D/1569/HA/P

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Council ref T.411/4/1303/80E

Your reference
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Our reference
T/APP/5252/C/80/3630/G4

Date
24 MAR 1981

Mr Michael F Crush MA FRICS
Chartered Surveyor & Planning Consultant
71 Wendover Court
Chiltern Street
LONDON W1

082626

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
APPEAL BY MR D H DEACON
LAND AND BUILDINGS AT THE SMALLHOLDING, BANK MILL LANE, BERKHAMSTED

1. I refer to your client's appeal, which I have been appointed to determine, against an enforcement notice served by the Dacorum District Council concerning the above mentioned land and buildings. I held an inquiry into the appeal on Tuesday 17 February 1981.

2. a. The date of the notice is 11 July 1980.

b. The breach of planning control alleged in the notice is the erection of a wood and corrugated shed.

c. The requirements of the notice are (1) to demolish the said building, (2) to remove all materials arising from such demolition and restore the land to its condition before the development took place.

d. The period for compliance with the notice is 2 calendar months.

e. The appeal was made on grounds 88(1)(a), (e), (f) and (g).

3. The evidence was not taken on oath.

CASE FOR THE APPELLANT

4. You maintained on the appellant's behalf under ground (a) that the location of the site, in a well screened position between Bank Mill Lane and the towpath of the Grand Union Canal, did not give rise to any loss of amenity. It consisted of a long piece of land with your client's flat roof brick bungalow towards the western end. The narrowness of the land meant that there was no proper back garden because the bulk of the site lay to the side. There was a substantial hedge to Bank Mill Lane which restricted visibility from there and the only place where anyone could look into the land was from a gap in the hedge along the northern boundary. The Council had withdrawn a notice under Section 65, which rendered them liable for compensation.

5. There was no direction under Article 4 restricting development rights under Article 3 of the General Development Order. Neither had there been any condition regarding landscaping attached to the permission given for the bungalow some years ago. The building was forward of the foremost part of the bungalow but it could be taken down and re-erected on the northern side of the plot, behind the building line, under permitted development rights. Under the 1950 Order it would have been exempt and you thought this entitled your client to a compensation claim. The Council's action was an unwarranted interference with his enjoyment of his land.

6. You did not press the claim under ground (e) that there had been less than 28 days between service of the notice and its taking effect in view of the Council's proof of posting. However you maintained that because the Anglia Building Society were served later, and after the date when the notice was due to take effect, it meant that there were 2 notices alleging the same development. It was therefore a bad notice, incapable of correction under Section 88(4)(b) and must therefore be quashed. The circumstances were identical to the case of Bambury v London Borough of Hounslow (1966) 2 QB 204 of which you submitted the report. The Council should have ascertained the Building Society's registered interest.

7. Mr Deacon confirmed he erected the shed himself over a period of about a month to store roofing materials for his bungalow. It was also used to store straw for his goats. It had rolls of roofing felt in it at present but that belonged to someone else from whom he purchased the material when required. The land was used for a variety of purposes such as keeping pigs, chickens, goats, sheep and dogs. No crops were grown but sometimes flowers. It did not represent his livelihood and he worked full time for Thames Water Authority. He agreed the site was untidy but for the past few years he had had a hard time with many personal problems.

8. Under ground (f) the requirements were excessive because there was no need to remove the materials if the shed could be re-erected elsewhere on the site. Under ground (g) the solution to the siting should be a matter for compromise and so 6 months was a reasonable period for that to be worked out and the shed re-erected.

CASE FOR THE LOCAL PLANNING AUTHORITY

9. They had sought information from your client under Section 284 to ascertain ownership and other interests and had only received his reply after serving him with the notice. Once that was known the building society was served. They disputed that the notice was bad merely because it was not served simultaneously. You had admitted your client's interests were not prejudiced and the matter therefore could be disregarded. That disposed of ground (e).

10. Under ground (a) the policies of the Structure Plan for the green belt and amenity corridor set out the severe limitations upon development and these policies were amplified in more detail in the District Plan. The site was subject to all the relevant policies. The photographs illustrated the untidy state of the site from several public points around its boundaries and it was not putting it too strongly to call it an eyesore. The shed was of substantial proportions and was

not within the curtilage of the dwelling but on the smallholding part of the site. Nor was it in use for the enjoyment of the dwellinghouse, as Article 3 Class I required, because the site was one planning unit with dual uses.

11. Under ground (f) the steps were not excessive because there would be no permitted right to re-erect the building unless it could be shown to be within the residential curtilage and for the residential enjoyment. As these considerations did not apply the steps were not excessive to remedy the breach. Under ground (g) 2 months was adequate when by Mr Deacon's own estimate only about 10 days were necessary to take it down.

INSPECTOR'S CONCLUSIONS

12. Dealing first with the claimed invalidity of the notice under ground (e) it appears that your client was served on 12 July 1980. The notice would have taken effect on 11 August 1980 and thus be within the statutory period. The argument that the notice becomes invalid by reason of its service upon the Building Society out of the period is not agreed. In the case you quoted the dates of the notices were different, the effect of which rendered both inoperative. Here the notices were identical. Section 88(4)(b) enables me to disregard the fact that the Society was not served within the period if neither it nor your client were prejudiced thereby. That is clearly the case and so I shall disregard the fact accordingly, particularly in view of the fact that your client only responded to the request for information on 5 August.

13. Turning next to ground (a) the main point is whether or not the circumstances of the case justify an exception being made to the green belt and other restrictive policies. In my opinion there are two planning units within the area of occupation in that one area is for residential purposes and the other as a small holding. The site is occupied solely by Mr Deacon but the area to the west of the wooden panel fence, which runs northward from the southern boundary on a line with the eastern end of the bungalow, is quite clearly the curtilage of the dwelling. To the east of that line and over the major part of the site the land contains sheds and other structures for chickens, geese, goats, dogs and a sheep, together with a large disorderly array of oil drums, trailers, bits of machinery, bricks, timber, etc. The access to the site is by the house and serves both the bungalow and the land.

14. The shed complained of is within the eastern area and, although there is a way to the land from the bungalow and access, it is not physically or functionally connected with the house. There are some 50 rolls of roofing felt at the east end and about the same number of bags of bitumen along the southern side. I was only able to see these by clambering upon some timber and looking through the northern windows, the key apparently being kept by a man who owns the stored materials. I saw no evidence of any straw in the shed either. I agree, therefore, with the Council's contention that the shed is neither within the residential curtilage nor for the enjoyment of the dwelling, as it requires to be for exemption under the General Development Order 1977.

15. On the other planning arguments I consider that the immediate environment of the site is of a rural character with added attractions of the Canal, mature trees and a pleasant landscape. The site is exposed in sharp contrast to this

scene through the gaps in the hedges and fences and from the access. The old and unpainted corrugated iron sheeting, projecting timber rafters and assorted old doors which have been used for the north side present an unsightly view both from the road and the Canal towpath, especially the latter which is some 1 m higher than the general level of the site.

16. I appreciate that your client has had personal problems which have caused him to neglect matters and that the notice is not directed at the other structures and materials. Nevertheless I do not consider the appearance of the shed or its use justify any exception from the Structure and District Plans' policies to protect the green belt and amenity corridor even though planting to fill the gaps would lessen its impact from the towpath. I doubt if planting would be effective on the south against Bank Mill Lane. The appeal fails on ground (a) accordingly.

17. Under ground (f) I consider the requirements should exclude the necessity to restore the land to its former condition but the remaining requirements are not excessive. I do not consider the 2 months allowed for compliance is unreasonably short in view of the nature of the construction. Therefore ground (g) fails. I have considered all of the other matters raised at the inquiry but they do not lead me to a different conclusion.

FORMAL DECISION

18. For the above reasons and in exercise of the powers transferred to me, I hereby direct that the notice be varied by the deletion from paragraph 5.(2) of the notice the words "and restore the said land to its condition before the development took place" subject to this variation I uphold the notice, dismiss the appeal and refuse planning permission for the application deemed to have been made under Section 88(7).

RIGHT OF APPEAL AGAINST DECISION

19. 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 Sir
Your obedient Servant

H BRINKWORTH BA DipTP MRTPI
Inspector

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