



The Planning Inspectorate

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

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PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL			
Ref.			File
DP	1992	1008	
Received		7 APR 1993	
Comments			

Council Reference:
4/1008/92EN
Our Reference:
APP/C/92/A1910/622557
Date: 5 APR 1993

Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY MR C M ANDREWS
LAND AND BUILDINGS OFF ICKNIELD WAY, TRING

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 2 March 1993. Applications for costs both by the Council against your client and by your client against the Council are the subject of separate letters. The evidence was taken on oath.

THE NOTICE

2. (1) The notice was issued on 7 July 1992.
- (2) The breach of planning control as alleged in the notice is without planning permission, change of use of land to the unauthorised use for a shopfitting and joinery business.
- (3) The requirements of the notice are:
 - i. Remove all equipment and articles relating to shopfitting and joinery use.
 - ii. Cease use of the building for shopfitting and joinery business.
- (4) The period for compliance with these requirements is 12 months.

GROUNDS OF APPEAL

3. The appeal was lodged on grounds (a) and (d) as set out at s.174(2) of the 1990 Planning Act following its amendment by the Planning and Compensation Act 1991. At the opening of the inquiry you withdrew the ground (a) appeal, and it is therefore proceeding only on ground (d), that is to say:
 - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.



APPEAL SITE AND SURROUNDINGS

4. The site is a roughly triangular shaped area of about 0.13ha (0.33acre) located at the edge of the built up area of Tring with open countryside to its north, west and south. It lies at the north-eastern corner of a large field, and is roughly bounded to the north by the Wendover Arm of the Grand Union Canal and to the north-east by a watercourse serving as a canal feeder. Beyond the canal feeder is an estate of modern 2 storey houses. The site is approached from Icknield Way, the B488 route, by a private track of about 100m length running along the bank of the watercourse.

5. A sizeable proportion of the site area is covered by a collection of single storey buildings of varying forms, clad for the most part with timber and corrugated metal and arranged around site edges. Fenced boundary lengths are marked similarly by close boarding and corrugated sheeting. Buildings lining almost the whole of the south-western boundary are inter-connected, including a caravan which has been incorporated into the structures. At the time of my inspection the site was vacant, although various materials, including timber and glass, remained in various buildings.

GROUND (d) APPEAL

6. As the notice was issued shortly before the coming into effect of s.171B of the 1990 Act inserted by s.4(1) of the Planning and Compensation Act 1991, the claim made under this ground is that the alleged development is an "established use" ie a use which had been in existence before 1964 and had operated on a continuous basis from then until the issue of the notice. On appeal, the onus is on an appellant to demonstrate on the balance of probability that this occurred.

7. The early history of the site up to the 1950s was the subject of purely documentary evidence. The Council accepted that it had been in existence in some developed form since the turn of the century, having been originally used as a coal wharf for the canal until 1914. It is apparent that from that date onwards the site had various uses, although the evidence suggests that it was used for most of the time agriculturally as a piggery. Evidence given by your client on use during the 1950s, by which time it was owned by him, suggests to me that activity fluctuated both in scale and nature of use. There were, however, periods when it continued to operate as a piggery, and none of the uses appeared to me to be similar to the use alleged in the notice.

8. The use alleged as the base for a shopfitting and joinery business is essentially that which you claim was operated at the premises from October 1966 until mid-1992 by F R Aldritt trading under a number of titles at varying times. Whilst the evidence of Mrs Aldritt suggested that general building contracting was also undertaken, it seems probable to me from available documentary records that the primary use throughout the period of occupation was related to shopfitting and specialist joinery manufacture. Although the site served as a base depot for the businesses, with the appeal site buildings used as workshops, stores and ancillary offices, the evidence convinces me that there was a substantial industrial component to activity on the site, and that storage of materials was only ancillary to the overall purposes of the use of the land.

9. This position reflects the response given by your client to the planning contravention notice served by the Council, when the use between 1967 and 1992 was stated to have been "shopfitter and specialist joinery manufacturers", and also the nature of extant uses recorded in 1975 and 1990 at the time of earlier appeal decisions affecting the site.

10. So far as the period immediately preceding and at the date of issue of the notice is concerned, I am satisfied that the use alleged by the Council was taking place. Mrs Aldritt's evidence was that the site had been occupied by her husband for these purposes since the autumn of 1966 until the time of his recent illness when her son had continued to operate from the premises. Over all of this time she had been involved in the businesses in some capacity. There had been a gradual build up of business from 1966 onwards, and although activity had been reduced during times of economic recession, she was sure that they had always been present at the site.

11. Although the Council refer to gaps in the rating record of the site during the 1970s, this included much of the period when enforcement action was being taken against an unauthorised building erected as a replacement to a 2 storey building destroyed by fire in 1972. Related written records over this period refer to the use of the premises for the purposes of a shopfitting and joinery business. Drawing conclusions on the available evidence for the period 1966 to 1992, I consider, on the balance of probability, that this use of the premises occurred on a continuous basis over the period from about October 1966 until 1992.

12. In my view, therefore, the ground (d) appeal turns on the nature and extent of use over the period immediately preceding 1964 and between then and October 1966, and in particular the activities of a Mr Fleckney as tenant of the site. The evidence, both documentary and oral, points clearly to his having been in occupation of the premises between early 1963 and September /October 1964. The area of dispute was the nature of the business which he conducted over this time.

13. The evidence at the inquiry given orally by Ms Tomlinson and Mr Andrews, in writing from a number of persons resident locally at the time, and from roughly contemporary written records, suggests that Mr Fleckney's business had a number of components. There were references to the storage of timber, sale of timber, logs and firewood, storage and sale of secondhand building materials, and the making of small timber items such as garden sheds, hutches and estate agents' sale boards. It seems likely to me that these various activities all took place to some degree, but less clear what their relative significance was.

14. In the absence of a mains electricity power supply at that time, and on what I heard and read, I consider it unlikely that the main purpose of Mr Fleckney's use was connected with the manufacture of timber products. On the contrary, it appears to me that storage both of timber and of other building materials formed a substantial element of the site's use. This is supported by the description of use during this period as "Timber Yard" given by your client in a letter written to the Tring U.D.C on 3 March 1967, and the similar findings of that Council's Surveyor in his written report prepared in October 1966. This was also the description of the site's use between 1963 and 1964 which you gave in 1989 in applying for a EUC.

15. There is, however, in my view insufficient evidence to substantiate use during this period for the storage of peat by a sub-tenant, or that such temporary sub-division brought about a change in the planning unit. I am, however, drawn to the conclusion that the primary purpose of Mr Fleckney's occupation of the land was probably for storage with any processing of timber as an ancillary activity only. This was a materially different use from the allegation made in the current enforcement notice, and does not support continuity of that alleged use from before the beginning of 1964. In any event, if the use between 1963 and 1964 were to be regarded as a composite use involving storage, dealing in building materials and fabrication of timber

garden sheds, I would still consider this to be a materially different use to the allegation now made in the notice where the industrial element is in my view much greater and there is no indication of retail activity from the premises.

16. I do not regard it as necessary therefore to consider in detail the arguments advanced by the Council on abandonment of use during the period from the end of 1964 to October 1966. Although your client indicated that instructions had been given to re-let the premises following its vacation by Mr Fleckney, he also gave details of equipment and materials left on the premises by the former tenant and his own actions to take building materials arising from demolition of buildings to the site with the intention of trading in secondhand materials. Although there was no indication of the scale of such use, it appears to me that it was probably a use undertaken on a commercial basis and material in degree. This particular use was also materially different to that now alleged.

17. For the above reasons, I conclude that use of the appeal site for the purposes alleged by the notice did not take place between early 1963 and October 1966, and that it did not therefore amount to an established use of the land immune from enforcement action. The ground (d) appeal therefore fails.

THE DEEMED APPLICATION FOR PLANNING PERMISSION

18. Although you put forward no arguments in support of the merits of the alleged use, I have to consider the deemed application for planning permission accompanying the enforcement notice appeal for continuation of the use. In this context, you do not dispute that the site forms part of the statutory Metropolitan Green Belt shown on the adopted Dacorum District Plan 1984 and you now accept that the site is properly included in the statutory Green Belt shown in the draft Borough Local Plan, now the subject of the Inspector's report on a PLI. Structure and local plan policies for the control of development within the Green Belt are consistent with national guidance contained in PPG 2. This provides that within a Green Belt approval should not be given, except in very special circumstances, for the construction of new buildings or for the change of use of existing buildings for purposes other than agriculture, sport, cemeteries, institutions standing in extensive grounds, or other uses appropriate to a rural area.

19. The evidence at the inquiry, the representations and site inspection have led me to the view that the main issues are the effects on the aims of Green Belt policy and upon the rural landscape at the edge of Tring.

20. The deemed application involves a commercial and industrial use of land. This is clearly not development for an appropriate Green Belt purpose as set out in national and local policy, and the presumption against inappropriate development therefore applies. It might be argued that cessation of the use in compliance with the terms of the notice would not radically alter the appearance of the site and its extensive range of untidy and unsightly buildings.

21. It is unclear how many of the existing structures on the land existed at times of earlier uses of the land, including agricultural activity, and how many were erected for the unauthorised use but are now immune from enforcement action. I accept that compliance with the notice would not remove the visual harm to the otherwise attractive rural canal-side environment. I consider, however, that operation of the site for the industrial purposes of the alleged use would be likely to result in materially greater harm to the rural character of the locality. As the base for a shopfitting and joinery business

the site has at times of economic prosperity generated significant levels of employment. The building floorspace on the site is clearly capable of accommodating a substantial industrial concern with commensurate activity on the land, related parking and traffic generation. These matters would unquestionably be damaging to the rural character of the locality in an open attractive area traversed by a public right of way and close to the urban edge. Bearing in mind the general age and poor condition of the buildings, I do not regard their general presence on the land as justifying the grant of planning permission in this case.

22. Following cessation of the use of the premises by F R Aldritt, there is no specific firm whose business interests should be weighed against the terms of Green Belt policy. The Council's claim that there were ample available sites in the area for business development was not disputed. In the light of the poor condition of buildings on the land, which would in my view require significant investment to return to long term beneficial use, I do not consider that existing facilities represent a factor of great weight to justify consent.

23. In the absence of very special circumstances to justify the inappropriate development within the Green Belt, it is harmful to the Green Belt as an interest of acknowledged importance. As a distinctly urban industrial use it is in my view also contrary to the stated Green Belt purpose of safeguarding the countryside surrounding large built up areas from further encroachment. The site lies beyond the canal feeder which has recently been recognised in the report into the local plan PLI as a clear and defensible long term boundary for the Green Belt, and permission would risk serious erosion of the Green Belt in the locality. For these reasons I regard the effects upon the aims of Green Belt policy as serious and unacceptable.

24. The urbanising effects of the development have the immediate effect of damaging the rural landscape in what is clearly a sensitive location alongside the Grand Union Canal, and which Policy 106 of the draft local plan recognises as a heritage and recreational resource. Conflict with the aims of this policy reinforces my concern at the impact of the development in this location.

25. I have considered also the objections made on residential amenity and highway grounds. Although the site lies relatively near to the housing area to the north-east of the canal feeder, the almost complete absence of objections during the course of the site's use leaves me in significant doubt as to the likelihood of material disturbance to residents. Although the business use is capable of generating sizeable vehicle flows onto Icknield Way, there was no detailed technical evidence relating to the standard of the access and major road sight lines. Although these matters do not in my judgement bring material harm, I regard the effects upon the aims of Green Belt policy and the harm to the character and appearance of the area as weighty objections justifying refusal of the deemed application.

26. I have taken into account all the other matters raised, but I find none so compelling as to outweigh the factors which have led to my conclusions.

FORMAL DECISION

27. For the above reasons and in exercise of the powers transferred to me I hereby 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 Act.

- Document 14 Schedule of site's planning history submitted by Mr McFarland.
- " 15 Planning Contravention Notice served 24.4.92.
- " 16 Response to Contravention Notice.
- " 17 Committee report re enforcement action.
- " 18 Copy of enforcement notice.
- " 19 Extracted Structure Plan policies submitted by Mr McFarland.
- " 20 Extracted Dacorum District Plan policies submitted by Mr McFarland.
- " 21 Extracted Dacorum Borough Local Plan policies submitted by Mr McFarland.
- " 22 JPEL extract reporting decision in the case of Pehrsson v S.S.E. & Royal Borough of Windsor and Maidenhead.
- " 23 Appeal decision for Shantock Hall, Bovingdon.
- " 24 Environmental Health Complaint Form.
- " 25 Local Plan objection details.
- " 26 Application for EUC 1989.
- " 27 Memo from County Clerk dated 21 November 1966.
- " 28(1-4)Extracts of reported cases submitted by the Council.
- " 29 Memo of Herts Fire and rescue Service February re fire in 1972.
- " 30 Enforcement notice dated 8 August 1973.
- " 31 Appeal decision February 1990 for 3 houses on appeal site.
- " 32 Extracts from the Valuation Lists.

PLANS

- Plan A Land owned by the Appellant at the site.
- " B Dacorum District Plan Inset Map for tring.
- " C Site location plan at 1/2500.
- " D O.S. extract for 1922/3.
- " E Plan of a scheme prepared in 1980 by F R Aldritt.

PHOTOGRAPHS

- Photo 1 21 colour photographs of the appeal site.
- " 2 2 photographs of Ms Tomlinson in 1965/6 submitted by Mr King.
- " 3(1-6) Photographs of the site on 15 April 1992 submitted by the Council.

APPEARANCES

FOR THE APPELLANTS

Mr A E King BA(Hons) BPI MRTPI - Planning consultant
who gave evidence and called:
Mr C M Andrews - Appellant
Mrs C Aldritt - of 25 Lukes Lea, Marsworth, Tring
Ms H Tomlinson - of 33 Woodland Close, Tring

FOR THE PLANNING AUTHORITY

Miss N Pope - Solicitor with Dacorum Borough Council

She called:

Mr M McFarland BSc(Hons) MRTPI - Planner with Dacorum Borough Council

DOCUMENTS

- Document 1 List of persons present at the inquiry.
" 2 Letter sent by the Council giving notice of the inquiry.
" 3(1-4)Letters and affidavit from third parties submitted by Mr King.
" 4 Report of investigation of the appeal site by Surveyor to Tring U.D.C. October 1966.
" 5 Correspondence between the Appellant and tring U.D.C. during 1967.
" 6 Letters from F R Aldritt dated 6 November 1966.
" 7 Appeal decision letter dated 21 April 1975 for the appeal site.
" 8 Letter dated 4 September 1973 from F R Aldritt lodging appeal against enforcement notice.
" 9 Extract from Council's statement to Hearing into previous appeal for residential development.
" 10 Notice of refusal of Established Use Certificate.
" 11 Extract from local plan inquiry report.
" 12 Press cuttings and related photographs of Market Garage in April 1963.
" 13 List of conditions suggested by the Council.



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Chief Planning Officer
Dacorum Borough Council
Civic Centre
Hemel Hempstead
Herts
HP1 1HH

Your Ref:

Council ref:
4/1008/92EN

Our Ref:
APP/C/92/A1910/622557

Date:
27 April 1993

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND 78
SCHEDULE 6 PLANNING AND COMPENSATION ACT 1991
APPEAL BY MR C M ANDREWS
LAND AND BUILDINGS OFF ICKNIELD WAY, TRING

1. I refer to the Inspector's decision letter dated 5 April 1993 giving his determination of the above appeal.
2. It has come to my attention that the letter dealing with the application for costs by the council, was not enclosed along with the Inspectors decision.
3. I would be grateful if you could amend your copy of the decision letter by appending this copy to your decision letter.
4. I apologise for any inconvenience this may have caused.

Yours faithfully

P HOULDEN

PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL						
REP	TORN	PLN	DC	D.C.	Admn.	File
Received				28 APR 1993		
Comments						



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PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL						
and Administration						Ack.
Council	L.P.M.	D.P.	D.C.	B.C.	Admin.	File
Received		28 APR 1993				
Comments						

Council Reference:
4/1008/92EN
Our Reference:
PP/C/92/A1910/622557
Date: 27 APR 1993

Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS BY DACORUM BOROUGH COUNCIL

- I refer to your application for an award of costs against Mr C M Andrews which was made at the inquiry held at the Civic Centre, Hemel Hempstead on 2 March 1993. The inquiry was in connection with an appeal against an enforcement notice alleging unauthorised use of premises off Icknield Way, Tring. A copy of my appeal decision letter and my decision on the application for costs made against your Council at the same time is enclosed.
- In support of your application it was said that the Council had only been notified of the withdrawal of the ground (a) appeal at the opening of the inquiry. This was unreasonable conduct. The Appellant's agent had been shown the recommendation of the local plan PLI Inspector on 19 February 1993. Nothing had been said about dropping the ground (a) appeal at a meeting held on the site on 23 February 1993. Responding to this ground of appeal had involved considerable extra work, and it had been unreasonable of the Appellant not to give advance notice of the intention.
- In response, it was said that the PLI report had not been published until recently. On acquiring a copy on 19 February, the Appellant's agent needed some time to consider the merits of continuing with ground (a), bearing in mind the detailed contents of the report and the complication about inclusion of the access in the Green Belt. This had not been a decision to take lightly, and there had only been 1 full working week between then and the inquiry.
- The application for costs falls to be determined in accordance with the advice contained in Circular 2/87 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably.
- I consider that it would have been preferable if you had notified the Council of the intention to withdraw this ground of appeal as soon as the decision had been taken and before the inquiry itself. However, it seems to me that there was relatively little time between the publication of the report and the inquiry. If your decision had been taken more speedily and notified to the Council, this would not necessarily have prevented work by their



witness and advocate in view of the time which I would expect to be required in preparation for a local inquiry.

6. More particularly, I take the view that, if the Appellant's behaviour were to be regarded as unreasonable, this would not have resulted in significant additional expenditure as the Council would have had to come to the inquiry prepared to deal with the merits of the case which arose from the accompanying deemed application for planning permission. This fell to be considered, and I see little difference between the preparation and work needed to deal with this matter and that for a ground (a) appeal.

7. I therefore conclude that your application for an award of costs is not justified.

FORMAL DECISION

8. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Dacorum Borough Council for an award of costs against Mr C M Andrews.

I am Sir
Your obedient Servant



ALAN UPWARD BA (Hons) MGD MRTPI
Inspector

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