



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

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T.O.P.M.	D.P.	D.C.	B.C.	Admin.	File	
Received		2 APR 1993				
Comments						

Your reference
JFH
Council's reference
4/1109/92EN
Our reference
APP/C/92/A1910/623516/P6
Date - 1 APR 1993

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY MR R G SKINNER
LAND AT PALDRE, RUCKLERS LANE, KINGS LANGLEY

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 land. I held an inquiry into the appeal on 16 March 1993. At the inquiry an application was made on behalf of your client for an award of costs against the Council. This is the subject of a separate letter.

2. a. The date of the notice is 6 July 1992.

b. The breach of planning control alleged in the notice is without planning permission, change of use from residential to mixed use of residential, storage of timber and joinery manufacturing.

c. The requirements of the notice are (i) remove from the site all stored timber, joinery products and equipment and machinery used in the manufacture of joinery products; (ii) cease the use of the site for the manufacture and storage of joinery products; and (iii) cease the use of the site for the storage of timber.

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

3. Your client's appeal is proceeding on grounds (a), (f) and (g) of section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991.

Site and surroundings

4. The appeal site is your client's house and its curtilage, occupying a plot about 18 m wide but extending some 200 m south from Rucklers Lane. The house is near the front of the property and is in the process of being reconstructed, planning permission for which was given in 1989. Much of the work is being done by your client, who is a skilled carpenter and joiner. At the time of my visit, the house except for the part being lived in resembled a dwelling under construction in which the walls and roof were complete, but much of the internal work of plastering, floorboards and ceilings, and installation of services remained to be done.

5. The plot slopes up from Rucklers Lane, quite steeply at first and then more gently. In places it has been divided by sloping terraces and retaining walls. The area in front of the house has been concreted, and there is a car port for 3 vehicles. A concrete drive passes by the east side of the house and leads to the workshop building, described below. In front of that building is a wooden building used for domestic storage. Behind the workshop building a concreted track extends to the end of the garden. The foundations have been laid for another building behind the workshop. There are 3 smaller buildings further down the garden, used for storing various items, and a summer-house at the southern end. A fence divides off the end part, and there is a pond and lawns.

5. I gather that the workshop building was erected on its present site partly in 1980 when it was moved from the southern end of the garden, and partly when it was extended to its present size in about 1986. It is constructed of wood with twin double-pitched roofs, and measures about 18 m by 13 m with projections at the southern end to provide an office and house a generator. The building is split-level, reflecting the slope of the ground. There are roof-lights, and windows to the southern elevation. Internally the walls and roof are fitted with insulation panels, and the greater part of the concrete floor is covered by chipboard. It is equipped with machines and work-benches; tools, templates and the like are arranged neatly around the walls. I noted various pieces being worked on, and your client indicated door and window frames and other parts being made for use in the house. Attached to the northern end of the building is a covered area with a translucent roof supported on wooden posts and beams: this is the main timber storage area. At the southern end is a small concreted yard containing some storage drums.

6. Most of the property boundaries are marked by 1.8 m high fencing, and the western boundary has a somewhat overgrown hedge. To the east is another detached house, "Kerity", which also has a large wooden building in the back garden. The land to the west and south, and also to the north across Rucklers Lane, is agricultural.

The notice

7. The notice alleges, as part of the mixed use, storage of timber, but as I suggested at the inquiry, timber is stored not as a use in its own right but ancillary to the use for joinery manufacturing. Some is also stored in connection with the construction works to the house or for furniture for the house. The Council's witness accepted this, and I confirmed my impression during my site visit. I shall therefore amend the notice to delete reference to storage of timber as a separate use; it follows that the corresponding requirement to cease that use should be deleted. It also appears to me from the evidence and from what I saw on site that the use should more accurately be described as woodworking and joinery manufacturing, and I shall make that amendment also. I am satisfied that these are corrections of fact which may be made without causing injustice to either party.

Appeal on ground (a)

8. The site is in the Metropolitan Green Belt where national policy as set out in Planning Policy Guidance note 2 is that there is a general presumption against inappropriate development, and that 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, other than for specified rural uses. This approach is reflected with similar wording in policies 1 of the Hertfordshire Structure Plan and the Dacorum District Plan, these comprising the Development Plan for the area; and in policy 3 of the deposit draft Dacorum Borough Local Plan.

9. You also draw attention to policies 32 and 99 of the draft Plan. Policy 32 encourages provision for small firms in employment areas and local centres, and in its reasons points out that such firms are important for the well-being of the

economy; but you accept that this site is not in an employment area. Policy 99 gives criteria for the conversion or re-use of redundant buildings in the countryside, but the workshop building where the manufacturing use alleged in this notice takes place is not redundant. You point out that it is immune from enforcement, having been erected for more than 4 years, and it would be redundant if this use were not allowed. Those points are relevant and I return to them below, but they do not mean that policy 99 applies. I shall therefore decide this case on its merits in the context of Green Belt policy.

10. Accordingly from the matters put to me at the inquiry and in written representations, and from my inspection of the site and its surroundings, I consider that the main issue is whether the unauthorised uses alleged in the notice are appropriate in the Metropolitan Green Belt, and if not whether there are very special circumstances justifying the grant of permission. On the first part of this, I do not consider that woodworking and joinery manufacturing are appropriate Green Belt uses. They are in the nature of a craft industry which might be accepted in some rural locations, but I do not think this makes them appropriate to a rural area as a matter of policy. I shall therefore concentrate my attention on the question of very special circumstances.

11. The identifying of very special circumstances must be approached with caution, not least because of the continuing pressure for development in the Green Belt, and the precedent which allowing one scheme may lead to elsewhere. The fact that the use takes place in an existing building is not persuasive in itself, as Green Belt policy is also concerned with changes of use. The building and the use are well screened from public view, but this is an argument that could be repeated too often to the cumulative detriment of the open character of the Green Belt. All the same, these are material considerations, and must be taken into account along with a number of others which are more specific to this case.

12. The status of the building is unusual. It is not a redundant building or a long-established one to which redundant buildings policies normally apply. On the other hand, it is not a building erected as permitted development, as to which paragraph D2 of Planning Policy Guidance note 7 expresses concern that they should not be constructed with the intention of early conversion to another use. It is purpose-built, solidly-constructed and in a good state of repair. I have no reason to doubt your client's statement that he would retain it even if he lost this appeal, for purposes incidental to the enjoyment of the dwellinghouse. If it were not for the hedge on the western boundary, the building would be a prominent intrusion into rural views from the west, and as it is it can be seen through the hedge in winter. But the likelihood of its remaining anyway must be taken into account in assessing the visual impact of the use.

13. The use itself has practically no visual impact at present. There is no outside storage, all timber not in the building being kept in the lean-to addition on the northern side. The business is not advertised on site. Your client said at the inquiry that traffic arising from the use amounts to about one trip a week collecting supplies or delivering finished products, the arrival and departure each day of the 2 employees outside his family, and perhaps about one further visit every week or fortnight. I am satisfied that the use on its present scale does not compromise any of the purposes of Green Belts stated in paragraph 4 of PPG2. Although the roads serving the site are very narrow, the Council do not object to the use on grounds of traffic safety or convenience. The building is insulated and the Council do not allege any nuisance from noise or smell. No complaints on those or any other grounds have been received.

14. The employment and other economic consequences if the use were to cease are also relevant. Your client produced accounts which were not examined as to their accuracy in detail, but suffice to show that your client has not generally made much living from the business. Indeed it started as a hobby and your client still re-

gards it largely in that light. The Council have not discussed relocation with him, nor did they challenge his statement that he could not afford to take on premises elsewhere. He would like to build up the business to the point where he could do so, but does not expect to achieve this for at least 5 years. I therefore regard it as highly probable that the business would come to an end if the notice were upheld. He and his son and 2 other employees would then be redundant. The Council suggest that this is a small figure in relation to the total unemployed, but the large figure is an accumulation of smaller ones. I also take into account the advice on helping small businesses, including working from home, contained in Planning Policy Guidance note 4.

15. The final set of circumstances which I regard as material is the opportunity which a grant of permission would provide of attaching conditions to control the future impact of the use. These would help to meet the Council's understandable concern that an uncontrolled industrial use should not become established. In particular your client would accept conditions limiting the use solely to woodworking and joinery, and that it shall be carried on only by him. These, suitably worded, would ensure that the business remained tied to your client's occupation of the property and restricted to this specialist undertaking. Together with the size of the building, they would also help to limit the scale of the business: if it grew, alternative accommodation would have to be sought. Your client indicated that he would not want to pass on the business unless it grew large enough that permanent premises could be found for it elsewhere. In these circumstances of the case, I am satisfied that a personal permission would be justified, having regard to the advice contained in Circular 1/85. A further condition could prohibit outside storage of materials, again to limit the size of operation and its visual impact.

16. I conclude that the above factors - taken in combination - do provide very special circumstances for permitting what would otherwise be an inappropriate use in this part of the Metropolitan Green Belt. Such a combination of circumstances is sufficiently unusual that I do not share the Council's concern that this decision would set an undesirable precedent. Any other cases would fall to be considered on their own merits. This conclusion is subject to the imposition of the conditions discussed above. The Council also suggested a condition limiting boundary noise levels, but as they could not suggest any limit that might be set, and as the building is already insulated, I do not consider such a condition to be necessary.

17. I have taken account of all the other matters raised but there is nothing which outweighs my above conclusion on the main issue. The appeal succeeds on ground (a) and grounds (f) and (g) do not fall to be considered.

FORMAL DECISION

18. For the above reasons and in exercise of the powers transferred to me, I hereby direct that the enforcement notice be corrected as follows:

- a. by deleting from paragraph 3 the words "storage of timber" and substituting "woodworking"; and
- b. by deleting item (iii) from paragraph 5.

Subject thereto, I allow this appeal, direct that the enforcement notice as so corrected be quashed, and grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act for the change of use of land at Paldre, Rucklers Lane, Kings Langley from residential to a mixed use of residential, woodworking and joinery manufacture, subject to the following conditions:

1. The use for woodworking and joinery manufacture hereby permitted shall be carried on only by Mr R G Skinner and shall be for a limited period being the period during which the premises, including the residential property "Pal-

dre", are occupied by Mr R G Skinner. When the premises cease to be occupied by Mr R G Skinner, the use for woodworking and joinery manufacture shall cease and all stored timber, joinery products and equipment and machinery used in connection with those uses, other than any required for a purpose incidental to the enjoyment of the dwellinghouse as such, shall be removed from the site.

2. The premises shall be used for residential purposes and for woodworking and joinery manufacture and for no other purpose including any other purpose in Part B 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 and re-enacting that Order.

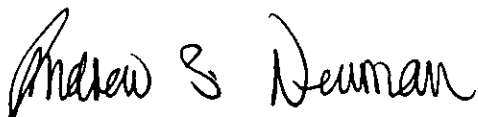
3. No woodworking or joinery manufacture shall be carried on, nor goods and materials stored, outside the building or the covered way attached to the northern side of it.

19. This decision does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990. Attention is also drawn to the enclosed note relating to the requirements of the Building Regulations 1991 with respect to access for disabled people.

RIGHT OF APPEAL AGAINST DECISION

20. This letter is issued as the determination of the appeal 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 S NEWMAN BA MA DipTP MRTPI
Inspector

APPEARANCES

FOR THE APPELLANT

Mr S Pickles

- of Counsel, instructed by Ellis and Hancock, solicitors, 24 Station Road, Watford, Herts.

He called:

Mr R G Skinner

- The appellant.

Mr D Newton ARICS

- Property Consultant, Monkham House, Exford, Somerset.

FOR THE PLANNING AUTHORITY

Mr R Higginson

- Solicitor, Dacorum Borough Council.

He called:

Mr J P Smith

- Enforcement Officer, Dacorum Borough Council.

Mr J E Knapp DipTP MRTPI

- Principal Planner, Dacorum Borough Council.

DOCUMENTS

1. List of persons present at the inquiry.
2. Letter of notification and list of addresses.
3. Extracts from Hertfordshire Structure Plan, Explanatory Memorandum, 1992.
4. Extracts from Dacorum District Plan, 1984.
5. Extracts from Dacorum Borough Local Plan, (a) Deposit Draft, 1991, (b) Proposed Modifications, 1992.
6. Letters dated 5 September 1991 and 28 May 1992 from Council to appellant.
7. Pehrsson v Secretary of State for the Environment and Council of the Royal Borough of Windsor and Maidenhead, [1990] JPL 764, submitted by the Council.
8. Committee report, 26 September 1991, submitted by the appellant.
9. Trading accounts submitted by the appellant.
10. Planning history summary submitted by the Council.

PLANS AND PHOTOGRAPHS

- A. Site plan submitted by the appellant.
- B. Approved plans for re-building house at Paldre.
- C. Aerial photographs submitted by the Council.



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Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS BY MR R G SKINNER

1. I refer to your client's application for an award of costs against Dacorum Borough Council which was made at the inquiry held at the Civic Centre, Hemel Hempstead on 16 March 1993. The inquiry was in connection with an appeal against an enforcement notice alleging change of use from residential to a mixed use of residential, storage of timber and joinery manufacturing, at Paldre, Rucklers Lane, Kings Langley. A copy of my appeal decision letter is enclosed.
2. In support of your client's application, reference was made to paragraph 14 of Circular 2/87. It was contended that this enforcement notice had been issued unreasonably, and there had been total disregard for the advice contained in Planning Policy Guidance note 18. Similar advice was included in Annex B of Circular 22/80 which was in place at the date when the Council resolved to take enforcement action. Paragraph 14 of PPG18 pointed out that the cost of responding to enforcement action may represent a substantial financial burden on a small business. That had clearly been the case here because of the cost of pursuing the case to appeal. In relation to paragraphs 15 to 17 of that Note, the Council had not considered whether a conditional permission might enable the business to continue at the site without harm to local amenity. At the only meeting held between the Council and the appellant, in September 1992, a personal permission was suggested, but rejected by the Council. The Council had not discussed the relocation of the business with your client, nor a timetable for relocation. No account had been taken of the need to foster business enterprise.
3. In response, the Council referred to paragraphs 5 and 6 of Circular 2/87. Awards of costs do not necessarily follow the decision on planning merits, but require amongst other things that unreasonable conduct should have caused the party making the application to have incurred expense unnecessarily. The development in this case was a blatant breach of planning control. It was unlikely that the appellant would be able to re-locate: this had been confirmed at the inquiry. Paragraph 12 of PPG18 states that if no agreement can be reached on relocation, the issue of an enforcement notice will usually be justified. It was accepted that the Council had not followed PPG18 to the letter, but discussion would have served no useful purpose. In any event, any award of costs should be partial only, reflecting the level of the team representing the appellant.



4. In response to the latter point, it was indicated on your client's behalf that the amount of costs would be a matter for taxation.

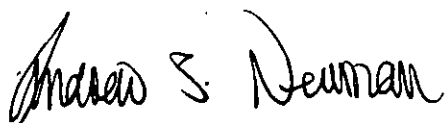
5. The application for costs falls to be determined in accordance with the advice contained in Circular 2/87 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may be awarded only against a party which has behaved unreasonably.

6. It does appear to me that the Council to all intents and purposes ignored PPG18 in their action over this case. Such behaviour leaves them open to an award of costs against them. But an award cannot be made for punitive reasons. Your client is also partially responsible for the situation that has arisen by erecting a substantial building and conducting a business in it without planning permission: this similarly has not affected my decision on the merits of the case. It would have been more helpful to your client if the Council had been more prepared to discuss the problem with him before they issued the notice, and indeed subsequently. However the Council had no planning application before them, so whatever was said at meetings, the opportunity of granting a conditional permission did not arise. I do not think the Council acted unreasonably in taking enforcement action against this industrial use at a residential property in the Metropolitan Green Belt. It follows that even if the Council had had more regard to PPG18, this would not have avoided the need for this inquiry to take place. Therefore I do not accept that your client incurred expense unnecessarily as a result of the Council's action. I conclude that the application for an award of costs is not justified.

FORMAL DECISION

7. For the above reasons and in exercise of the powers transferred to me, I hereby refuse the application by Mr R G Skinner for an award of costs against Dacorum Borough Council.

I am Gentlemen
Your obedient Servant



A S NEWMAN BA MA DipTP MRTPI
Inspector