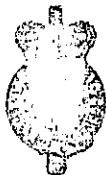


# TOWN PLANNING REGISTER SHEET

|  |   |  |
|--|---|--|
| ADDRESS/LOCATION OF SITE:<br><br>11 Chestnut Drive<br>BERKHAMSTED  | TOWN PLANNING REF. NO:<br>4/1098/79E  |  |
|  | LOCAL AUTH. BLD. REGN. OR OTHER REF. NO:                                      |  |
|  | DATE OF COMMENCEMENT OF STATUTORY PERIOD:                                     |  |
| LOCAL AUTHORITY NAME:<br>Dacorum District Council  | DATE OF EXPIRY OF STATUTORY PERIOD:   |  |
| PARISH NAME:<br>Berkhamsted Town   | DATE OF DECISION:   |  |
| DESCRIPTION OF PROPOSED DEVELOPMENT<br><br>Appeal against Enforcement - Repair of motor vehicles & parking of commercial vehicles. | DECISION:   |  |
|  | DIRECTIONS<br>Dept. of Env't.      County Plan. Auth.      County High. Auth. |  |
|  | DATE OF APPEAL DECISION:<br>17.4.80.  |  |
|  | APPEAL DECISION:<br>DISMISSED.  |  |
|  | O.S. SHEET NO:      NAT. GRID REF.<br>667      SP9970007020                   |  |
| NAME AND ADDRESS OF APPLICANT:<br><br>A.C.Barrett Esq,<br>11 Chestnut Drive,<br>BERKHAMSTED  | ROAD CLASS:<br>Unclassified   |  |
|  | PREVIOUS APPLICATIONS ON SAME SITE:<br><br>661-76<br>689-77E                  |  |
| NAME AND ADDRESS OF AGENT:<br><br>Blaser Mills & Newman,<br>203 High Street,<br>BERKHAMSTED  |   |  |
|  |   |  |

C/18/2.4



**Department of the Environment**

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21 APR 1980

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FILE  
No.

Council reference

4/1028/79E and 4/1631/79E

Messrs Blaser Mills and Newman

Solicitors

203 High Street

BERKHAMSTED

Herts

HP4 1AD

**CHIEF EXECUTIVE**

18 APR 1980

Your reference

GCS/JE/YVK

Our reference

T/APP/5252/C/79/2792 and 2800/G4

Date

17 APR 1980

Gentlemen

1088

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

APPEALS BY MR A C BARRETT

LAND AND BUILDINGS AT CHESTNUT DRIVE, BERKHAMSTED

1. I refer to these appeals, which I have been appointed to determine, against 2 enforcement notices served by the Dacorum District Council concerning the above-mentioned land and buildings. I held an inquiry into the appeals on 27 March 1980.

2. NOTICE A (reference 2792)

a. The date of the notice is 21 June 1979.

b. The breach of planning control alleged in the notice is the making of a material change in the use of 11 Chestnut Drive to that for 1. the repair of motor cycles and other motor vehicles 2. the parking of a commercial motor vehicle 3. the stationing of a motor vehicle in which motor cycles are repaired.

c. The requirements of the notice are that the use be discontinued and the land restored to its condition before the development took place.

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

e. The appeal was made on ground 88(1)(b) but at the inquiry grounds (a), (f) and (g) were added.

3. NOTICE B (reference 2800)

a. The date of the notice is 21 June 1979.

b. The breach of planning control alleged in the notice is the making of a material change in the use of the public road and footpath of Chestnut Drive to that for repairing motor cycles and/or other motor vehicles and/or for the stationing of a motor vehicle in which motor cycles are repaired.

c. The requirements of the notice are that the use be discontinued.

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

e. The appeal was made on ground 88(1)(b) but at the inquiry grounds (a), (f) and (g) were added.

## SITE AND SURROUNDINGS

4. Your client's dwelling, a bungalow (No 11), fronts the southern side of Chestnut Drive, a reasonably quiet and pleasant residential street having a carriageway some 16 ft wide with footpaths each side. The land falls south to north, the bungalow being some 2 ft above carriageway level, houses on the northern side of the highway being at a lower level than that of the street. The drive to No 11 runs alongside that of the adjoining house to the east (No 9), both giving access to parking areas beyond the dwellings. Outside No 11 is parked a heavy commercial van which contains your client's mobile workshop. There were a few other vehicles parked in Chestnut Drive at the time of inspection.

## FACTS NOT IN DISPUTE

5. The following facts were not in dispute:--

1. your client operates a mobile repair van for motor cycles, the business being advertised and contact being made by telephone to No 11 Chestnut Drive;
2. an appeal was dismissed in 1977 against an enforcement notice relating to repairs and the like to motor cycles at the garage at No 11, this notice having been complied with;
3. your client repairs motor cycles of relatives and friends in the mobile van sometimes when it is within the curtilage of No 11 and sometimes when the vehicle is parked on the road;
4. other persons' motor cycles are sometimes contained in the van when left in or outside the appeal premises;
5. repair activities have been seen within or heard from the van at various times;
6. between mid August 1978 and mid July 1979 some 30-40 different motor cycles belonging to relatives, friends and others have been seen at the appeal premises, and off-loading and on-loading of some of these have also been seen.

## APPELLANT'S LEGAL ARGUMENTS

6. The legal submissions made on behalf of your client were:--

1. no commercial repairs are done either at No 11 or on the road outside, any motor cycle or vehicle repair is confined to the vehicles belonging to the relatives or friends of your client and the activity is ancillary to the enjoyment of the dwelling;
2. the mere parking of a commercial vehicle, a Bedford van of less than 3 tons, on the road is ancillary to the use of the dwelling at No 11 and is parked there to enable your client to go to and from work, this involving no change of use;
3. the enforcement notice B is void in alleging a change of use on the public highway which is land over which your client has no rights other than those of any other citizen;

4. for the enforcement notice to bite, the person on whom it is served must have an interest in the land and no one has this in respect of Chestnut Drive except the Council, particularly any default being outside planning control and being governed by other powers.

#### COUNCIL'S LEGAL ARGUMENTS

7. The legal submissions made on behalf of the Council were:-

1. there is no reason why an enforcement notice cannot relate to a public highway as to any other land and decided cases have shown such enforcement actions to apply;
2. there is a business use being made at No 11 as well as in the road outside and the mobile workshop has been parked both within the curtilage of the dwelling and on the highway in connection with its activities;
3. there is no desire to prevent your client from performing activities ancillary to a dwelling house but when it has gone beyond a certain stage, it creates a change of use to which objection is made;
4. the commercial vehicle on the carriageway has nothing to do with the dwelling as such and creates a material change of use.

#### CONCLUSIONS - GROUND (B) AND NOTICE B VALIDITY

8. Having regard to the evidence and facts presented at the inquiry, I conclude that:-

1. some personal repairs and the like would be permissible at No 11 but if the activity, even for hobby purposes, increases to such an extent that it goes beyond that normally ancillary to a private dwelling, then a material change of use occurs requiring planning permission;
2. in this instance, there have been several vehicles here at a time, others have been seen being off-loaded or on-loaded, the dwelling has a telephone for a repair business and there have been comings and goings of vehicles between 1978 and 1979 above that normally anticipated at a private dwelling;
3. this scale of activities, whether for commercial and/or private purposes, is not normally ancillary to a dwelling and the enforcement notices are therefore properly directed to a change of use for repairs to vehicles both within No 11 and outside it;
4. the parking of the commercial vehicle is also in this instance not ancillary to the enjoyment of the dwelling but ancillary to your client's repair business and that too has caused a material change of use both inside and outside No 11;
5. moreover, the argument that the notice cannot apply to parking on the highway is misconceived for the notice is directed here to a commercial vehicle being parked for repair purposes and not to parking in itself, no authority being given to show that such a notice cannot apply;

6. accordingly, I find the activities complained of to be outside the scope of those normally ancillary to the enjoyment of a dwelling house and have resulted in a material change of use requiring planning permission, and as that has not been obtained and a breach of planning control has resulted, ground (b) fails.

#### MERITS - APPELLANT'S CASE

9. The main arguments made on behalf of your client were:-

1. planning permission should be granted for the repair of vehicles belonging to your client's family and friends;
2. the parking of the van is incidental to the use of the dwelling and should be permissible, the inspecting Council's officer saying that this was not incongruous;
3. under ground (f), the notices are too wide in restricting the use and should be cut to limit them to any breach only;
4. under ground (g), the time allowed is too short and if your client has nowhere to park his vehicle he would go out of business, a larger unspecified period being requested.

#### MERITS - COUNCIL'S CASE

10. The main arguments made by the Council were:-

1. the appeal premises are in a residential area on the County Development Plan approved in 1971, there being little alternative area in the locality where such vehicle repair use could be properly re-located;
2. the use of No 11 and the highway at Chestnut Drive for the purposes specified in the enforcement notices are just as unneighbourly as the motor cycle repair use in the garage here which was dismissed in the 1977 appeal;
3. there have been continuous complaints from adjoining residents whose evidence shows noise and disturbance from the use complained of;
4. it would be wrong to allow such activities and the parking of this obtrusive vehicle in this residential area.

#### MERITS - CONCLUSIONS

11. From my inspection of the site and its surroundings and the representations made, I am of the opinion that:-

1. the principal issue in these appeals is whether the vehicle repair use and the parking of the commercial van in which repairs are performed could be properly located here having regard to their impact on the surroundings and also to the provisions of the development plan;

2. Chestnut Drive is a comparatively narrow residential street where any vehicle repair activity is bound to create disturbance and nuisance particularly to the nearest residents and where, moreover, the residential notation of the approved development plan would not support such use in close proximity to dwellings;

3. owing to the size of the mobile repair van and the limited width of Chestnut Drive, it is considered that its presence dominates the street scene in an unattractive way and, moreover, taken up a substantial part of the carriageway reducing passage to other normal street users;

4. even if parked within the curtilage of No 11, the vehicle at a higher level would be even more dominant and unattractive and would have nothing to commend it;

5. for all these reasons, the presence of the mobile repair van and the vehicle repair use both have a harmful impact on this residential locality from their appearance and effect and, accordingly, there is little on which to set the objections to them aside or to warrant planning permissions being granted under ground (a);

6. under ground (f), the notices merely require discontinuance of the uses which is the minimum necessary to remedy the breaches complained of, there being nothing, therefore, on which to find that the notices are excessive except for the requirement in Notice A to restore the land to its former condition, which is indefinite and should preferably be deleted;

7. moreover, the notices only relate to activities outside the scope of those ancillary to the dwelling house use at No 11 and there is nothing in them which needs variation to protect any private or hobby activities which would normally be acceptable and, for that reason, no further amendment of the notices are necessary, ground (f) only partially succeeding as indicated above;

8. under ground (g), both notices allow 6 weeks but your representations, although asking for a longer period, did not state any specific time; whilst having regard to the Council's information that little or no alternative locations are available for these activities, it is felt that on balancing this against the neighbours' complaints, there is insufficient to find the period allowed to be unreasonable and I do not propose therefore to extend it, so that ground (g) fails also;

9. in short, there is little to warrant the grant of planning permission for the disputed uses in this residential area against the planning considerations which apply and, consequently, I intend to dismiss the appeals - I have considered other matters raised but find they are not of sufficient weight to affect the decision.

#### FORMAL DECISION

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

i. DIRECT that the words in paragraph 2 of enforcement notice A "and to restore the said land to its condition before the said development took place" be deleted; and

ii. subject to this variation DISMISS both section 88 appeals, UPHOLD the enforcement notices and REFUSE to grant planning permissions on the applications deemed to have been made under section 88(7) of the 1971 Act.

RIGHT OF APPEAL AGAINST DECISION

13. This letter is issued as the determination of the appeals 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

A. A. Sloma.

A A SLOMA BSc(Eng) MICE FIMunE Barrister LMRTPI  
Inspector

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