

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

HP.
To Roll Holdings Ltd
Roiterkampweg 2
Shertogenbosch
Holland

Agent
I R M C Van Aardenne
Van Ogtropweg 10-16
1949 ba
Wijk aan Zee Holland

Replacement and Re-Roofing of Existing Industrial
Buildings and Erection of Extension (Outline).
at Calaflow Works, Watling Street,
Flamstead.

Brief
description
and location
of proposed
development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated 18.5.88. and received with sufficient particulars on 24.5.88. and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:—

The site is within a rural area beyond the Metropolitan Green Belt on the adopted Dacorum District Plan wherein permission will only be given for use of land, the construction of new buildings, changes of use of existing buildings for agricultural or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and, by reason of the proposed increase in floorspace and absence of any justification to override these presumptions against further development the proposed development is unacceptable in the terms of this policy.

Dated 8th day of September 1988

Signed 

Chief Planning Officer

NOTE

1. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
2. If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Borough Council in which the land is situated, a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
3. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in s.169 of the Town and Country Planning Act 1971.



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PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL						
Partnership						Ack.
C.P.O.	T.C.P.M.	D.P.	D.C.	B.C.	Admin.	File
Received		29 AUG 1989				
Comments						

Your Reference
SEH/645
Our Reference
T/APP/A1910/A/89/119259/P5
Date
25 AUG 89

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 36 AND SCHEDULE 9
AS AMENDED BY THE HOUSING AND PLANNING ACT 1986
LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
APPEAL AND APPLICATION FOR COSTS BY POLL HOLDINGS LIMITED
PLANNING APPLICATION NO:- 4/0984/88

1. I have been appointed by the Secretary of State for the Environment to determine the above appeal. This is against the decision of the Dacorum Borough Council to refuse planning permission for the replacement and the re-roofing of the existing industrial buildings, and the erection of an extension, at Calafrow Works, Watling Street, Flamstead, Hertfordshire. I held a local inquiry into the appeal at Hemel Hempstead on 15 August 1989 and I visited the site the same day. At the inquiry an application for costs against the Council was made on behalf of the appellants, and I deal with this separately below.

APPEAL

2. The application submitted to the Council was made in outline form with all matters of detail reserved for subsequent consideration. At the commencement of the inquiry, I was able to confirm with the parties that the size and siting of the alterations and extensions to the existing and replacement structures, together with the means of access to the site, were treated as a part of the application. Particularly, the total floorspace of the new and existing buildings to be created if the scheme were to be implemented would amount to some 2520sqm, an increase of 880sqm to that now present on the site. The relevant details in this respect as shown on the submitted plans therefore formed a part of the application and I have approached my determination of the appeal on that basis.

3. The appeal site is a roughly wedged-shaped area of land of about, or just less than, 0.8ha in extent. It lies some distance to the north of the village centre of Flamstead in a position between the original alignment of Watling Street and the present line of the A5 trunk road, to which it has a frontage of some 152m. Within the wider, overall triangle of land formed by the now redundant junction of these 2 highways, situated to the south-east of the appeal land, and River Hill to the north-west, the existing buildings comprise a modern petrol filling station, a public house and a small group of dwellings, together with those on the site itself.

4. Some short distance to the south-east of the appeal land is the major junction of the A5 with an elevated section of the M1 motorway. At this point, a clearly identifiable form of linear development fronting the main road commences and continues westwards, in a somewhat sporadic fashion, towards the village of

Markyate. Within this ribbon of buildings is included the cluster of development on the appeal site, the adjoining buildings to which I have referred as well as an extensive lorry park, a cafe and a number of isolated dwellings and farm buildings. In my view, the immediate area close to the appeal site and adjacent to the main road possesses much of the typical character and appearance of such locations following the reduction in the status of the original trunk road as the principal traffic route in the region, after the construction of the motorway.

5. Various buildings have existed on the site for a considerable number of years, certainly from a date prior to the last war. These were first established in a position towards the western end of the site as an engineering works. A range of steel huts was subsequently constructed close to the northern boundary towards the east, probably about 50 years ago, and these largely remain in place today. The majority of the remaining land is laid out as car park or for storage purposes. There is some screening of the site afforded by the presence of the trees and shrubs, particularly alongside the northern boundary, close to an embankment. Access is to the A5.

6. From the evidence presented at the inquiry in respect of the history and use of the land as broadly agreed between the parties, it can be concluded that:

a. An engineering works in various forms has been in existence on the appeal land for a period in excess of 50 years. The piecemeal arrangement of buildings now present bear little relationship to the original development on the site and feature a variety of approved alterations and extensions. These have been erected in contrasting styles of design and with differing materials.

b. The buildings on the site have been variously used over the years and now house plant and equipment. At one time up to 70 people were employed therein.

c. The Council accepts that the established use of the whole site is for industrial purposes.

d. Some of the buildings, particularly the huts, are in a state of some disrepair and appear unsightly.

e. Towards the northern boundary of the site on the embankment, but elsewhere as well, the open storage of discarded items of plant and machinery takes place. This adds to the general impression of the land as one of disuse and neglect.

f. The floorspace of the buildings originally erected amounted to perhaps one third of that now present, including the huts, but no firm agreement on this point proved possible. The majority of the additions, excluding the huts, were built during the heyday of the site, since the late 1950's.

7. Having fully considered all that has been said of this matter, both at the inquiry and in writing, and from everything which I observed at my site visit, I have formed the opinion that the main issue in this appeal upon which the decision must turn is whether or not the proposals to expand and substantially re-build the premises in this way would unacceptably alter the character or appearance of the area to an extent that the harm thus caused should be resisted for that reason.

8. It was explained at the inquiry that the proposed occupiers of the premises are a Dutch firm specialising in the manufacture and installation of equipment and

other items required for the fitting out of new offices and similar buildings, such as suspended floors and partitioning. Whilst the company has been operating in Europe for some time, this enterprise would represent their first involvement in Britain in so far as the manufacturing process is concerned. It is anticipated that about 35 people would be employed on the site, in a variety of skills. The land is ideally located from an operational viewpoint, with excellent transport links.

9. The proposals involve an appreciable enlargement and re-furbishment of the existing buildings on the site. Whereas the workforce which would be present is unlikely to equal that which was employed within the premises some years ago, I take the view that the development would amount to a substantial re-shaping and consolidation of the premises with a high degree of permanence in the appearance of the buildings, in a manner not readily seen at the moment, particularly to the eastern end of the site.

10. The Council referred to the location of the site in a rural area beyond the Green Belt, but nevertheless in very close proximity to its boundary which lies on the southern side of the A5. Within the written statement to the adopted District Plan it is stated that, except in very special circumstances, development will not be permitted within such locations unless it constitutes a type falling within 3 particular categories, such as for the purposes of agriculture or forestry, and none of which apply to this case. A similar approach is followed at policy 52 of the approved Structure Plan Review of 1988.

11. There can be no real argument, in my view, that the proposals of your clients involve a form of development contrary to the policies of both the District and Structure Plans concerning this form of development beyond settlement limits. Whereas other policies concerning employment generation, particularly at policy 48 of the District Plan and the text thereto at paragraph 4.13, are to be seen as expressions of support to the re-use and redevelopment of redundant industrial buildings, subject to certain constraints, it is clear to me that these encouragements to economic activity cannot be regarded as of such weight, in themselves, to counter the established policies of restraint relevant to rural areas beyond the Green Belt wherein the appeal site lies.

12. The Council have indicated, however, that they would be prepared to consider a scheme for the redevelopment of the land which did not exceed the present floorspace of the buildings or their physical scale, particularly in terms of overall height. In the case of this appeal, I am conscious of the fact that the site contains a number of structures, generally accepted to be unsightly, located within an area which, despite its rural location, possess little aesthetic merit. In my opinion, the site effectively forms an integral segment of a substantial corridor of buildings situated alongside the trunk road, many of which are in commercial use. The filling station immediately to the east is a gaunt, modern structure and the nearby lorry park, little more than an unrelieved and intrusive commercial wasteland. The motorway flyover, the major hotel development planned to go ahead to its eastern side and the very nature of the immediate neighbourhood to the appeal site, dominated as it is by the heavy traffic on the A5, are all factors which lead me to conclude that the restrictive policies of the Council for new development within rural areas have to be approached in the very particular circumstances of this case.

13. It was said that whatever the outcome of the appeal, the industrial use of the site would be likely to remain and the buildings thereon, with one possible exception, could be retained. Whereas I appreciate and understand the general point made by the Council that a result of the implementation of these proposals would an

expansion of the industrial buildings on the site, particularly in the height of the structure to replace the huts, I simply cannot accept that in the circumstances of this case, the harm which this might arguably cause to the appearance of the area can correctly be regarded as anything other than of limited significance. The overall height of the new building, and the extension to that existing would, it was said, equal that now present.

14. Bearing in mind the general improvement to the appearance of the land which its development in this way would occasion I am certain that the modest additional floorspace proposed would be acceptable having regard to all the special considerations applicable to the scheme. The industrial character of the land would remain as now, albeit in a different and, I believe, aesthetically better, form. The benefits accruing from the overall improvement in the appearance of the site more than outweigh, I consider, the arguable harm arising from the modest expansion of the use which the proposals would involve.

15. With all these factors in mind, and in the light of the main issue which I have identified, it is my firm conclusion that the arguments in favour of the development outweigh the policy and other objections put forward by the Council. For this reason permission should be given. On the matter of conditions, I have studied the schedules submitted by the parties in the light of Circular 1/85 and the evidence presented at the inquiry. A substantial level of agreement was possible in this respect. I agree that conditions are necessary to control the external appearance of the new buildings and extensions and that landscaping requirements, including the retention of the existing trees, should be imposed. Drainage details, however, are not a matter to be addressed by condition in this case.

16. As regards the layout of the site and the car parking provision, in view of the fact that the future use of the premises could be controlled by a firm other than the appellants, I believe it to be important for the Council's full standard to be met. It seems to me, however, that it is possible to provide for this facility in a manner other than as shown on the illustrative drawing presented to the inquiry without the same impact upon the appearance of the site from the A5. For this reason, a condition in this respect is appropriate.

17. I have considered all the other matters raised, including the representations made on behalf of the adjoining land owners, but nothing is of sufficient weight for to take any other view of this case.

18. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for the replacement and the re-roofing of the existing industrial buildings, and the erection of an extension, at Calafrow Works, Watling Street, Flamstead, Hertfordshire in accordance with terms of the application (No:- 4/0984/88) dated 18 May 1988 and the plans submitted therewith, subject to the following conditions:

1. a. approval of the details of the design and external appearance of the new building, and the extensions and other alterations, (hereinafter referred to as 'the reserved matters'), shall be obtained from the local planning authority.
- b. application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this letter.
2. The development hereby permitted shall be begun on or before whichever is the later of the following dates:

- a. 5 years from the date of this letter or
- b. the expiration of 2 years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter approved.

3. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

5. Before the development hereby permitted is commenced, a schedule of all the external materials to be used in its construction shall be submitted to and approved by the local planning authority and thereafter the works shall only be undertaken in accordance therewith.

6. Before the development hereby permitted is commenced, details of the layout of the site, the provision to be made for the parking of vehicles and the turning and manouvering facilities, shall be submitted to and approved by the local planning authority and thereafter the works shall only be undertaken in accordance therewith, and completed before the premises are occupied.

19. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

20. The developer's attention is drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970.

21. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 23 of the Town and Country Planning Act 1971.

APPLICATION FOR COSTS

22. In support of the application for costs, it was stated on behalf of the appellants that the behaviour of the Council had been unreasonable and that the inquiry, and therefore their costs in this respect, had been avoidable. As the first point, the reason given in the Council's notice of decision to refuse permission for the development was incomplete in the light of their case presented to the inquiry. The reason only referred to the fact that the site lay within a rural area beyond the Green Belt and that the expansion of the appeal premises was an inappropriate proposal for that reason. No reference in the reason had been made to the other matters raised at the inquiry, such as the car parking provision or

the effect of the scheme on the visual amenity in the area. The reason was therefore inadequate.

23. Secondly, no request had at any time been made by the Council for further details of the application. Paragraph 17 of Circular 2/87 specifically refers to this point. If such action by them had been taken, then such information could have been supplied and the objections of the Council now evident in respect of the manner of development rather than the principle of the scheme, overcome. The Council's letter of 22 September 1988 might arguably have conveyed to the appellants the fact that other objections existed, but these should have been stated in the decision notice.

24. Thirdly, it was said, the reason for refusal ignored Government advice. The Council had stated that a presumption against development would apply to inappropriate schemes in rural areas beyond the Green Belt. In the case of the appeal development it was said that there was neither a need nor a justification for your clients' proposal and, for that reason alone, permission should be refused. Government advice within PPG1 and other documents is clear and unequivocal. Except in cases involving schemes within the Green Belt, developers are not required to prove their case for their need to develop land, there is always a presumption in favour of development. The Council, in effect, had attempted to extend the presumption against development within the Green Belt, and therefore the special considerations applicable to such proposals, to the rural areas beyond it. For all of these reasons, the Council had acted unreasonably and the appellants full costs of the inquiry should be awarded.

25. In response, it was accepted on behalf of the Council that the reason for refusal did not refer to the matters of detail now in dispute as they were not shown on the plans. The Council's letter of 22 September 1988 which accompanied the decision notice made it clear to the appellants that other objections existed as it did that a scheme for re-building the premises as a replacement rather, than an expansion, could be considered. Negotiations were offered but not taken up. The Council's pre-inquiry statement, served in good time, made the extent and nature of their objections absolutely clear. There could never have been any misconception on the part of the appellants as to the full scope of the Council's criticisms of their scheme and ample opportunity for them to prepare their case had been given. The Council were fully entitled to state their full reasons for their objection in their statement, as an amplification of their formal reason, and this they had done.

26. As regards their policies for developments within rural areas beyond the Green Belt, the Council has consistently followed an approach of strict restraint. It was absolutely reasonable for them to call upon applicants to show their need to develop land within such areas. This policy in no way ignores the normal presumption in favour of development but recognises the importance of maintaining rural areas free from inappropriate development, in addition to the Green Belts. It was a well-established principle that the countryside should be protected from harmful or unnecessary development. The reason given to refuse the application the subject of the appeal does not imply that the normal presumption in favour of development has been ignored but refers to the special circumstances which should normally exist before the objections to certain types of development within rural areas can be overcome. Such a way is to show specific need.

27. Finally the Council had at all times acted reasonably and in accordance with Government advice. Members were constantly apprised of changes in legislation and policy and could not in this case have been under any misapprehension as to the need to give sound and clearcut reasons for their decision or the correct interpretation of their policies. They could not be expected to criticise a scheme in detail when

no details were given. It was perfectly reasonable behaviour on the Council's part to raise these matters in their pre-inquiry statement and this they had done.

CONCLUSIONS

28. In determining your client's application for costs, I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and that costs are awarded only on grounds of unreasonable behaviour. Accordingly I have considered the application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties, and all the relevant circumstances of this appeal. As regards the reason for refusal, and the matter of its comprehensiveness, I believe that the Council would have been equally open to criticism on this point had they refused permission on grounds that they clearly were not able to judge from the information before them. Your clients elected to submit the application in outline form with certain details forming a part of the application. These did not include, for instance, landscaping or the method of car parking provision. The Council refused the application on a matter of principle rather than detail which, in these circumstances, they were entitled to do.

29. In my view, the matters referred to by the appellants as a source of objection by the Council, and beyond the parameters of the reason for refusal, have been over-stated. The Council's letter to the appellants of 22 September 1988 concluded with an offer of further negotiations. This was not taken up. Paragraph 9 of Circular 18/86 refers specifically to the desirability of improved communication between the parties to appeals with the objective of informing the applicant of the background to the decision and "to amplify if necessary the details of the LPA's objections to the proposed development". The appellants were afforded the opportunity to discuss the details of the refusal of permission with the Council, broadly on the lines which the Circular advocates.

30. In the context of the application for costs and in these circumstances, the Council acted reasonably in bringing forward their detailed objections to the scheme when they did. They may not have been fully apparent from the reason itself but would have become clear if the subsequent discussions, as the Council offered, had taken place. In any event, comparatively little inquiry time was taken up on these aspects of the development and the appellants were well aware that such matters would be raised to the extent that a proposed layout for the site had been prepared. In my view this combination of circumstances does not amount to unreasonable behaviour on the part of the Council.

31. On the second ground for this application, paragraph 17 of Circular 2/87 states that a planning authority will be expected to have sought further details of an application if they are unclear about the applicant's intentions from the details supplied. Unreasonable conduct could occur in such circumstances if permission were subsequently to be refused because insufficient details of a scheme were supplied. In this case, whilst further information was not requested by the Council, this was unnecessary as sufficient information had been supplied with the application to justify the terms of the reason given. The costs application on this ground cannot therefore succeed.

32. As regards the reason for refusal itself, and the policy background thereto, I note that the approved Structure Plan at policy 52 itself refers to the question of need, although not within the same context as this appeal. My earlier conclusions in permitting this development stem from the special justification of your proposals, having regard to the nature and condition of the appeal site. The Council have utilised the same general language in their reason as might often be

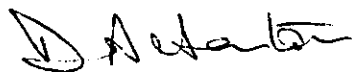
associated with cases within the Green Belt.

33. All relevant development plan policies are material considerations in the determination of applications and appeals, to which weight should be attached. I believe it to be clear that the reason for refusal is a full expression of the Council's specific objection to the scheme, based upon the information available to them and which they considered adequate to determine the application. Bearing in mind the relevant policies of the Structure and District Plan from which the thrust of the reason is derived, I take the view that it represents an accurate interpretation of well-established policy, only recently approved in its current form by the Secretary of State. Some justification is implicitly called for in applications to develop land within the rural areas beyond the Green Belt in contravention of the relevant policies of both Plans. For this reason the Council cannot have acted unreasonably in putting forward the reason they did, neither, I believe, did they act contrary to Government advice. I read nothing in the content of the reason to be in direct contradiction of any such advice. For this reason the claim for costs on the grounds of the unreasonable behaviour of the Council in this regard must fail.

FORMAL DECISION ON COSTS

34. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse your client's application for an award of costs.

I am Gentlemen
Your obedient Servant



D A HARMSTON FRICS DipTP MRTPI
Inspector

APPEARANCES

FOR THE APPELLANTS

Mr V Townell - a Solicitor and partner in the firm of Messrs Breeze and Coyles of 37 Bullsmore Lane, Enfield, Middlesex.

He called:

Mr S E Hayhurst - an Associate of the John Daldry Partnership, Chartered Town Planners and Development Consultants, of Central House, High Street, Chipping Ongar, Essex CM5 9AA.
BA(Hons) MA MRTPI

FOR THE PLANNING AUTHORITY

Mr S Baker - a Solicitor with the Dacorum Borough Council.

He called:

Miss A Bochnacki - a Principal Planning Officer with the Dacorum Borough Council.
BSc DipTP MRTPI

FOR AN INTERESTED PARTY (WSFS LIMITED)

Mr J S Finlayson FRICS - a Chartered Surveyor of "Glosters", Downs Avenue, Epsom, Surrey KT18 5HG.

DOCUMENTS

Document 1 - List of persons present at the inquiry.
Document 2 - Notification of inquiry with distribution list.
Document 3 - Letter from the Department of Enterprise dated 10 August 1989.

DOCUMENTS (continued)

- Document 4 - Letter from the Council dated 22 September 1988.
- Document 5 - Written Statement to the 1986 approved Review of the Hertfordshire County Structure Plan.
- Document 6 - Council Committee report of 8 September 1988.
- Document 7 - Extracts from the Dacorum District Plan.
- Document 8 - Schedule of planning history.
- Document 9 - Copy of Deed of Exchange dated 19 October 1981.
- Document 10 - Schedule of suggested conditions from the Council.
- Document 11 - Schedule of suggested conditions from the appellants.

PLANS

- Plan A - Application Plans, 5 No - site plan, block plan and 3 drawings entitled "Existing Factory", "Proposed Factory Extension" and "Proposed Rebuilding of Existing Works".
- Plan B - 1:2500 scale site location plan.
- Plan C - Illustrative site layout proposal.
- Plan D - Plan of appeal site in relation to the Green Belt boundary (LPA 1).
- Plan E - Land Use plan (LPA 2).
- Plan F - Plan showing site history (LPA 3).
- Plan G - Site plan of proposed motel development.