheeting.
- c. The requirements of the notice are:
  - (i) remove all building materials and reclaimed metal from the land;
  - (ii) cease use of the land for the storage of building materials including bricks, concrete paving slabs, timber, and roof sheeting; and
  - (iii) cease use of the land for the storage and processing of metal.
- d. The period for compliance with the notice is 6 months.

3. Your clients' appeal was made on grounds (a),(b),(c),(f) and (g) of Section 174(2) of the 1990 Act, as amended by the Planning & Compensation Act 1991. As the prescribed fees have been paid I will also consider the application for planning permission deemed to have been made under Section 177(5) of the amended act.

## The Land Affected by the Notice

4. Part of the land shown edged red on the plan attached to the notice is leased to Barbrak Limited, and it was submitted that this land should be excluded from the notice,

because it forms a separate planning unit. The leased area is centred upon a workshop and open land that are fenced off from your clients' operations. It also includes smaller buildings, a parking area and circulation space at the front of the site which are not fenced off for the exclusive use of Barbrak Limited; and it appears that there is some shared use of these open forecourt areas. In view of this element of shared use I see merit in the notice applying to the whole site, particularly as it is all in your clients' freehold ownership. Furthermore if I were to exclude certain parts of the site to reflect current leasing arrangements, then it could be argued that the offices leased to Cabena Construction should be deleted from the notice. However no such submission was made and, for the same reasons I have given for not excluding the land leased to Barbrak Limited, I do not intend to exclude office accommodation leased to Cabena Construction. Accordingly I do not intend to make any alterations to the area affected by the notice.

### **The Alleged Breach of Planning Control**

5. The allegation as worded refers only to those activities on the site which the Council consider to be in breach of planning control. It makes no reference to the fact that the majority of land is used by your clients as a demolition contractor's yard. I raised this matter at the opening of the inquiry and neither party considered any correction of the allegation to reflect this point was necessary. However, in the interests of accuracy, I consider the notice should refer to the change of use of the land to a mixed use including those uses alleged to be in breach of planning control; and I intend to correct the notice accordingly.

### **The Issue of Invalidity**

6. It was submitted that the notice is invalid for two reasons. First it was claimed that its lack of clarity made the notice invalid, insofar as it attempts to preclude the storage of all building materials and metal rather than just that storage which is in breach of planning control. Secondly it was claimed that the reasons why it was considered expedient to issue the notice have not been adequately explained; the notice appearing to have been issued without regard to the matters that were agreed at the 1994 appeal and on the basis of a prospective rather than an actual breach of planning control.

7. Neither of these arguments do I find persuasive. There is no evidence before me to suggest that your clients did not know what the notice said they had done wrong or what it required them to do to put matters right. If, as part of my consideration of this appeal, I conclude that the notice as worded seeks to control matters that are not in breach of planning control, then I have the power to make any necessary corrections or variations to the notice, so long as they would not cause injustice. It was no part of your clients' case that such corrections or variations would cause injustice. Consequently I do not regard any over enforcement within the notice as a reason for finding it to be invalid. With regard to the second matter, I consider that part four of the notice sets out in clear terms why the Council regarded it as expedient to issue the notice. Those reasons are compatible with the main findings of the Inspector in the 1994 appeal and, in my view, adequately reflect the Council's perception of the harm that has arisen and potentially could arise from particular activities. The reasons for issuing the notice are not based just on the fear of future harm, and I am satisfied that it was expedient for the notice to be issued.

### **The Appeal on Ground (b)**

8. The appeal on this ground is based solely upon the assertion that the land has not been used for the processing of reclaimed metal. At the opening of the inquiry the Council indicated that they regarded this processing to be nothing more than sorting through and dividing up metal brought back to the site from demolition contracts. Mr Bromley, for your clients, accepted that such sorting and dividing had occurred. And, on this basis, I consider that the matters referred to in the notice have occurred. The appeal on ground (b) therefore fails.

### **The Appeal on Ground (c)**

9. In order to determine whether or not a breach of planning control has occurred it is necessary to consider first those purposes for which the site might lawfully be used. There is no dispute that the two principal determinants of the lawful use in this case are a planning permission granted in 1972 and a lawful development certificate (LDC) issued in 1993.

10. The 1972 planning permission was for the demolition of existing buildings and the erection of workshops and offices for storage, maintenance, sale and repair of earth moving machinery. The site in that permission was the same area of land as the site in the current enforcement notice. Conditions 7 and 8 of the permission demonstrate that the application was accompanied by an Industrial Development Certificate and it appears that there was an industrial element to the use of the permitted buildings. However that in itself does not convince me the site was then used for general industrial purposes. Condition 7 required the building to be first used by W Seymour Plant Sales and Hire Limited. And Mr Bromley identified that this firm used the site for the storage, maintenance, sale and repair of earth moving machinery. Considering the name of the firm and the general description of their business, it appears to me that the use of the site as a whole at that time contained elements of storage, retail and industrial activity. On the limited evidence available, I am not persuaded that the permitted use could reasonably have been described as either general industrial or any other class of use as defined in a Town and Country Planning (Use Classes) Order. As such it seems likely to me that the 1972 permission authorised the erection of workshops and offices as part of a "sui generis" use of the land.

11. The LDC issued in 1993 was for the use of the land for the storage, maintenance, repair and hire of building, demolition and civil engineering vehicles and plant. From the evidence before me I think it likely that this use is not materially different from the use referred to in the 1972 permission. And, on this basis I consider that the 1972 permission and the 1993 LDC both make lawful a similar use of the appeal site. For the reasons set out above, I do not share the view put forward on behalf of your clients that the site can lawfully be used for general industrial purposes.

12. Your clients are demolition contractors and the 1993 LDC allows them to use the site for the storage, maintenance, repair and hire of demolition vehicles and plant. In general terms neither reclaimed metal nor building materials could be termed as vehicles or plant

and, as such, I do not consider that the storage and processing of reclaimed metal or the storage of building materials come within the lawful use of the site.

13. The notice alleges that the breach of planning control occurred within the last ten years. Whilst Mr Bromley's evidence was directed at the manner in which building materials and metals are currently stored on the land, it is apparent that the scale and nature of such storage has not been consistent since your clients first acquired the site in 1993. In 1994 an appeal was dismissed, following the Council's refusal to grant planning permission for, amongst other things, the use of part of the site for the storage of building materials. The portion of the site in question measured 40m x 30m, and the Inspector for that appeal recorded that the use had already commenced. Photographs of the site in 1994 all show that the extensive storage of building materials and metals was taking place at that time. Furthermore there was no dispute that at least until May 1995 a large mechanical guillotine for cutting metal was on the site; and local residents were able to provide evidence of lorries full of scrap metal being brought to the site during the summer of 1996. Having regard to each of these factors I am satisfied that, irrespective of the quantities of materials I saw at the time of my site visit, for periods of time since 1993 the land has been used for the storage of building materials and the storage and processing of reclaimed metal at a scale which was clearly in breach of planning control. The appeal on ground (c) therefore fails.

#### **The Appeal on Ground (a) and the Deemed Application**

14. The appeal site occupies a rural location within the Metropolitan Green Belt, and is accessible only by narrow country lanes. Both local and national policies for the Green Belt provide that, except in very special circumstances, planning permission will not be given for development for purposes other than agriculture, sport and recreation, or other uses appropriate to a rural area. The storage of building materials and the storage and processing of reclaimed metal, clearly do not come within any of the categories of uses appropriate in a Green Belt; and, as such, they are both inappropriate development in this location.

15. Consequently in this case I consider that the main issues are first, what harm would be caused to the fundamental aim and purpose of including this land in the Green Belt by granting planning permission for these uses. Secondly, whether or not there are any very special circumstances why permission should be granted, sufficient to outweigh the presumption against inappropriate development in the Green Belt. And, thirdly, the effect of the traffic generated by these uses upon highway safety on the lanes leading to the site.

16. In considering this appeal I am mindful that the storage uses for which your clients are seeking planning permission are substantially smaller in scale than those considered in the 1994 appeal. As part of my site inspection the areas around the site then occupied by piles of building materials, and steel joists and girders, were measured and those measurements were recorded on a plan (Plan B). On the basis of that plan, a second plan (Plan C) was produced by Mr Bromley, indicating the areas within which your clients would be willing to contain all outside storage of building materials and reclaimed metal. I have considered both Plans B and C in my determination of the appeal on ground (a) and the deemed application.

17. With regard to the first issue, Planning Policy Guidance: Green Belts (PPG 2) states that the most important attribute of Green Belts is their openness; and it goes on to state that one of the purposes of including land in Green Belts is to assist in safeguarding the countryside from encroachment. At the inquiry it was stated that if there were no building materials or reclaimed metals being stored on the specified areas, then they would be occupied by vehicles and plant. But I do not find that view to be persuasive, particularly as there was no evidence as to where those additional vehicles and plant would come from. In my view, the open storage of building materials and reclaimed metals adds to the general clutter and paraphernalia on the land, and thereby inevitably detracts from the openness of the site. I acknowledge that these unauthorised uses are taking place within the confines of an existing commercial site. Even so, they result in a more intensive use being made of the whole site, and I regard that as tantamount to the further encroachment of inappropriate development into the countryside in this locality. For these reasons I consider that to grant planning permission for these uses to remain would cause material harm to the fundamental aim and purpose of including this land in the Green Belt.

18. Turning to the second issue, I accept that operationally it is convenient and more economic for your clients, if they are able to store on this site building materials and metals likely to be required for forthcoming demolition contracts. The Government is committed to the principles of sustainable development, and the recycling of materials derived from natural resources is one way in which development can be made more sustainable. Even so, having regard to the wide geographical area covered by your clients business, I see no compelling reason why these materials should not be stored on land outside the Green Belt.

19. I have also had regard to the trees that have been planted and the earth bunds that have been formed around the perimeter of the site, in order to screen activities on the land. However it appears that those bunds were constructed without planning permission and there is a possibility they may be the subject of enforcement action. As their future is uncertain, it would be inappropriate for me to find the bunds to be very special circumstances for permitting the unauthorised uses the subject of this appeal. Furthermore the tree planting so far undertaken would be unlikely to screen totally the outside storage areas and this could not be regarded as a very special circumstance for allowing your clients' appeal.

20. To conclude on the second issue, therefore, I find there to be no very special circumstances for granting permission for these uses sufficient to outweigh the presumption against inappropriate development in the Green Belt.

21. As for the third issue, it was stated on behalf of your clients that the storage on the site of building materials and metals required for future contracts does not result in any increase in traffic to and from the site. This is because those materials can be carried on the same vehicles that are used to transport plant to and from the site. In contrast it was suggested that there would be an increase in traffic if building materials and reclaimed metals could not be stored there and had to be brought from or taken to another site separately. This assessment of the situation is clearly at variance with the views of local residents, whose perception is that traffic has increased since building materials and

reclaimed metal have been stored on the land. On balance, I find it hard to accept that the storage of additional items on the land does not result in additional traffic movements, even if this is no more than the occasional transporting of either the containers used to store unwanted wood or the skips full of metal for recycling. The roads leading to the site are no more than narrow country lanes, and when the site is accessed from the east heavy goods traffic is also obliged to travel through residential areas. The situation is extremely unsatisfactory and, in such circumstances, I consider that even small increases in the frequency with which large vehicles come to and go from the site, would be likely to increase the risk of accidents on roads in the immediate locality. I regard this as a further disadvantage of the scheme.

22. I have taken account of all other matters raised on the planning merits of the scheme, including the suggested conditions, but they do not outweigh my conclusions on the main planning issues. Consequently the appeal on ground (a) fails and I do not intend to grant permission on the deemed application.

### **The Appeal on Ground (f)**

23. You claimed that the requirements of the notice are excessive in that they seek to prohibit activities which are ancillary to the lawful use of the site.

24. With regard to building materials stored on the land, it appears that at present these principally comprise bricks, paving slabs, roof sheeting, timber and railway sleepers; all to be used in future demolition contracts. You stated that bricks, sometimes from demolition contract sites, are brought to the land on pallets and stored for use in bricking up or blocking up, buildings or walls, in future contracts. Similarly timber is brought to the land from demolition contract sites, and used to make temporary hoardings or supports for shoring up buildings which can be used in future contracts; with any surplus being stored in two large containers for future shipment to timber sales in the West Country. Many of the building materials on the land are, therefore, the recycled product of previous demolition contracts.

25. As part of the lawful use of the land a wide range of plant (including builders skips, scaffolding poles, and roadside safety equipment) is stored on open parts of the site. In practical terms I think that it is not wholly clear cut as to whether some of the items stored on the land, such as timbers used for shoring up on a demolition site, are plant or building materials. And, to my mind, the storage of building materials on the land in small quantities necessary for a forthcoming demolition contract could reasonably be regarded as an activity ancillary to the lawful use of the land. However, if the storage of those materials were to occupy a significant part of the site, I consider that it is possible for the ancillary connection to be lost and for that storage to amount to a material change of use.

26. In relation to the total hectareage of the appeal site, the areas occupied by piles of bricks, slabs and timbers are comparatively small. On the basis that these materials are stored solely for the purpose of reuse in connection with future demolition contracts, I am satisfied that their storage within those areas defined on either plan would be ancillary to

the lawful use of the land. As such the requirements of the notice should be varied to allow for this limited amount of storage.

27. Turning to the storage and processing of reclaimed metal; steel girders and joists are currently stored on the site in small quantities for use in future demolition contracts. For the same reasons as those given in relation to the storing of building materials, I consider the storage of those items to be ancillary to the lawful use. In addition to this it was stated that cabling and pipes are brought back to the site from demolition contracts, cut and stripped within the main workshop, with the resultant metal then stored in two skips situated adjacent to the workshop. The metal placed in the skips is not required for forthcoming demolition contracts. To my mind the bringing of scrap materials to the site in this way, the reclaiming of the metal, and its subsequent storage on the land prior to being resold has no direct relationship with the lawful use of the land; being more akin to scrap dealing. As such it could not be regarded as an ancillary activity. Nor am I persuaded that the scale of this recovery work is so small that it could be termed *de minimis*.

28. The only aspect of the alleged breach which remains to be considered is the storage of timber in two large containers prior to it being resold. For reasons set out above, I do not consider that the storage of materials not required in forthcoming demolition contracts, to be an activity ancillary to the lawful use of the site. These two containers have the capacity to accommodate substantial quantities of timber, and I am not persuaded that this element of the unauthorised use could reasonably be regarded as *de minimis*.

29. In considering this case I have been mindful that the appeal site is not a demolition contractor's yard and that the purposes for which the land might lawfully be used by your clients as demolition contractors, is as set out in the LDC issued in 1993. However I am satisfied, on the balance of probability, that certain elements of the storage activities alleged in the enforcement notice can be carried out as an ancillary activity to the lawful use of the land. I draw support for this conclusion from the extract of the Council's evidence at the inquiry in May 1994; reproduced as Appendix 36 to Mr Bromley's proof of evidence.

30. I therefore intend to vary the requirements of the notice so as to allow some storage of building materials and reclaimed metals. To this extent the appeal on ground (f) succeeds.

#### The Appeal on Ground (g)

31. An increase in the compliance period from 6 months to 24 months was requested so as to allow sufficient time for a new site to be found where the materials can be securely stored. However all that is required in this instance is an alternative method of disposing of the cabling and pipes (the metal from which is stored in skips adjacent to the main building) and timber which is stored in containers prior to being taken to away for resale. I regard 6 months as a reasonable period within which to make alternative arrangements for these materials. The appeal on ground (g) therefore fails

32. I have taken account of all other matters raised but they do not alter my conclusions upon the considerations leading to my decision.

### **FORMAL DECISION**

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

- (i) Substitute the plan attached to this letter for the plan attached to the notice as issued.
- (ii) In section 2 delete the words "shown edged red on the attached plan"; and substitute therefor the words "shown edged black on the plan attached to the appeal decision letter".
- (iii) In section 3 after the words "use of the land" insert the words "to a mixed use including use".
- (iv) Delete section 5(i).
- (v) Insert at the end of section 5(ii) the words "other than within areas B and D as defined on the Plan attached to this decision letter".
- (vi) Delete section 5(iii) and replace with the following:

"Cease use of the land for the processing of reclaimed metal. Cease use of the land for the storage of reclaimed metal other than within area A as defined on the Plan attached to this decision letter".

Subject thereto, I dismiss this appeal, uphold the notice as corrected and varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the amended Act.

### **Rights of Appeal Against Decision**

33. 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.

Yours faithfully



Derek Thew DipGS ARICS  
Inspector