



The Planning Inspectorate

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

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| Room 1404 | PLANNING DEPARTMENT | Direct Line | 0272-218448 |
| Tollgate House | DACORUM BOROUGH COUNCIL | Switchboard | 0272-218811 |
| Houghton Street | | Ack. Fax No | 0272-218 |
| Bristol BS2 9DJ | | Admin. GTN | 1374 |
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Received 28 JUL 1993

E.T.Ray & Co
Solicitors
4 & 6 Church Square
Leighton Buzzard
Bedfordshire
LU7 7AE

Your Reference:
PADR/MBR/19279
Council Reference:
4/0978/92EN
Our Reference:
APP/C/92/A1910/622106
Date: 27 JUL 93

Dear Messrs E T Ray & Co

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY G.E.BIGGS & SONS LTD
LAND AND BUILDINGS AT POTTEN END HILL, WATER END, HEMEL HEMPSTEAD

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeal against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land and buildings. I held an inquiry into the appeal on 1 June 1993.

THE NOTICE

2. (1) The notice was issued on 5 May 1992.
- (2) The breach of planning control as alleged in the notice is without planning permission, change of use from:-
- Unit A agriculture to use for the storage of dairy produce
 - Unit B agriculture to use for the storage of fencing and ancillary materials
 - Unit C agriculture to use for vehicle repairs
 - Unit E agriculture to use for the storage of furniture
 - Unit 1 & 2 agriculture to use for the storage of nuts, bolts and fasteners
 - Unit 3 agriculture to use as a carpentry workshop
 - Unit 5 agriculture to use as a photographic studio

Unit 6 & F agriculture to use for the manufacture and storage of high fidelity speaker stands

Unit 9 agriculture to use for the manufacture of signs

Unit 15 agriculture to use for the manufacture and repair of guitars

Unit 16 agriculture to use as an engineering workshop and storage facilities

Unit 17/18 agriculture to use for the storage of shop fittings

Unit 14 agriculture to use for the manufacture of handbags.

(3) The requirements of the notice are:-

(i) Stop using any of the above units for manufacturing and/or storage;

(ii) Remove from the land all machinery, installation and ancillary equipment and items stored in connection with the uses set out in the alleged breach of planning control.

(4) The period for compliance with these requirements is two years.

GROUND'S OF APPEAL

3. Your client's appeal is proceeding on grounds (a) 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 (g) that any period specified in the notice in accordance with section 173(9) falls short of what should be reasonably allowed.

PRELIMINARY MATTERS

4. At the inquiry the parties expressed concern as to the form of the enforcement notice since although the accompanying plan shows the site as a whole outlined in red the alleged breach of planning control details the change of use on a unit by unit basis. It was suggested on behalf of the Appellant that the breach of planning control should correctly refer to the change of use of the whole site from agriculture to a mixed use for light industry, storage and car repairs. However, since the alleged breach of planning control does not include all the units used for unauthorised purposes it was subsequently agreed that it would cause injustice to the Appellant if the scope of the notice were extended to include those additional units. In the circumstances I do not consider that it would be within my powers

to amend the notice in this way and I do not intend to do so.

THE APPEAL SITE

5. The appeal site is located within the Green Belt about 3 km north-west of the town of Hemel Hempstead and some 1 km north-east of the village of Potten End. The farm occupies an area of about 2.5 ha and accommodates some nine poultry houses, an egg packing/grading building, three storage barns, a milling unit and grain silos. The former poultry houses are located to the west of the site access and each house provides two units of accommodation. They have been constructed on a steel frame with aluminium corrugated roofs and the exterior is clad with plywood.

6. Your client now uses only two poultry houses for egg production and one building for general farm use. The remaining buildings have been let for light industrial and storage purposes and at present some 20 units are occupied by small businesses. My observations at the time of my site visit confirmed the Appellant's evidence that the use of certain units now differs from that alleged in the notice and the present use of Unit A is for car repairs; Unit C is used for the storage of shelving; Unit 2 is a print workshop; Unit 5 is used for the manufacture of cabinets and Unit 1 is vacant.

7. The access to the site is off Potten End Hill at a point about 250 m east of the junction of that road with Hollybush Close. The majority of the roadways within the site are concreted. There is an area of mature woodland on the west side of the site which provides a buffer varying in depth from about 60 m to 90 m between the buildings and neighbouring residential properties in Hollybush Close. There is also substantial tree cover to the south which effectively screens the site from the public highway. To the north there is open farmland which is located within the Chilterns Area of Outstanding Natural Beauty and to the east there are two houses with gardens which are within the ownership and control of the Appellant.

THE APPEAL ON GROUND (a)

8. On ground (a) I consider that the main issue is whether the development would accord with the Green Belt policies which are generally designed to resist inappropriate development in such locations and, if not, whether there are any very special circumstances in this case to justify an exception.

9. The Hertfordshire County Structure Plan has recently been updated and the 1991 Alterations were approved in 1992. I therefore give considerable weight to this Plan in accordance with the advice contained in Planning Policy Guidance Notes 1 and 12. Policy 1 of the Structure Plan advises on the location of the Green Belt in general terms and sets out a general presumption against inappropriate development within it.

10. The Dacorum District Plan was adopted in 1984. Whilst it is not a recent plan I nevertheless consider that its Green Belt

policies remain of some relevance today and I have taken them into account as a material consideration in this case. Policy 1 of the District Plan states that within the Green Belt permission will not be granted except in very special circumstances for development unless the Council is satisfied that the proposal is for the purposes of agricultural or forestry; for leisure purposes appropriate to the area and which cannot reasonably be located within urban areas or for other uses appropriate to the Green Belt.

11. The Dacorum Borough Local Plan Deposit Draft has been the subject of a Local Plan Inquiry; the Inspector's Report was publicised in February 1992 and the Plan is likely to be adopted later this year. Although it has not yet passed through all the statutory procedures leading to adoption it is now at a fairly advanced stage in the development plan process and I have therefore given appreciable weight to it in this case.

12. Policy 3 of the Draft Local Plan sets out a presumption against building development within the Green Belt. However, it advises that appropriate reuse of some redundant buildings is acceptable. Policy 99 expands on this and states that in the countryside permission will be given for redundant buildings to be converted and/or reused provided certain criteria are met. These include '(C) the building is worthy of retention'. The Policy also advises that such buildings are, in the Green Belt, listed buildings of special architectural or historic interest and buildings of particular quality which are considered to make a positive contribution to the landscape and rural character of the surrounding area.

13. You stated that the land has been used for around 30 years as a poultry farm. In recent years due to a dramatic fall in the demand for eggs the egg producing activities have had to be considerably reduced. The flock size has been reduced from an original 28,000 birds to the present 8,000 birds. Your client has been advised by ADAS that a considerable capital investment would be required in more efficient housing and equipment in order to reduce costs and in view of recent developments within the industry it would be difficult to justify any reinvestment. The Council accepted at the inquiry that the poultry houses are no longer needed for their original purpose.

14. The approved Structure Plan and the adopted Dacorum District Plan do not include the re-use of rural buildings as a specific category of development that would be appropriate in the Green Belt. Policy 99 of the Draft Local Plan does make such provision but in this case the Council does not consider that the buildings satisfy Criteria 'C' since they do not make a positive contribution to the landscape and rural character of the area. In my view, due to their utilitarian design and materials the buildings are unattractive and detract from the appearance of this rural site. I do not therefore consider that they are of the type or quality identified by Policy 99 as suitable for re-use. Since I do not regard them as 'worthy of retention' under the terms of that policy I conclude that the development materially

conflicts with the objectives of Draft Local Plan Policy 99, Structure Plan Policy 1 and the adopted District Plan Policy 1.

15. As regards the strategic and local employment policies for the area, Structure Plan Policy 26 provides that favourable consideration will be given to the development and redevelopment of land and premises for small firm accommodation consistent with the environmental policies of the Plan. Policy 64 advises that permission will normally be given for the expansion of existing employment generating activities, subject to the other policies of the Plan.

16. The Draft Local Plan Policies 25-32 set out the Council's employment strategy which aims to ensure the availability of sufficient land and a variety of sites to meet the needs of industry and commerce. Policy 29 specifically identifies General Employment Areas within towns. Policy 31 relates to land with established employment generating uses and states that the conversion of premises vacated by firms to an alternative employment generating use will be accepted, provided the new use will not cause any environmental problems. Policy 32 seeks to encourage the provision of business, industrial and storage and distribution units of less than 235 sq m in General Employment Areas and town and local centres.

17. At the inquiry it was submitted on behalf of the Appellant that 'agriculture' is an employment generating use and Policy 31 is directly applicable to the appeal site. However, Policy 25 defines such uses to be 'business, industry, storage and distribution'. I do not therefore consider that the use of the site as a poultry farm is an 'established employment generating use' as envisaged by Policy 31. The appeal site also lies outside the General Employment Areas identified by Policy 29 and the areas within which Policy 32 seeks to encourage the provision of small units. In my opinion, therefore, the development significantly conflicts with the aims of the strategic and local employment policies for the area.

18. Having regard to national policy, Planning Policy Guidance:Industrial and Commercial Development and Small Firms (PPG4) advises that in rural areas applications necessary to sustain the rural economy should be weighed with the need to protect the countryside, for example, in terms of its landscape and states that industrial and commercial development will not normally be appropriate in the Green Belt. However, Planning Policy Guidance:Green Belts (PPG2) states that the re-use of redundant buildings should not be refused unless there are specific and convincing reasons which cannot be overcome by attaching conditions to the planning permission.

19. The advice contained in Planning Policy Guidance:The Countryside and the Rural Economy (PPG7) is that there should generally be no reason for preventing the re-use or adaption of agricultural and other rural buildings for new uses, provided their form, bulk and general design are in keeping with their surroundings. Whilst PPG7 outlines the opportunities for re-

using existing rural buildings for new commercial, industrial or recreational uses it also recognises that there may sometimes be legitimate objections such as environmental or traffic grounds, that outweigh the advantages of re-use. The primary consideration should be whether the nature and extent of the new use proposed for the building are acceptable in planning terms.

20. You submitted that the poultry houses are substantially constructed and are about 20 years old with a further life expectancy of 40-50 years. Since the units are surrounded by trees it is nearly impossible to see them from the road or from the residential properties in Hollybush Close. Your client stated that no complaints had ever been made to him in respect of the change of use of the units by owners of adjoining properties and that none of the businesses carried on in the units could be considered to be noisy or to create any smells.

21. Since the buildings are well screened from public view the Council did not argue that the development has a significant visual impact. It was also accepted that the development would not result in noise disturbance or fumes to occupants of residential properties in Hollybush Close due to their distance from the appeal premises and the buffer zone of trees. The Council is nevertheless concerned that the frequency of cars coming and going to the site give it an urban character which it did not have before.

22. Your client submitted at the inquiry details of a traffic survey he conducted at the site over 5 days in early May 1993 of the daily vehicle movements to each unit. This shows that the daily traffic to the site totalled 77 cars and vans. This includes some 20 vehicle movements arising from the farm use which also generates 3 lorry movements per week and 2 tractor/spreader movements. The estimated figures for 1983 when all the units were used for the egg business are 5 lorries, 12 tractor/spreader and 45 cars per week. Although there has been a reduction in the number of lorry movements and in the use of the tractor/spreader in my view there has been a very substantial increase in cars and vans visiting the site.

23. It seems to me that the development has resulted in a material increase in traffic movements to and from the site compared to that which would normally be expected to result from an agricultural use. I consider that such an increase in cars and vans visiting the site must inevitably have an urbanising effect that would significantly detract from the rural character of the site and the surrounding area. I do not therefore believe that the development is acceptable in planning terms.

24. In my opinion, the adverse impact of cars and commercial traffic generated by the development in this rural location is a specific and convincing objection that cannot be overcome by attaching conditions to the planning permission. I believe that this objection strongly outweighs the advantages of re-use in this case. Since I do not consider that the development otherwise falls within the categories of appropriate development

set out either in PPG2 or in the Development Plan I conclude that it would be inappropriate development within the Green Belt. I believe that the urban influence of the development in this rural location conflicts with the basic principle of PPG2 to safeguard the countryside from further encroachment.

25. You have drawn support from the re-use of other redundant farm buildings in the locality. However, the site at Marchmont Farm, Piccott's End is located within a conservation area and you agreed at the inquiry that it comprises a series of very old timber barns some of which are attractive and make a positive contribution to the landscape. At Balshaw Heath, Bullbeggars Lane, Potten End there is a mixed light industrial use of redundant buildings. You nevertheless accepted that since this relates to an established use there is a material distinction between this site and the appeal property. At Church Farm, Great Gaddesden the Council has permitted the conversion of redundant barns to dwellings. Since these are Grade II listed barns within a conservation area I do not consider that this development is directly comparable to that which has taken place at the appeal site.

26. There are now nearly 50 people employed at the appeal site. You submitted that the units have proved ideal for small businesses and such units are very hard to find in the locality. The occupants of the units expressed concern that they would not be able to find other suitable alternative premises of the size and rent now paid if forced to vacate the appeal site and this would result in the closure of the businesses. This was supported by the Dacorum Enterprise Agency which confirmed that there is a shortage of suitable low cost premises for small businesses in Dacorum.

27. Given that there are many forms of development which also have the potential to generate employment I do not consider that the creation of employment opportunities is of itself enough to outweigh Green Belt policy in this case. Although there is a lack of small business units in the locality the Draft Local Plan has identified areas in which the provision of small units will be encouraged. Whilst the Council was unable to recommend a suitable alternative site the advice contained in Planning Policy Guidance:Enforcing Planning Control (PPG18) is that it is not the LPA's responsibility to seek out and suggest to the owner or occupier of land on which unauthorised development has taken place an alternative site to which the activity might be satisfactorily relocated.

28. You stated that the chicken farm without the rental income from the units could not survive economically. The units would then lie derelict and possibly in time become waste land as it was some 30 years ago when your client's father purchased the land. Whilst I recognise the importance of diversifying the rural economy and that the alternative to re-use may be a building that is left vacant and prone to vandalism and

dereliction I nevertheless consider that all such considerations and the employment implications of this case are strongly outweighed by the significant harm that would result to the Green Belt and do not amount to the very special circumstances required to overcome the presumption against inappropriate development within it. The appeal on ground (a) fails and I do not intend to grant permission to the deemed application for planning permission.

THE APPEAL ON GROUND (g)

29. On ground (g) you stated that under normal economic circumstances a new business could hope to grow and after a year or two be able to move on to permanent, larger and more expensive premises elsewhere. Since all that is available in the locality is the larger, expensive type of building it is necessary for these small businesses to remain in their present accommodation until the economic climate improves. The alternative to being allowed more time would be for the businesses to close. You have approached all of the commercial agents within the Borough and none have been able to offer any suitable premises at rents similar to those being charged by your client. You therefore request that the period for compliance be extended to five years or as long as can be judged to be reasonable.

30. The Council stated that the two year period was proposed to enable the existing businesses to be relocated to suitable locations with minimum disruption to either the businesses or the employment they provide. Whilst I recognise that there is a shortage in the area of suitable low cost premises for small businesses, in my opinion, this is already reflected in the period for compliance. I consider that two years is a realistic period for the occupants to seek alternative premises and I do not regard the compliance period as inappropriate. Given my conclusion that on the evidence before me the development materially harms the rural character of this part of the Green Belt I do not believe that any extension of the compliance period can be justified. The appeal on ground (g) fails.

31. In reaching my conclusions on the grounds of appeal I have taken into account all the matters raised in the representations but none outweighs the considerations that have led to my decision.

FORMAL DECISION

32. For the above reasons, and in exercise of the powers transferred to me, I dismiss the appeal, uphold the notice, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

- Document 2 - Copy letter sent by the Council notifying people of the inquiry and circulation list.
- Document 3 - Appendices LPA 1 to LPA 17 inclusive attached to the proof of evidence of Mr McFarland.
- Document 4 - Copy letter dated 16 February 1989 sent by ADAS to the Appellant.
- Document 5 - Bundle of 2 copy letters dated 15 May 1992 and 17 May 1993 sent by Dacorum Enterprise Agency to Mr Scott.
- Document 6 - Copy letter dated 14 May 1992 sent by Mr Scott to Dacorum Enterprise Agency.
- Document 7 - Copy letter dated 13 November 1992 sent by Dacorum Borough Council to Mr Scott.
- Document 8 - Copy letter dated 19 November 1992 sent by Mr Scott to Dacorum Borough Council.
- Document 9 - Letter from John E Massey submitted by the Appellant.
- Document 10 - Estates Gazette Case Summary, Wycombe District Council v SSE and another.
- Document 11 - Appendices attached to the proof of evidence of Mr Biggs detailing units, traffic survey and accounts.

PLANS

- Plan A - Plan attached to the enforcement notice.
- Plan B - Plan GS1 attached to the proof of evidence of Mr Scott.

PHOTOGRAPHS

- Photograph 1 - Bundle of 4 photographs attached to the proof of evidence of Mr Scott.
- Photograph 2 - Bundle of 3 photographs submitted by the Appellant showing the interior of units.

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

A handwritten signature in dark ink, appearing to read 'C W Hoare', written in a cursive style.

MRS C W HOARE LLB Solicitor
Inspector

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APPEARANCES

FOR THE APPELLANT

Miss Mary Macpherson of Counsel - instructed by E.T.Ray & Co Solicitors, 4 & 6 Church Square, Leighton Buzzard, Beds LU7 7AE

She Called:

| | |
|--------------------|--|
| Mr P C Biggs | - Director of Appellant Company |
| Mr M H Wilkins | - 38 Figtree Hill, Hemel Hempstead, Herts. |
| Mr R J Cooper | - 33 Water End Road, Potten End, Hemel Hempstead, Herts. |
| Mr J W Smith | - Highbury, Hockcliffe Road, Leighton Buzzard, Beds. |
| Mr G J Scott FRICS | - 2 Grange Road, Tring, Herts HP23 5JP |

FOR THE LOCAL PLANNING AUTHORITY

Mr Paul Brown of Counsel - instructed by the Solicitor to Dacorum Borough Council.

He Called:

Mr M J McFarland BSc MRTPI - Planning Officer Dacorum Borough Council.

INTERESTED PERSONS

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|--------------|--|
| Mr R Jones | - Newcroft, Hollybush Close, Potten End, Herts. |
| Mrs A Clarke | - Unit 9, Biggs Farm, Potten End Hill, Water End, Herts. |

DOCUMENTS

Document 1 - List of persons present at the Inquiry.