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Your Reference:  
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 T/APP/A1910/A/89/143642/P5  
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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 DEPVALE LIMITED  
 APPLICATION NO :- 4/1108/89

1. I have been appointed by the Secretary of State for the Environment to determine the above appeal against the decision of the Dacorum Borough Council to refuse outline planning permission for the erection of 3 storey offices and car parking on land off Stratford Way, Hemel Hempstead. I held a local inquiry into the appeal on 17 and 18 July 1990. At the inquiry application for costs was made on behalf of your client. I deal with this separately below.

#### APPEAL

2. The application which is the subject of this appeal was in outline with all matters reserved for subsequent approval. It was accompanied by plan no. 2389:01 which shows the proposed layout of the site and an elevation of the office building. At the inquiry an amended plan (no. 2389:01B), incorporating minor revisions to the earlier plan was submitted. It was confirmed that these plans were prepared for illustrative purposes only, to indicate the probable form of development and I have therefore had regard to them on that basis.

3. The appeal site lies to the south of Hemel Hempstead town centre and comprises a wedge shaped area of former railway land bounded to the south by the London to Scotland railway line and to the north by operational Gas Board land, the main part of the site being at a lower level than its surroundings. It is presently unused and overgrown. Access to the site would be gained at its northwestern corner from Stratford Way, a residential cul-de-sac which joins the A41 Trunk Road (London Road) some 125m north of the proposed access.

4. It was not part of the Council's case that office development on the appeal site is unacceptable in principal. The emerging local plan shows the site within a general employment area where the provision of accommodation for small business enterprises is encouraged. The Council's planning witness did not dispute that there was a local demand for small offices of the type



proposed and the details of available premises put forward for the appellant were not challenged.

5. From what was said at the inquiry, my inspection of the appeal site and its surroundings and the written representations made I consider the main issues in this case to be firstly whether, as a result of the additional traffic generated by the proposal, the amenities of residents of Stratford Way would be materially harmed and, secondly, whether the increased use of the Stratford Way/A41 junction would be detrimental to highway safety.

6. For the Council it was maintained that the character of Stratford Way would be significantly changed by the introduction of additional traffic and that the associated noise, congestion and general disturbance would seriously affect the living conditions of its residents. This view was supported by the written representations made by individual residents and by submissions made on their behalf at the inquiry.

7. Stratford Way is a residential cul-de-sac of some 34 properties. The road rises gradually from its junction with the A41 before turning sharply and running parallel to the railway line. Apart from the first 80m or so of its length it has frontage development on its western and northern sides only, with footways along the built frontages. Traffic is subject to a 30mph speed limit and there are no restrictions on roadside parking. Although it widens to about 9m at the junction the road has a typical width of about 6m.

8. Because it is a cul-de-sac which serves a relatively small number of dwellings the road is not subject to heavy traffic flows. Unchallenged evidence for the appellant, based on survey, indicated a peak two-way flow of 27vph. It is inevitable that any form of intensive development on the appeal site, including the erection of 39 dwellings for which outline permission was granted in February 1988, would have a noticeable effect on existing conditions at Stratford Way. Assessments of additional traffic flows generated by the proposed office development, again not challenged by the Council, indicated a maximum peak flow of 78vph, giving a total flow of 105vph. Bearing in mind the road width and taking account of the presence of parked cars I share the views of the expert witnesses of both parties that this level of flow would be well within the road's capacity. In my opinion the increased traffic would not therefore give rise to serious congestion or conflicts along Stratford Way.

9. Some doubts were expressed by the Council and local residents about the adequacy of the proposed on site parking and the possibility of additional roadside parking taking place. I am satisfied that appropriate parking provision could be made within the site and adjoining land controlled by the appellant to meet the Council's current standards, which I consider to be appropriate in this case.

10. On the question of the effect of additional traffic noise my observations at Stratford Way accorded with the undisputed evidence put forward by the appellant's expert witness regarding background noise levels. There is a significant background noise at the northern end of the road from traffic on the A41 and whilst conditions improve towards the site access the background climate is frequently punctuated by the sound of trains passing closeby. However it is evident from the predicted noise levels that apart from those living close to the main road residents would experience increased noise from the movement of traffic to and from the site. The figures produced were based on a worst-case situation and whilst they indicate a change in conditions predicted noise levels remain below the maximum figure in circular 10/73,

although slightly above the suggested "good standard". In considering the effect of this increase I have borne in mind that the higher levels referred to would only be experienced for a relatively short period at the start and end of the working day, at times when most households are active and not as vulnerable to noise disturbance as they would be late at night or early in the morning. For the remainder of the day noise levels would not be significantly changed.

11. Having regard to this and to the existing noise climate within the area I conclude that the additional traffic generated by the proposed development would not give rise to levels and patterns of noise which would materially harm the amenities of residents of Stratford Way.

12. I now turn to highway safety. The main concern expressed by the Highway Authority representative related to increased dangers arising from the intensification of the use of the A41 junction. Whilst the agreed visibility distances, measured in accordance with TA20/84, indicate that visibility in both directions is below the requirements set out in Planning Policy Guidance Note 13 it was accepted by the Highway Authority that because of the alignment of the main road visibility to the south east is more than adequate. I noted that drivers leaving Stratford Way have a satisfactory uninterrupted view across the bend in the main road of traffic approaching from the right, the critical direction for vehicles leaving the minor road. To the northwest visibility to the southwestern edge of the highway is restricted by frontage boundaries. However, visibility to the centre of the road is such that oncoming traffic can be seen at a distance which would allow vehicles to turn out of the junction safely. Whilst I recognise that the A41 is a well used Trunk Road where conditions are unlikely to ease until the proposed by-pass is built traffic in this area travels relatively slowly because of the presence of the roundabout to the west and the many other minor road junctions nearby.

13. The width and alignment of the junction itself is such that cars and light vans are able to turn into and out of Stratford Way without crossing the centre lines of either the minor or major road. The tight kerb radii does however mean that larger commercial and heavy goods vehicles cannot turn into and out of the junction without either mounting the kerb or crossing the centre lines, thereby endangering pedestrians and other roadusers. I was told that commercial vehicles visiting the proposed offices would be predominantly light vans and that there would be 4 or 5 such vehicle movements each working day. This figure was not disputed and is one which I consider to be a reasonable estimate, representing a level and type of commercial traffic which would not give rise to significant dangers or conflicts at the junction.

14. I therefore conclude that conditions at the junction are such that its use by the additional traffic generated by the proposed development would not give rise to unacceptable highway dangers.

15. In considering this appeal I have had regard to my fellow Inspector's decision letter in respect of your client's appeal in 1986 (reference no. T/APP/A1910/A/86/046021/P5) regarding an application for planning permission for the erection of light industrial units on the site. It seems to me that his decision to dismiss that appeal turned on the effect of the use of Stratford Way by heavy goods vehicles outside normal working hours on the living conditions of residents. In the case of office development the traffic generated would be predominantly private cars with a small number of light commercial vehicles. I therefore consider that the problems identified by my colleague in respect of heavy goods vehicles would not arise in relation to office development.

16. I have taken account of all other matters, including effect of the removal of trees, but none overrides the conclusions which have led to my decision.

17. I have considered the conditions suggested by the Council in the light of advice in circular 1/85. The application was in outline but in addition to conditions relating to the submission of reserved matters and the construction of parking and service areas prior to the occupation of the development I consider that it is necessary to attach other conditions along the lines suggested. Because of its proximity to an operational gas board site and the possibility that tipping may have taken place and, bearing in mind advice in circular 21/87, it is my view that the possibility that the land may be contaminated should be fully investigated and any necessary measures taken. I am aware that circulars 1/85 and 13/87 state a presumption against the imposition of conditions restricting future changes of use which, by virtue of the Use Classes Order, would not constitute development. However I consider that there are particular circumstances in this case relating to the effects on the amenities of local residents of heavy goods traffic which would be likely to be generated by other Class B1 uses which justify the imposition of a condition restricting future changes of use.

18. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and grant outline planning permission for the erection of 3 storey offices and car parking on land off Stratford Way, Hemel Hempstead in accordance with the terms of the application (No.4/1108/89), dated 22 June 1989, and the plans submitted therewith, subject to the following conditions:

1. a. approval of the details of the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site (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 either before the expiration of 5 years from the date of this letter, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

3. no development shall take place until there has been submitted to and approved in writing 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 buildings 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 of the development 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. no part of the office development hereby permitted shall be occupied until provision has been made within the site for cars to be parked and for the loading and unloading of vehicles, in accordance with details to be submitted to and agreed by the local planning authority.
6. no development shall take place until the results of a specialist survey of the site to establish the presence or otherwise of toxic, noxious or explosive substances (including gases) have been submitted to the local planning authority.
7. no development shall take place until a scheme for nullifying the adverse effect of any land contamination identified as a result of condition 6 above has been submitted to and agreed by the local planning authority and any scheme so approved shall be implemented prior to the occupation of any part of the office buildings hereby permitted.
8. the development hereby permitted shall be used for offices and for no other purpose (including any other purpose in Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order)
19. Attention is drawn to the fact that an applicant for any consent, agreement, or approval required by a condition of this permission (for approval of the reserved matters referred to in the permission) has a statutory right of appeal to the Secretary of State if consent, agreement or 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 also drawn to the enclosed note relating to the requirements of the The Buildings (Disabled People) Regulations 1987.
21. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 23 of the Town and Country Planning Act 1971.

#### APPLICATION FOR COSTS

22. In support of your client's application for costs it was said that the Council had acted unreasonably by failing to substantiate its reasons for refusal by bringing forward evidence of any weight. The Inspector who determined the 1986 appeal had disposed of the issue of safety at the junction and the Council should have made the Highway Authority aware of his conclusion during consultations on the office scheme. The Council's objection to the proposal on amenity grounds related to noise. The previous Inspector had considered this aspect of the increase in traffic and his concern related to the effect of the movement of heavy goods vehicles at unsocial hours. There had been no suggestion that such movements would be a feature of the office development and the Council had brought no technical evidence relating to the effect of traffic noise.
23. In response it was argued for the Council that there were valid and justifiable reasons for refusal and that there was no compelling reason why planning permission should be granted.

## CONCLUSIONS

24. 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 in this appeal.

25. Although the previous appeal concerned a different type of development the planning issues were not significantly different to those of the appeal before me. In relation to highway safety I consider that my colleague gave a clear indication that deficiencies in visibility at the junction were not of a magnitude to justify refusing planning permission. The Council produced no evidence that the effect of the current proposal on safety at the junction would be materially worse than the proposal previously considered or to demonstrate the nature and extent of the unacceptable dangers referred to in the reason for refusal. Its evidence in this respect did little more than draw attention to the deficiencies at the junction; these were matters of fact which had been fully examined in 1986.

26. Technical evidence produced for your client concerning existing and predicted noise levels and traffic flows was not challenged by the Council and it was accepted that although consulted the Council's Environmental Health Officer had not suggested that traffic noise would damage residential amenities. The first reason for refusal was therefore not substantiated by evidence which identified any material harm to residential amenity arising specifically from the effect of traffic generated by this proposal.

27. In these respects therefore I consider that the Council has acted unreasonably and as a result your client has incurred the unnecessary expense of an inquiry.

## FORMAL DECISION ON COSTS

28. Accordingly, a formal order, which I have made in exercise of my powers under section 250(5) of the Local Government Act 1972 and section 36 of, and paragraph 5 of Schedule 9 to, the Town and County Planning Act 1971 as amended by the Housing and Planning Act 1986, is enclosed with this letter. You are now invited to submit to the Chief Executive of the Council, to whom a copy of this letter and order has been sent, details of the costs referred to, with a view to reaching agreement on the amount.

I am Gentlemen  
Your obedient Servant

*Steven Fox*

STEVEN FOX BA MA MRTPI  
Inspector

## TOWN &amp; COUNTRY PLANNING ACTS, 1971 and 1972



## DACORUM BOROUGH COUNCIL

To Depvale Properties Ltd  
c/o Poulter & Francis  
57 Marlowes  
Hemel Hempstead  
Herts

Robert Crawford Architect  
Post Cottage  
Lindsell  
Dunmow  
Essex

.....Erection of offices and car parking.....  
.....  
at .....Land off Stratford Way.....  
.....Hemel Hempstead.....

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 .....22 June 1989..... and received with sufficient particulars on .....26 June 1989..... and shown on the plan(s) accompanying such application..

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

1. In the opinion of the local planning authority the introduction of commercial traffic onto Stratford Way - a residential road - would prove severely injurious to the residential amenity of the area.
2. Visibility at the junction of Stratford Way and the A41 trunk road is below an acceptable standard, and the additional traffic generated by the proposal would create conditions prejudicial to highway safety.

Dated .....7th..... day of .....September..... 1989

Signed.....

Chief Planning Officer

SEE NOTES OVERLEAF

P/D.15

#### 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.