



**Department of the Environment and  
Department of Transport**

Common Services

Room 1410 Tollgate House Houlton Street Bristol

Telex 449321

Direct line 0272-218 938

Switchboard 0272-218811

**CHIEF EXECUTIVE  
OFFICER**

**14 MAY 1986**

File Ref. ....

Refer to ....

BS2 9DJ

**16376**

4/1090/85E

Messrs Smeathmans

Solicitors

PO Box 1

10 Queensway

HEMEL HEMPSTEAD

Hertfordshire

HPL 1LU

Your reference		PLANNING DEPARTMENT			
RTH/PMA		DACORUM DISTRICT COUNCIL			
Our reference		Ack.			
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Comments					

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9

LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981

APPEAL BY ABBOTS HILL LIMITED

LAND AND BUILDINGS AT ABBOTS HILL SCHOOL, BUNKERS LANE, HEMEL HEMPSTEAD

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against an enforcement notice issued by the Dacorum Borough Council concerning the above land and buildings. I held an inquiry into the appeal on Tuesday 25 March 1986.

2. a. The date of the notice is 25 June 1985.

b. The breach of planning control alleged in the notice is the making of a material change of use of land at Abbots Hill School, Bunkers Lane, Hemel Hempstead, shown edged red on the plan attached to the notice, by the change of use of that part of the land shown coloured blue on the plan attached to the notice from use for the purposes of a school to use for the siting of a mobile home, without the grant of planning permission required in that behalf.

c. The requirements of the notice are:

i. the discontinuance of the use of that part of the land shown coloured blue on the plan attached to the notice for the siting of a mobile home;

ii. the removal of the mobile home from the land.

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

e. The appeal was made on the grounds set out in Section 88(2)(a), (b), (c) and (d) of the 1971 Act as amended.

3. The evidence was not taken on oath.

**THE SITE AND SURROUNDINGS**

4. Abbots Hill School is a girls boarding school set in extensive grounds of some 69 acres on the south-east side of Hemel Hempstead. The school itself comprises a range of scattered buildings in the north-eastern part of the grounds, including the main school building, modern extensions and additions, a coach house

block, a number of free-standing buildings and an assembly hall which is under construction; other facilities include tennis courts and a swimming pool. The structure described in the notice as a mobile home, is situated about 120 m north-east of the main school building, near a number of detached classroom blocks and the new assembly hall. It is of prefabricated construction, apparently of timber framework with alloy and weather-boarded cladding under a shallow-pitched roof. It appears to have been formed by the joining of 2 units, each resting on a steel chassis with wheels, which in turn rest on a substantial concrete base. Additional support is provided by sections of tree trunks, breeze blocks and jacks. The space between the floor and concrete base has been roughly clad with plywood sheeting. The accommodation provided consists of a combined living room and kitchen area, 2 bedrooms, a bathroom, a lobby and a lean-to porch and utility area. There is no formal vehicular access to the site other than by means of a rough track which is a continuation of Highwoodhall Lane, a narrow access road leading off Bunkers Lane. The structure is well screened from views from the north and west by an abundance of trees and other vegetation.

#### UNDISPUTED FACTS

5.
  - i. The structure was first placed on the site, after installation of the concrete base, in 1972.
  - ii. It is presently occupied residentially during term time by the Headmistress and has been used in the past as accommodation for teachers and their families or other school staff. It has never been used to accommodate persons unconnected with the school.
  - iii. The construction of the concrete base is not the subject of the notice.
  - iv. The structure has an area of 65.3 sq m or 703 sq ft and its dimensions are shown on Plan C.
  - v. Abbots Hill School provides boarding and day facilities for 160 girls. St Nicholas House, a separate junior school, provides day education for up to 100 children, there being no boarders. There are 112 boarders in the main school, 87 full-time and 25 weekly boarding. Dormitory facilities are located in the main building ('F' on Plan B) for 90 girls under the care and supervision of a matron, deputy matron, one single member of staff and one married member of staff and her husband. The Deputy Headmaster and his family live in the bungalow marked 'A' on Plan B. One matron supervising 6 girls lives in the cottage marked 'B' on Plan B and 9 girls live in the adjoining Davidson Block. Seven girls under the supervision of a teacher reside in the stable block marked 'C' on Plan B. The caretaker, chef and deputy chef also live in this block. Together with the Headmistress living on the appeal site there is a total of 8 resident members of staff, excluding the caretaker and chefs.
  - vi. The appeal site lies within the Metropolitan Green Belt as indicated on the Hertfordshire County Structure Plan and the Dacorum District Plan, adopted in January 1984. A summary of the relevant Structure Plan and District Plan policies is contained in Documents 7 and 8.

#### THE ALLEGED BREACH OF CONTROL

6. During the course of the inquiry, the question was explored of whether or not the allegation was sufficiently complete to precisely describe the breach of

13. Turning to the appeal on ground (d), it follows that the siting of a mobile home as opposed to the construction of a building does not fall within any of the categories of breach of control described in Section 87(4) of the Act. More particularly sub-sections (a) and (b) deal solely with operational development, which this is not, and sub-sections (c) and (d) deal with the making of a change of use without planning permission of any "building" as a single dwellinghouse and as I have found this mobile home is not a "building" for the purposes of the Act but a caravan. Accordingly the development alleged falls outside the provisions of Section 87(4) and your clients' appeal on ground (d) also fails, even though the time limits set by that section are satisfied. In this context the case of *Makin v Elson*, 1977 1 All ER 572, relied upon by your clients was, as pointed out for the council, concerned with a different point of law under the Finance Acts and not planning legislation. That apart the question of whether or not a caravan is a dwellinghouse does not arise in my view, in terms of Section 87(4), for the reasons which I have given above.

#### THE APPEAL ON GROUND (b)

14. As to whether or not the siting of a mobile home is a material change of use of the land and therefore constitutes a breach of planning control, it was contended for your clients that the mobile home, as a residence for teaching staff, was ancillary or incidental to the school use of the remainder of the planning unit. The planning unit as a whole extended to some 69 acres, being the school grounds, and the area of the mobile home site represented a mere 0.0023% of this. As the Headmistress' residence the mobile home was an integral part of the school complex; it was part and parcel of it and its siting could not be said to be a material change of use of the land. It was not remote from the rest of the school and the occupant would be conveniently on hand for supervisory duties.

15. Although the planning unit has in my opinion been correctly identified as the whole of the school grounds, the plan attached to the notice specifically, and it was agreed accurately, identifies that part of the unit to which the allegation relates. I do not consider, therefore, that the question of the area of land involved as a proportion of the total is of particular significance in assessing whether or not such a change of use has occurred.

16. The main question in my view is whether or not the mobile home can be regarded as an ancillary part of the main school use. In this respect I share the council's opinion that it is in effect a free-standing and self-contained residential unit, containing all the amenities for separate occupation, independent of any facilities or services, such as provision of meals, within the school complex. It is distantly located from the school buildings and the nearest dormitory accommodation was given in evidence as being some 100 m away. Whilst I noted at my inspection that the mobile home is connected by telephone, I consider that this is too tenuous a link to enable the occupant to exercise effective supervision of boarding pupils at such a distance in the event, for instance, of a night-time emergency. This is in my view substantially different to the situation which would have prevailed if the mobile home had been sited, say, immediately abutting one of the dormitory blocks where there could be both a physical and functional link between the 2.

17. From these considerations it seems to me that the use of this mobile home as residential accommodation for staff, whether it be the Headmistress or other teaching staff, is more a matter of convenience than an essential adjunct to the educational use of the planning unit as a whole. In those circumstances I do not accept that the siting of this mobile home can be regarded as being ancillary to the main school use and I conclude, as a matter of fact and degree, that a material

control complained of, it being common ground that the structure was and always had been used for residential purposes. My attention was drawn by the council to an apparent conflict between the decided cases of Woodspring District Council v Secretary of State for the Environment and Another and the Borough of Restormel v Secretary of State for the Environment and Another (Documents 12, 13 and 14). In the later, Restormel case, the learned Judge commented that it could not be decided whether a material change of use had occurred until it was known for what purposes the caravan, or mobile home in this case, was to be used and whether that purpose fitted in with the existing use of the land. This seems to me to be a logical approach and one which should be adopted in this instance.

7. With that in mind and at the request of the parties, I therefore propose to exercise my powers of correction by adding the words "for residential purposes" at the end of the last line of Schedule 2 of the notice. I consider that I can make such a correction without injustice to either party.

#### THE APPEALS ON GROUNDS (c) and (d)

8. It was argued for your clients that the structure described in the notice as a mobile home was not in fact either a mobile home or a caravan but was a building which had been constructed more than 4 years before the notice was issued. I was directed to certain passages from the Encyclopedia of Planning Law and a series of decided cases referred to therein, particularly the case of Cardiff Rating Authority v Guest Keen Baldwins Iron and Steel Company Limited (1949) 1 KB 385, containing a number of principles or criteria for defining what is a building. However in that judgement it was accepted that an exhaustive definition of the term is impossible to achieve.

9. For my part the resolution of the question of whether or not the allegation should be addressed to operational development or to a material change of use is dependent upon whether or not the structure in question is a building or a caravan, and I take the latter term to include a mobile home. The case of Guildford Rural District Council v Fortescue (1959) 2 QB 112, referred to in the Restormel case, was said to set out the basic planning law that the stationing of a caravan is not included within the expression "carrying out of building, engineering, mining or other operations on land". This has always been my understanding of the law on this point.

10. My attention was directed to the definition of a caravan in Section 290 of the 1971 Act, as drawn from the Caravan Sites and Control of Development Act 1960; this being any structure designed or constructed for human habitation which is capable of being moved on wheels or a trailer.

11. At first glance the structure on the appeal site appears to be a prefabricated building of temporary construction. However, closer inspection reveals that it comprises 2 units each mounted on a pair of wheels which in turn rest upon a concrete base. These units are not bolted, cemented or otherwise affixed to the base and in my view are capable of being moved after separation, albeit with some difficulty. I am in no doubt that this structure is in fact a mobile home which, as pointed out by the council, by reason of its dimensions falls within the definition of a twin mobile home unit as set out in Sections 13 and 16 of the Caravan Sites Act 1968.

12. It follows from this finding that the notice correctly alleges the siting of a caravan and that this is a material change of use of land and not operational development; therefore the appeal on ground (c) must fail.

APPEARANCES

FOR THE APPELLANTS

Mr R T Hodder

- Partner - Smeathmans, Solicitors,  
PO Box 1, 10 Queensway, Hemel  
Hempstead, Herts, HPI 1LU.

He called:

Mr S F N Humbert FRICS

- Chartered Surveyor.

FOR THE PLANNING AUTHORITY

Mrs C M Goodman

- Assistant Solicitor, Dacorum  
Borough Council.

She called:

Miss B H Thomas BA MSc MRTPI

- Assistant Planner, Dacorum  
Borough Council.

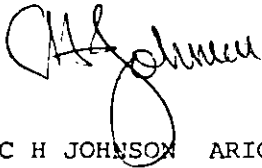
DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- " 2 - Councils letter notifying interested persons of the inquiry and list of those notified.
- " 3 - Letter dated 28 February 1985 from Abbots Hill School to the Council.
- " 4 - Exchange of correspondence between the council and appellants solicitors.
- " 5 - Planning history of the appeal site put in by the appellants.
- " 6 - Planning history of the appeal site put in by the council.
- " 7 - Extract from Hertfordshire County Structure Plan 'Alterations No 1'.
- " 8 - Extract from Dacorum District Plan.
- " 9 - List of suggested planning conditions put in by the council.
- " 10 - Cardiff Rating Authority v Guest Keen and Balwins (1949)  
IKB All ER 36
- " 11 - Guildford RDC v Penny (1959) 2 All ER 111.
- " 12 - Woodspring DC v SSE and Borough of Restormal v SSE (JPEL reports).
- " 13 - Transcript of Borough of Restormal v SSE 1982.
- " 14 - Transcript of Woodspring DC v SSE 1982.

COSTS

31. A further letter concerning your clients' application for costs will be sent as soon as possible.

I am Gentlemen  
Your obedient Servant

A handwritten signature in dark ink, appearing to read 'C H Johnson'. The signature is written in a cursive style with a large, looping initial 'C'.

C H JOHNSON ARICS  
Inspector