The Planning Inspectorate

VP3

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

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Mrs A Gubb
Marstongate Stables
Long Marston
TRING
Herts HP23 4QZ

Received 20 JUN 1996
Comments

Your Ref: RH/AJF/2447/473
Our Ref: T/APP/C/95/A1910/639356/P6
Council Ref: 5/1037/95EN
Date: 18 JUN 1996

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
LAND AT MARSTONGATE STABLES, LONG MARSTON

1. I have been appointed by the Secretary of State for the Environment to determine your appeal against an enforcement notice issued by Dacorum Borough Council concerning the above land. I have considered the written representations made by you and the Council (and also those made by an interested person) and inspected the site on 21 May 1996.

The Notice and Grounds of Appeal

2. a. The notice is dated 30 June 1995.

b. The breach of planning control as alleged in the notice is the unauthorised change of use from mixed use as stables and house to use for stables, house and stationing of mobile home for residential use.

c. The requirements of the notice are to cease the use for stationing a mobile home for residential purposes, remove the mobile home and restore the land to its former condition.

d. The period for compliance with these requirements is 6 months.

Your appeal was lodged on grounds (a) and (f) of Section 174(2) of the amended 1990 Act. However in your representations you refer to a 1964 planning permission for the stationing of a residential caravan on the site and you also contend that no significant change has taken place in the use of the land as a whole. I propose to treat these representations as an argument under ground (c) that the matters alleged in the notice do not constitute a breach of planning control. The application for planning permission to continue the alleged use (deemed to have been made under Section 177(5) of the 1990 Act) also falls to be determined.

Site and Surrounds

3. The appeal site is just over one ha in area most of it consisting of open pasture. The buildings on the site are grouped close to the Station Road frontage and consist of a two-storey dwelling, an outbuilding and stables along the northern boundary. The mobile home, occupied by your son and his wife, is positioned close to a 2 metre high brick wall which marks the boundary with the adjoining property Marstongate. Your house forms part of a group of some 5 houses located in predominantly flat agricultural land about 1 kilometre from the village of Long Marston.

The Allegation

4. The notice does not mention agriculture as one of the current uses of the appeal site. However when I visited the site there were a number of pigs within the outbuilding. I consider that the appeal site is being used for agricultural purposes as well as the other purposes specified in the notice. I propose to correct the notice accordingly. This can be done without injustice to you or the Council.

The Ground (c) Appeal

5. You argue that the stationing of the mobile home does not constitute a significant change in the use of the appeal site as a whole. You also refer to a planning permission dated 4 December 1964 which permitted the use of the site as a caravan site. You argue, in effect, that no breach of planning control has taken place.

6. The mobile home is occupied by your son and daughter-in-law as their home with all the facilities needed for independent residential use. This is not a case therefore where the mobile home is being used simply as additional bedroom accommodation for the house. In this case the use of the mobile home is not ancillary to the use of your own house as a dwelling but represents a separate residential unit. The current use of the appeal site therefore includes use as a caravan site as well as use as a house. In my judgement this has involved a material change in the use of the site as a whole for which planning permission is needed.

7. I accept that in 1964 planning permission was granted for the stationing of a caravan on the site. However in 1977 planning permission was granted for the erection of your house. This contained a condition that the residential caravan use should cease and the caravan be removed following occupation of the house. The 1977 house permission was therefore an alternative to the 1964 caravan permission. As the house authorised by the 1977 permission was subsequently built that planning permission was implemented and this brought to an end the 1964 permission. The use of the site for stationing a further residential caravan requires a further planning permission. As this not been obtained a breach of planning control has taken place. The ground (c) appeal fails.

The ground (a) appeal and the deemed planning application

8. From my inspection of the site and its surrounds and my reading of the representations, I consider that the main issues are whether the use of the appeal site for the stationing of a mobile home for residential purposes accords with the provisions of the Development Plan and, if not, whether there are other material considerations in this case which indicate that an exception ought to be made to those provisions.

9. As to the first issue, the appeal lies within a rural area. In such an area only certain kinds of development are acceptable as stated in Policy 5 of the adopted Dacorum Borough Local Plan. Residential development (including use as a residential mobile home) is not generally acceptable. Residential development may be justified on agricultural grounds. Indeed your own house, it seems, was permitted for this reason in 1977 and was made subject to an agricultural occupancy condition. However there is no suggestion that the mobile home is needed in connection with agriculture. The modest extent of the holding and number of stock do not suggest that a second unit of residential accommodation is needed on agricultural grounds.

10. In the absence of agricultural justification the retention of the residential mobile home in this rural area would be contrary to the Development Plan as well as to national planning policies. I conclude, on the first issue, that the use as a mobile home for residential purposes does not accord with the provisions of the Development Plan.

11. As to the second issue, I accept that the mobile home is well screened from Station Road. I also accept that your 3-bedroomed house already accommodates yourself, your daughter and your brother and that it is desirable for your son and his wife to have separate accommodation. However in my judgement these considerations, taken individually or together, do not justify an exception being made to Development Plan policy. Such arguments could be repeated in many other cases and, if accepted, could lead to new homes being allowed in the open countryside in such cases. This would undermine the countryside policies of the Development Plan. I conclude, on the second issue, that there are no other material considerations in this case which indicate that an exception ought to be made to the provisions of the Development Plan.

12. I accept that any adverse affect on the occupants of the neighbouring property could be met by resiting of the mobile home or by the provision of further screening. However the principal objection to the mobile home is a policy objection and this cannot be overcome.

13. I have taken into account all other matters raised by you including the needs of your brother but these other matters do not cause me to alter the conclusions I have reached on the main issues. The ground (a) appeal fails and permission will be refused on the deemed application.

The ground (f) appeal

14. You say that you are agreeable to variations in the siting of the mobile home and to the provision of appropriate screening. However such measures would not meet the fundamental policy objection to the approval of a residential use, unsupported by agricultural need, in a countryside location. The requirements of the notice, to cease the use, remove

the mobile home and restore the land to its former condition, are no more than is needed to remedy the breach of planning control. The ground (f) appeal fails.

FORMAL DECISION

15. For the above reasons, and in exercise of the powers transferred to me, I hereby correct the notice by the deletion of the contents of paragraph 3 and the substitution therefor of:

> "Without planning permission, the change of use of the land from a mixed use for agricultural purposes, for stables and as a house to a mixed use for agricultural purposes, for stables and as a house and also for the stationing of a mobile home for residential use".

Subject to this correction I dismiss your 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.

RIGHTS OF APPEAL

16. 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

Patrick Burke

P J BURKE BA(Oxon) Solicitor
Inspector

The Planning Inspectorate

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

RIGHT TO CHALLENGE THE DECISION ON AN ENFORCEMENT APPEAL

The attached enforcement appeal decision is final unless it is successfully challenged in the Courts on a point of law. If a challenge is successful the case will be returned to the Secretary of State by the Court for redetermination. However, it does not necessarily follow that the original decision on the appeal will be reversed when it is redetermined.

You may seriously wish to consider taking legal advice before embarking on a challenge. The following notes are provided for guidance only.

Depending on the circumstances, an appeal may he made to the High Court under either or both sections 288 and 289 of the Town & Country Planning Act 1990. Section 289 enables the decision on any of the grounds of the enforcement appeal to be challenged. Section 288 enables only a decision to grant planning permission or discharge conditions or the decision on any associated S78 planning appeal to be challenged. Success under Section 288 would not alter the appeal decision on the enforcement notice itself. The notice would remain quashed or upheld unless successfully challenged under Section 289. There are other significant differences between the two sections, including different time limits, which may affect your choice of which to use. These are outlined below.

Challenges under Section 289 of the 1990 Act

Section 289 provides that the appellant, the local planning authority or any person having an interest in the land to which the enforcement notice relates, may appeal to the High Court on a point of law against the Inspector's determination of the enforcement notice appeal. To have an interest in the land means essentially to own, part own or lease the site.

An appeal under Section 289 may only proceed with the leave (permission) of the Court. An application for leave to appeal must be made to the Court within 28 days of the date of the Inspector's decision, unless the period is extended by the Court.

Challenges under section 288 of the 1990 Act

Section 288 provides that a person who is aggrieved by the decision to grant planning permission or discharge conditions or by any decision on an associated appeal under Section 78 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

1. the decision is not within the powers of the Act; or

2. any of the 'relevant requirements' have not been complied with ('relevant requirements' means any requirements of the 1990 Act or of the Planning & Tribunals Act 1992, or of any order, regulation or rule made under either Act).

The two grounds noted above mean in effect that a decision cannot be challenged merely because someone does not agree with the Inspector's judgement. Those challenging a decision have to be able to show that a serious mistake was made by the Inspector when reaching his or her decision; or, for instance, that the inquiry, hearing or site visit was not handled correctly, or that the appeal procedures were not carried out properly. If a mistake has been made the Court has discretion not to quash the decision if it considers the interests of the person making the challenge have not been prejudiced.

It is important to note that under Section 288 an application to the High Court must be lodged with the Crown Office within 6 weeks of the date of the accompanying decision letter. This time limit cannot be extended. 'Leave' of the High Court is not required for this type of challenge.

If you require further advice on making a High Court challenge you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL. Telephone: 0171 936 6000.

INSPECTION OF DOCUMENTS

Any person entitled to be notified of the decision in an inquiry case has a statutory right to view the listed documents, photographs and plans within 6 weeks of the date of the decision letter. Other requests to see appeal documents will not normally be refused. All requests should be made to Room 11/01, Tollgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference and stating the day and time you wish to visit. Please give at least 3 days' notice and include a daytime telephone number, if possible.

COMPLAINTS TO THE INSPECTORATE

Any complaints about the Inspector's decision letter, or about the way in which the Inspector has conducted the case, or any procedural aspect of the appeal should he made in writing to the complaints officer in Room 14/04, Tollgate House, Houlton Street, Bristol, BS2 9DJ quoting the Inspectorate's appeal reference. You should normally receive a full reply within 15 days of our receipt of your letter. You should note however, that the Inspectorate cannot reconsider an appeal on which a decision letter has been issued. This can be done only following a successful High Court challenge as explained in this leaflet.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (THE OMBUDSMAN)

If you consider that you have been unfairly treated through maladministration on the part of the Inspectorate or the Inspector you can ask the Ombudsman to investigate. The Ombudsman cannot be approached direct; reference can be made to him only by an MP. While he or she does not have to be your local MP (whose name and address will be in the local library) in most cases this will be the easiest person to approach. Although the Ombudsman can recommend various forms of redress he cannot alter the Inspector's decision in any way.

COUNCIL ON TRIBUNALS

If you feel there was something wrong with the basic procedure used for the appeal, a complaint can be made to the 'Council on Tribunals', 22 Kingsway, London, WC2B 6LE. The Council will take the matter up if they think it comes within their scope. They are not concerned with the merits and cannot change the outcome of the appeal decision.