



# Department of the Environment and Department of Transport

Common Services

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C. STN 2074	Ac.
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Your reference	
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Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9  
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981  
APPEALS BY MR R LAWS  
LAND AND BUILDINGS AT BIRCHIN GROVE FARM, HALF MOON LANE, PEPPERSTOCK, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine these appeals. They are against 2 enforcement notices issued by the Dacorum Borough Council and a refusal of planning permission by the Council concerning the above mentioned land and buildings. I have considered the written representations made by you and by the Council and also those made by an interested person. I inspected the site on 25 November 1986.

## Notice A

2. a. The date of the notice is 9 May 1986.
- b. The breach of planning control alleged in the notice is the change of use of the timber-framed store building, shown coloured yellow on the plan attached to the notice, to residential use.
- c. the requirements of the notice are to cease the residential use of the timber-framed store building.
- d. The period for compliance with the notice is 9 months.
- e. The appeal was made on the grounds set out in Section 88(2) (a) and (h) of the 1971 Act as amended.

## Notice B

3. a. The date of the notice is 9 May 1986.
- b. The breach of planning control alleged in the notice is the failure to comply with conditions, Nos 1 and 2 subject to which planning permission was granted.
- c. The permission (No 4/1502/80) was granted on 13 November 1980 and was for a temporary dwelling.
- d. The conditions which are alleged not to have been complied with are as follows:

1. This permission shall expire on 31 December 1985.

2. The development hereby permitted shall be removed from the site, the use hereby authorised shall be discontinued and the land reinstated to its former condition at or before the expiration of the period referred to in condition 1 above.

e. It is alleged that the conditions have not been complied with in that the development has not been removed from the land nor has the land been reinstated to its former condition.

f. The requirements of the notice are to demolish so much of the temporary dwelling as has been built; to remove from the land all materials arising from such demolition; and to reinstate the land to its former condition.

g. The period for compliance with the notice is 9 months.

h. The appeal was made on the grounds set out in Section 88(2) (a) and (h) of the 1971 Act as amended.

#### Section 36 appeal

4. The development for which planning permission was refused is the retention of a previously permitted temporary dwelling.

5. The interpretation of these appeals is complicated by the cross-referencing made in the representations to, variously:

a. the residential use of the store building to which Notice A relates;

b. the initial 1980 outline permission for a temporary dwelling for 5 years (4/1502/80). Notice B is concerned with 2 of the conditions imposed on that permission;

c. the approval in 1981 of the reserved matters for that consent (4/0351/81);

d. the refusal in 1986 of the application to retain the previously permitted temporary dwelling (4/1418/85). The Section 36 appeal is concerned with this refusal.

I refer to these sub-paragraphs in my letter. Notices A and B carry the same designation given them by the council but Notice A will be considered after the other appeals.

6. Your client's 6.9 acre holding is entered from Half Moon Lane at the end of the metalled carriageway. Within the site near the road there is a brick generator building and along the northern boundary stand a range of wooden buildings comprising stables, chicken huts, an old farm office, and pig pens; an all purpose metal barn, about 80 x 45 ft, is sited close by. I was told that at the time of my visit there were present on the farm, 10 cows, one bull, 10 calves, 20 geese, over 100 chickens, 6 sows and 8 horses. The holding comprises 3 large grazing fields with a bridleway and public footpath crossing the land from the driveway. On the land immediately adjoining to the north, formerly in your client's possession, there is woodland and some farming activity. The surrounding area is generally farmland but along Half Moon Lane there are some dwellings and caravan sites northwards towards Pepperstock.

7. The building with which Notice A is concerned lies at the side of the driveway into the holding opposite the stable and chicken huts. It is a timber building with a tiled roof, with windows facing onto the grazing land. Internally the building has been partitioned to provide 3 bedrooms, a bathroom and kitchen. The rooms are furnished for residential accommodation but the corridor and kitchen have no floor coverings. Electricity and drainage are connected.

8. The dwelling to which the Section 36 appeal relates is located in the corner of the holding near Half Moon Lane; a gateway has been installed and hardcore laid on the access track. The present state of construction is that the main fabric of the building has been completed: the roof is felted and battened but not tiled; 3 of the front dormers have been completed; the blockwork walls have not been rendered; the window frames are installed but not glazed. Outwardly the configuration conforms to the elevations in the application at paragraph 5(d) above. Internally the wall partitioning of the rooms on the ground floor have been built and some on the upper floor. The timber joists are in place but there is no flooring. Currently a small amount of hay is stored in the building and cattle shelter in the garage space.

#### Notice B

9. I saw on my visit that the partially constructed dwellinghouse has been built in accordance with the plans submitted under paragraph 5(d) above. I note that the application in (d) was expressed in terms of the retention of the previously permitted temporary dwelling referring also to the outline consent in (b), and that the council considered the construction of the building constituted the implementation of the 1980 permission. However I take the view that the approval in (c) finalises the package of development permitted in (b) and constitutes the authorised development until or unless superseded by another approval. I also note that the decision on (d) was taken after the expiry of (b) and therefore even if it had then been approved the building would not be associated with the outline consent. Moreover my assessment is that the development carried out is of such a nature that it cannot reasonably be regarded as a temporary building with a life of 5 years as permitted in the outline consent; and I note you also refer to it as a permanent dwelling in your later submissions. The plans approved in (c) are for a 3 bedroom bungalow with no garage whereas the dwelling which is being built is, as the plans in (d) confirm, a substantial 2 storey house of 266 sq m floorspace with integral garage and on the upper floor 4 bedrooms, 2 bathrooms and a further living space. In my opinion the present building is materially different to that approved in (c). I regard it as development de novo and it is the carrying out of building operations against which it would be appropriate for the enforcement notice to be directed. But the breach of planning control alleged is the non-compliance with conditions and not the carrying out of development. My conclusion is that the notice is fundamentally defective and cannot be corrected. Notice B will therefore be quashed and I do not consider this appeal further.

#### Section 36 appeal

10. In the light of my findings in respect of Notice B I have regarded the Section 36 appeal as seeking permission for the retention and completion of the partially completed dwelling. From the representations made and my observations during my visit the issue on which I assess the appeal is the effect on the countryside of erecting the building in this rural location and whether there are special reasons requiring your client to live on his holding.

11. The dwelling is sited beyond the made up part of Half Moon Lane and its access is to the track in which the road continues southwards. There is some straggle of development along the road to the north towards the village but my impression is that the location is properly associated with the countryside to the south. Although not generally prominent to view the house is seen from the track and from the public footpath which crosses your client's holding. In my opinion it is an alien feature in the landscape and its presence adversely affects the open character of the countryside. Bearing in mind the restrictive policies aimed at protecting this rural area I do not consider planning permission is justified without special reason.

12. You claim that your client has an absolute need to have a home on his farm which provides his only source of income; and you maintain that his farm is viable in that it has enabled him to enjoy a sufficient livelihood by reason of his competency. However in assessing the need for your client to live on his holding it is, as explained in the Annex to Circular 24/73, the need of the farming enterprise which has to be taken into account rather than that of your client. The few animals, including some horses, on the holding at the time of my visit did not seem to me to go to the making of an agricultural enterprise of substance and I do not find reason to dissent from the recent conclusions in the Ministry of Agriculture, Fisheries and Food appraisal that the holding is not at present a viable unit, nor capable of supporting anticipated stocking levels. I note your interpretation of the meaning to be given to viable but I agree the council's view that in the planning sense in which this appeal is being considered the criteria in the Circular should be applied. The history of the site shows that over the past few years a number of applications for some form of residential accommodation on the site have been considered, and various agricultural appraisals made. Opportunity has also been given for a 5 year period of residential occupation to establish and demonstrate that the holding can be made viable. I do not think that the present circumstances, which also include a reduced area of landholding, point to any successful resolution of the problems of which your client has been made aware in recent years. My conclusion is that there is insufficient reason to justify a permanent dwelling on the site and the harmful effect of its presence on the character of the countryside should not be accepted. The appeal will therefore be dismissed.

#### Notice A

13. In this appeal the store building, erected under permitted development rights, has been converted to provide residential accommodation for your client. In your later submissions you refer to this unit as a temporary dwelling and seek its continued use pending completion of the permanent dwelling. These descriptions differ from my interpretation of the appeals and I refer to paragraph 5 above. Consequent to my dismissal of the Section 36 appeal and for the avoidance of doubt I shall regard the Notice A appeal as being for the continued residential use of the store building.

14. The same issues apply generally in this case as those on which I have assessed the Section 36 appeal. As a residential building I consider its presence also to be an intrusion into the countryside for the same general reasons. Although less prominent and, by its construction, merging in more readily with the other agricultural buildings in the complex, the public footpath passes close by it. In my opinion the character of the countryside is adversely affected by the residential use being carried on in the building and, again, bearing in mind the restrictive policies, special justification is necessary if the change of use is to be accepted. The agricultural circumstances of the holding remain the same in respect of the need for your client to live on his land, but the scope of the enterprise is reduced by taking the building out of agricultural usage; and it is to be noted that it was the agricultural considerations which provided the reason for the building to be erected without planning permission. Now that the Section 36 appeal has been dismissed your submission that your client be permitted to live in the store building until the permanent dwelling is completed no longer carries weight. I have taken into account the encouragement given to small businesses in recent government circulars, including Circulars 14/85 and 22/80, and I note that the council has also had regard to these matters. But the considerable past history in the representations does not convince me that any substantial progress has been made towards resolving the agricultural involvement in the land. And the fact that your client has no other home is not in my view an overriding reason in itself for the store building to be converted into residential use. My conclusion is that planning permission for the change of use should not be granted.

15. On ground (h) you ask for an extended period of time for your client to continue to have a presence on the farm, which is necessary for him to maintain his holding in a viable state. The council deduces from a letter written by your

client in October 1985 that his family are living elsewhere and there is no evidence to show why the period allowed should not be sufficient to find alternative accommodation. I have already concluded that the continued presence of your client on the farm is not justified and ground (h) is concerned only with the period of time necessary to implement the requirements of the notice. In my opinion the 9 month period specified for complying with the notice is not unreasonable and the appeal on ground (h) fails.

16. I have taken into account all the other matters raised in the written representations and am of the opinion they do not outweigh the considerations on which I have based my decisions.

#### FORMAL DECISIONS

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

##### Notice A

I hereby dismiss the appeal, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under Section 88B(3) of the amended 1971 Act.

##### Notice B

? I hereby ~~dismiss~~ <sup>allow</sup> the appeal and direct that the enforcement notice be quashed.

##### Section 36 appeal

I hereby dismiss the appeal.

18. 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

*R.P. Dannreuther*

R P DANNREUTHER  
Inspector

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RIGHTS OF APPEAL

- (a) On an enforcement appeal (except any decision to grant planning permission on the deemed application under section 88B(3) of the Act)

An appeal against the decision given in the accompanying letter on the enforcement notice appeal may be made to the High Court on a point of law under the provisions of section 246 of the Town and Country Planning Act 1971. Any appeal must be made within a period of 28 days of the date of receipt of this letter (unless the period is extended by the Court).

- (b) i. On a decision to grant planning permission on the deemed application under section 88B(3) of the Act  
ii. On any appeal under section 36 of the Act

Section 245 of the Town and Country Planning Act 1971 provides that a person who is aggrieved by the decision given in the accompanying letter (on the appeal made under section 36 of the Act/to grant planning permission on the deemed application), may challenge its validity by an application to the High Court within 6 weeks from the date of this letter. The grounds upon which an application may be made to the Court under section 245 are that:-

1. the decision is not within the powers of the Act (that is, the Inspector appointed by the Secretary of State has exceeded his powers); or
2. any of the relevant requirements have not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

The "relevant requirements" are defined in section 245 of the Act: they are the requirements of that Act, the Tribunals and Inquiries Act 1971 (or any other enactment replaced thereby) and the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts. This includes the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1974 (SI 1974 No 420); the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981 (SI 1981 No 1743); and the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 (SI 1981 No 1742).

A person who thinks there may be grounds for challenging the decision should first seek legal advice.

INSPECTION OF DOCUMENTS - Only on appeals decided following a local inquiry.

Under the provisions of rule 16(2) of the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1974, and rule 16(5) of the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981, any person entitled to be notified of the decision given in the accompanying letter may apply to the Secretary of State, in writing, within 6 weeks of the notification of decision, for an opportunity of inspecting any documents, photographs and plans listed in the notification. Any application under this provision should be sent to the address from which the decision was issued quoting the Department's reference number shown on the decision letter and stating the proposed date and time (in normal office hours) for the inspection. At least 3 days' notice should be given, if possible.