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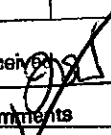
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DEPUTY EXECUTIVE
OFFICER

17 MAY 1985

File Ref.
JMP to 210 17/5
Clerk to

Messrs Smees and Webb
Solicitors
105/107 High Street
HEMEL HEMPSTEAD
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Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT PLANNING (AMENDMENT) ACT 1981
APPEAL BY JOSEPH ARTHUR CATLING
LAND AT WIDMORE FARM, BRADDEN LANE, GADDESSEN ROW, HEMEL HEMPSTEAD

1. I have been appointed by the Secretary of State for the Environment to determine the appeal against an enforcement notice issued by Dacorum District Council, relating to the above-mentioned land. I held an inquiry into the appeal on 29 January 1985.

2. (a) The notice was issued on 2 May 1984.

(b) The breach of planning control alleged in the notice is the making of a material change in the use of part of Widmore Farm, Bradden Lane, Gaddesden Row, Hemel Hempstead, identified by green colouring on a plan attached to the notice, to use for the storage of construction plant equipment machinery and materials.

(c) The requirements of the notice are:

(i) The discontinuance of the use of that part of the land shown coloured green on the attached plan for the storage of construction plant equipment machinery and materials.

(ii) The restoration of that part of the land shown coloured green on the attached plan to its condition before the unauthorised change of use took place.

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

(e) Your clients' appeal was made on ground (e) of Section 88(2) of the Town and Country Planning Act 1971 and ground (b) was added at the inquiry without objection by the Council. In addition, counsel for your client said he wished to withdraw the application deemed to have been made under Section 88B(3) of the Act and, accordingly, he offered no evidence in support of the deemed application. In my opinion however the provisions of Section 88B(3) of the Act are absolute and where an appeal against an enforcement notice is brought under Section 88 of the Act, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates. Provided, therefore, the prescribed fee has been paid I am required to deal with the deemed application

and there is no provision in the regulations for a refund of the fee if an appeal is withdrawn after the commencement of the inquiry. I propose therefore to consider the deemed application in the course of my decision.

3. The evidence at the inquiry was taken on oath.

THE APPEAL SITE

4. Widmore Farm lies 4 or 5 miles to the north of Hemel Hempstead and its south-eastern boundary fronts onto Bradden Lane, a narrow country road linking the A4146, about a mile to the south-west, and the hamlet of Jockey End about half a mile to the north-east. The farm lies amongst very attractive rolling countryside and there is very little built development in the vicinity. On the east side of the farm buildings stand 2 detached bungalows and a block of 4 houses known as Widmore Cottages. About 200 yds to the south-west of the farm along Bradden Lane lies Hatchetts Farm. There do not appear to be any other buildings than these and those on Widmore Farm to interrupt the remote rural character of the surroundings.

5. The appeal site is roughly rectangular in shape. It is fenced on 2 sides by posts and wire and its north-eastern end is marked by part of the original buildings of Widmore Farm. The south-east boundary is unfenced. At the eastern end of the site there is a modern 9 ft high corrugated iron building about 14 ft 4 ins long by 10 ft 10 ins wide. The rest of the site is virtually covered in a variety of materials. I saw 2 dumper trucks, a cement mixer, a quantity of kerbing stones, some granite setts, concrete setts, a lorry body, the wreck of an old van, 2 lorry containers, some pipes, a diesel storage tank, 2 old caravans, some oil drums, some orange and white road traffic signs, some wheelbarrows, and some cast iron drain covers. The surface of the site, where it was visible, appeared to be uneven and I saw evidence of some excavation work near the corrugated iron building. I saw a number of yellow bricks revealed by the excavations. They appeared to have been laid to form a flat surface in a regular pattern several inches below the present surface of the site.

6. The farmhouse and buildings of Widmore Farm are at the north-eastern end of its road frontage with Bradden Lane. The farm comprises about 39 acres about half of which is pasture land. The remainder of the farm is of rough uneven ground covered with grass. There are signs here and there of rubble and masonry suggesting that tipping has taken place.

7. The position of the appeal site as depicted on the plan attached to the enforcement notice is slightly incorrect. No point was taken on this by the appellant but measurements were taken on the site inspection and a plan (plan C) showing the correct position of the appeal site was agreed.

The Case for the Appellant on Grounds (b) and (e)

8. Mr Catling is a farmer. He purchased Widmore Farm in August 1958. It comprises 39.5 acres approximately. At the time he bought the farm about half its acreage was used mainly as a brickworks. He rented additional land to farm. The appeal site lay within the area used as a brickworks. There were kilns, chimneys and puddling shops and the land was covered with stacks of bricks. There were also 5 pits or holes in the surface of the land resulting from excavations for clay used in the brick-making.

9. Mr Catling resolved to make some profit from the brickworks land and in 1960 he obtained planning permission (document 5) to use the land as a refuse tip. He

allowed one main contractor, Tovey Transport, to have the major right to tip refuse into the pits. The sites of the pits were not capable of supporting a lorry while it was tipping material. A bulldozer or bogmaster was needed to push waste material into the pits. A number of other smaller contractors were also allowed to tip on the site. Each contractor had his own bulldozer or bogmaster. At times a number of smaller lorries were also needed on the site.

10. Most of the contractors who tipped refuse into the pits used the appeal site to park their tracked vehicles and lorries overnight.

11. When Mr Catling bought Widmore Farm he agreed to let the former owners leave many of the piles of bricks on the land until they were required. The bricks were slowly cleared over a number of years. Some bricks were left on the appeal site long after the majority had been removed from the rest of the brick kiln site. The rubble from demolishing the kilns was also deposited on the appeal site.

12. Mr Catling produced a list (document 4) of the people whom he allowed to use the appeal site for the parking and storage of vehicles and earthmoving plant from 1959 until 1983. He said that the plant would have been used during the day and would only have been returned to the appeal site for parking at night. He recalled that when Messrs Toveys used the appeal site they were employed to dispose of waste pulp from paper manufacturers. They brought the waste to Widmore Farm in 20 ton lorries and deposited it in the centre of the present farmyard. From there the waste was lifted onto smaller lorries by a 4 yd bucket on a tracked vehicle, taken to one of the tips and tipped onto its edge. From there it was pushed over into the pit by a bogmaster. The 20 ton lorries could not reach the tip in bad weather. This activity continued during 1965 until 1969. A bulldozer, a bogmaster and 2 lorries were kept on the appeal site at night throughout that period. The other people mentioned on the list in document 4 stored things on the appeal site from time to time. Any daytime inspection of the appeal site or aerial photograph would not have revealed evidence that the appeal site was in use however because the machinery was generally in operation and was only stored there at night.

13. In 1969 Mr Catling made an oral agreement with a Mr McDermott for the appeal site to be used by the McDermott Construction Company Limited for the storage of their vehicles. Although the company used the site the agreement was with Mr McDermott. The Company generally kept 2 or 3 lorries and some JCBs on the site. Although the Company did carry out some tipping of refuse into the pits on Widmore Farm, the vehicles, plant and equipment stored on the appeal site were in connection with the Company's engineering operations elsewhere.

14. In 1973 the agreement was put on a formal basis with the McDermott Construction Company Limited. In 1982 all tipping operations came to an end on Widmore Farm but McDermott Construction Company Limited have continued to use the appeal site for the storage of vehicles plant machinery and materials.

15. Mrs Catling was able to corroborate most of her husband's evidence and she also produced some cash books (document 13) for periods between 1957 and 1968 containing references to dealings with Toveys Transport and a number of other business names referred to by her husband.

16. Mr Nicholl who is a driver by occupation remembered that in early 1964 he had begun a transport business and was searching for somewhere to park his 2 lorries. He then lived in Luton and heard from some drivers who were tipping rubbish at Widmore Farm that he might be able to get a parking space there. Mr Nicholl went to Widmore Farm and saw that there were other lorries, dumpers and bulldozers in the yard with piles of bricks everywhere. Some were stacked on the appeal site. Mr Nicholl spoke to Mr Catling who gave him permission to park alongside the buildings on the right hand side of the track that led to the tipping area close

to the wire fence. Having examined the plan of the appeal site Mr Nicholl said that he could confirm that that was the piece of land he was allowed to use for parking. Mr Nicholl's lorries were in use on most days and generally returned to the farm in the evenings. Sometimes it was not possible to return to Widmore Farm at night. He used the appeal site for parking his vehicles for 3½ to 4 years before selling the lorries. He remembered he often repaired the lorries on the appeal site at weekends when they were not being used.

17. On these facts it was claimed on behalf of the appellant that the appeal site had been used for the storage of vehicles and plant since before the end of 1963. It was conceded that the storage use before 1969 and before 1964 had been primarily connected with the tipping activities on Widmore Farm. Between 1969 and 1973 and thereafter the use of the appeal site for the storage of vehicles and plant had been in connection with the construction industry in places away from Widmore Farm. The use of the site however before and after the end of 1963 was virtually the same and there has been no material change in the established use. The appeal site has been continually used for general storage of plant, equipment, machinery and materials since before the end of 1963.

18. It was also conceded on behalf of the appellant that there had been some intensification in the use of the appeal site since McDermott Construction Company Limited had been its main occupier. While the storage was connected with the tipping activities of Widmore Farm, only night storage had taken place on the appeal site before the end of 1963. Nonetheless it was claimed that although there is some difference arising out of this intensification, it is not a material difference in planning terms. Plant storage is still an apt description for the use of the site before and after the end of 1963.

19. The use of the appeal site before the end of 1963 was not ancillary to the permitted refuse tipping. The 1960 planning permission did not include permission to store vehicles and plant on the appeal site. If the appellant had asked the Council for permission to use the appeal site in this way, the Council would have insisted that planning permission was required. An independent storage use of the appeal site was therefore begun before the end of 1963 and is immune from enforcement action.

The Case for the Council

20. The Council accepted the appellants' evidence about the use of the appeal site from 1969 when the McDermott Construction Company Limited began to keep their vehicles plant and machinery there. All the Council's evidence related to the period between 1959 and 1969.

21. In 1959 an application was made to the County Council for permission to change the use of the former brickwork's land within Widmore Farm to use as a refuse tip. The presence of a number of pits on the land was considered a hazard to farming and accordingly permission was granted (document 5) in 1960. The brickwork's site was inspected in connection with the planning application and it was discovered that a small business of car-breaking was being carried out on land coloured blue on Plan A. An application to regularise the car-breaking use was refused and the subsequent appeal was dismissed. The car-breaking ceased after that.

22. The site was not visited again by the Council until 13 November 1963 when it was discovered that car-breaking was again taking place at Widmore Farm on an area coloured purple on Plan A. A note made by one of its officers after that visit was produced from the Council's records (document 10). It was contended for the Council that if there had been any other unauthorised use going on at Widmore Farm their officer would have made a note of it at the time but the note refers only to the car-breaking activity.

23. An enforcement notice relating to the car-breaking was served on Mr Catling who appealed. A local inquiry was held and the appeal was dismissed. A copy of the Council's statement in connection with that appeal together with the inspector's findings are included in document 11. Neither the report of the inspector nor the Council's statement referred to the storage of construction plant or other materials on the appeal site.

24. A further visit was made to Widmore Farm by the Council's Officers on 15 July 1965 and a note of their findings (document 12) was produced from the Council's records. It was noted that the car-breaking was still going on at Widmore Farm but no other unauthorised uses were noted.

25. The Council also produced a number of photographs (photographs A, B and C) sent to them on 28 August 1965 by a Mr J Simon. According to the Council the photographs show the site of the car-breaking activity but no evidence of the storage of construction plant, equipment and materials on the present appeal site. However other aerial photographs were produced (photographs D and E) taken in 1972 and 1980 and these do show the unauthorised use of the current appeal site.

26. In the Council's opinion it is very improbable that if there had been any activity on the current appeal site it would have been overlooked by all those who had cause to visit Widmore Farm for the purpose of inspecting other unauthorised uses. It follows that the appeal site was not used for the storage of construction, plant, machinery, equipment and materials in 1960, in November 1963, in May 1964, in July 1965 or in August 1965. The site was however used for these purposes by October 1972. Accordingly the use must have commenced sometime between August 1965 and October 1972.

27. Although the appeal site may have been used for the storage of bricks at one time, this activity would have been ancillary to the primary use of the land as a brickworks. The present storage use is an independent activity and a primary use of the land in its own right.

28. So far as the deemed application is concerned, the Council considered the merits of allowing the present use of the appeal site to continue when on 8 March 1984 they determined an application by McDermott Construction Company Limited in that regard. The Council's reasons for refusing permission were that the site lies within a rural area beyond the Green Belt and within the Chiltern's Area of Outstanding Natural Beauty on the Dacorum District Plan and also in an area where the Approved County Structure Plan seeks to limit new development to that which concerns agriculture, essential purposes appropriate to a rural area or small-scale facilities for participatory sport or recreation. In addition the Council considered that Bradden Lane is a narrow rural lane, quite unsuitable in width and construction for the type of traffic likely to result from a continuation of the present use of the site.

Conclusions

29. In order to succeed on ground (b) in this appeal it is necessary to show that the matters alleged in the enforcement notice do not constitute a breach of planning control. It appears to me however that the basis of your clients' case is that the present use of the site is a continuation of an activity begun before 1964 and that when it began it did require planning permission. With that being so I consider that on your own evidence the appeal on ground (b) must fail. The matters alleged in the enforcement notice do constitute a breach of planning control whether or not they are immune from enforcement action.

30. As to the appeal on ground (e) I take the view that on the evidence of your clients the majority of the vehicles and equipment kept on the appeal site before the end of 1963 were used in connection with the authorised refuse tipping activities. I consider this use of the appeal site was clearly ancillary to those tipping operations and so was not a parking or storage use in its own right at all. I consider a material change in the use of the site took place in about 1969 when the site was first used by McDermott Construction Company Limited. Any storage of vehicles plant or equipment before then was insignificant. Mr Nicholl's use of the site for independent parking of his lorries was rather more substantial but even if I accepted that the material change of use began with him, it would not be immune from enforcement action because he started in early 1964. It follows that the appeal on ground (e) must also fail.

31. On the deemed application I consider the present use of the appeal site is alien to the natural beauty of its surroundings. I do not think it matters that, because of its remoteness, the appeal site can be seen by relatively few people. The point is that the character of the land and its surroundings would, in my opinion, be adversely affected if the present activities were to continue. I can also appreciate the force of the highway objection. Bradden Lane is a narrow country road where ordinary saloon cars would find it difficult to pass each other. I think it reasonable to anticipate hazardous conditions arising if the road continues to be used for transporting the kind of construction plant I saw on the appeal site.

FORMAL DECISION

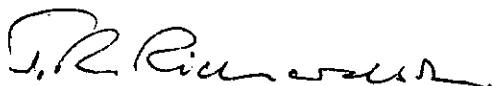
32. For the above reasons and in exercise of the powers transferred to me, I hereby:

- (i) dismiss your clients' appeal;
- (ii) direct that the enforcement notice be corrected by substituting the plan attached to this letter for the plan originally attached to the notice;
- (iii) uphold the notice as corrected;
- (iv) refuse to grant planning permission on the deemed application.

RIGHT OF APPEAL AGAINST DECISION

33. This letter is issued as the determination of the appeal 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



J R RICHARDSON, LLB Solicitor
Inspector

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