



The Planning Inspectorate

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Your Reference:
KEEN/MRH/GB
Council Reference:

PLANNING DEPARTMENT			
DACORUM BOROUGH COUNCIL			
4/0397/96			
Our Reference			
TV/APP/C/96/A1810/642350			
Date:			
DOP	03 APR 1997	Ack.	File

Dear Sir

Received -4 APR 1997

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6,
PLANNING AND COMPENSATION ACT 1991
APPEAL BY MR J KEEN
LAND AND BUILDINGS ADJOINING GOWER'S YARD (KEEN'S YARD) REAR
OF WESTERN ROAD, TRING, HERTFORDSHIRE

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 mentioned land and buildings. I have considered the written representations made by you and the Council and also those made by Tring Town Council and other interested persons. I inspected the site on 10 March 1997.

THE NOTICE

2. (1) The notice was issued on 13 March 1996.
- (2) The breach of planning control as alleged in the notice is without planning permission, change of use of land from light industry (Class B1(c)) to use for motor vehicle repairs.
- (3) The requirements of the notice are to:
 - (i) Remove all equipment, fixtures and fittings from the site connected with the commercial motor vehicle repair activities.
 - (ii) Cease all commercial motor vehicle activities at the site.
- (4) The period for compliance with these requirements is by 1 May 1996 after this notice takes effect.

NOTE

ALSO REFER TO

FILE 4/0397/96 for further details.

GROUNDS OF APPEAL

3. Your client's appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act as amended by the Planning and Compensation Act 1991.

SITE DESCRIPTION AND BACKGROUND TO THE APPEAL

4. The appeal site is located to the north-west of Western Road and is served by an unmade access road from Miswell Lane. The access runs along the ends of the rear gardens of houses in Goldfield Road. The nearest houses to the north-west are some 20 metres from the site boundary, and those to the north-east are some 35 metres away. To the south-west is the Post Office sorting office and to the north-east between the appeal site and the rear gardens of houses in Goldfield Road is a yard and buildings used for vehicle repairing and spraying. To the south-east is a disused coal yard which has access from Western Road. In addition to the appeal premises the access track serves the vehicle repair and spraying premises, a printing works, a small studio and a builders yard.

5. The appeal site was formerly a builders yard and in 1985 a storage building was permitted. In 1992 permission was granted for light industrial use, limited to Use Class B1(c) in order to safeguard the amenities of the adjoining residential area.

6. Mr Caterer, who leases the site from your client Mr Keen, began using the premises for his vehicle repair business in February 1994. He applied for planning permission to regularise the unauthorised use, and permission was refused. In August 1995 an appeal against the refusal of planning permission was dismissed, on the grounds of harm to residential amenity due to noise emanating from the building. The Inspector stated in paragraph 10 of his decision letter that allegations that noise and disturbance arise from the traffic movements to and fro along the access track had not influenced his decision, as such movements would occur in connection with the permitted light industrial use of the building. The Inspector considered the question of imposing conditions requiring acoustic insulation and other works to reduce noise, including your client's agreement to keep the doors closed while power tools were being used. He concluded that in the absence of any information about the feasibility or cost of such works, and the difficulty of ensuring compliance with conditions, it would be inappropriate to approve the development subject to conditions.

The appeal on ground (a)

7. Since that appeal decision the Environmental Health Department of the Council has been involved in discussions with Mr Caterer and a series of noise reduction measures have been agreed. These include insulating the doors, which are to

remain closed when power tools are in use, noise attenuation measures to the compressor and its relocation within the building, the use of electric powered tools, and the installation of an extractor fan in an appropriate location. No work would take place outside the building. Council officers are prepared to recommend that the use should be approved subject to noise reduction conditions, and a second planning application to regularise the use was before the Council at the time of my visit.

8. The Council's statement says that this application remains undetermined, and this is not due to concerns about the measures for noise reduction at the site itself, but for reasons relating to the effect of the use of the access track from Miswell Lane. The reason the application has not been approved is that discussions are continuing about the prospect of the access track being improved in order to better serve the businesses which use it and to reduce noise, dust and disturbance to adjoining residential occupiers which arise from its poor and uneven surface. The Council maintains that improvements to the track are justified in connection with this development as the car repair use is likely to generate more traffic than a light industrial use, and Policy 28 of the Dacorum Borough Local Plan (April 1995) includes a requirement for the rear service road to be upgraded. The implementation of this proposal depends on agreements made in connection with planning applications, such as the one currently before the Council, as no public funds are available.

9. The Council has introduced a new argument by referring to the need to improve the access track. This was not referred to in the reasons for serving the notice, although the Local Plan was already approved at that time. In its statement submitted in connection with this enforcement appeal the Council argues that although the approved light industrial use could lead to some disturbance from the use of the track, the traffic associated with such use would be less than that associated with the motor vehicle repair activities. Mr Caterer states that 12 vehicles per day are generated by the use. Residents refer to a greater level of activity, although no alternative indication of numbers is given. Clearly the particular type of light industrial use that might occupy the premises in conformity with the planning permission could vary in the amount of traffic generated, but vehicle repairs inevitably generate a relatively high proportion of traffic movements, including road testing. Rather than concluding that this likely increase in traffic weighs against the approval of the vehicle repair use, the argument is used by the Council to support the case for the upgrading of the road in accordance with Policy 28 of the Local Plan.

10. Your client is willing to enter into a legal agreement to upgrade the track and discussions are continuing with the Council as to the extent of the work required. There may be benefit to be derived from the making up of the access track, but if it is necessary to accept a use which is likely to

generate additional traffic in order to achieve this, it seems to me that this must detract from the overall benefit. I note that in the Committee report that recommended approval to the application for the light industrial use of the building, (formerly a builders yard), which is appended to the Council's statement, it is stated that "whilst the lengthy access from Miswell Lane could be upgraded, it would not be reasonable to request such extensive and costly works in connection with a simple change of use which is unlikely to result in a materially different level of traffic generation." In view of the uncertainty surrounding this matter I consider that the determining issue in deciding this appeal is the likely level of noise generated by the vehicle repair activity itself.

11. I appreciate that Mr Caterer has made some progress in agreeing conditions with the Council, and I am sure that some reduction in the level of noise could be achieved, particularly as a result of the agreement to convert to electric power tools from compressed air operated tools. However, the Inspector who dealt with the first appeal and local residents have expressed reservations about the feasibility of keeping the doors closed while power tools are being used. I share those reservations. This is an important consideration, as the two roller shuttered doors face directly towards the rear of the houses in Goldfield Road. Whilst I do not doubt your client's intentions to comply with this undertaking, I consider that it would be difficult to effectively enforce, as the doors provide the only means of vehicles entering and leaving the building. It is unlikely that all noisy activities within the building would cease when the doors needed to be opened. Also there would still be a temptation for them to be left open in hot weather, which is precisely the time that nearby residents might be expected to be enjoying the use of their gardens. Your client intends to install a mechanical extractor to overcome the problem of the doors remaining closed, but nevertheless in the relatively confined space of the workshop working conditions are likely to be fairly unpleasant in hot weather, and the temptation to leave the doors open will remain.

12. I conclude that due to its design and position within the site an unacceptable level of noise is likely to continue to be generated by the activities within the building, albeit intermittently, and because of its close proximity to adjoining dwellings the site is unsuitable for use for vehicle repairs. I accept that there is already a vehicle repair business between the appeal site and the rear of the houses to the north-east, but any noise from the appeal site will be in addition to noise generated from that source.

13. In reaching my decision to refuse the deemed application for planning permission I have taken into account all the other matters raised in the representations, but none outweigh the considerations that have led me to my conclusion. The appeal on ground (a) therefore fails.

14. Although there is no appeal on ground (g) I consider that the compliance period in the notice needs to be clarified and extended. The notice refers to 1 May 1996, which was two weeks after the notice came into effect on 17 April 1996. It is necessary to substitute a compliance period for the specific date stated in the notice, as the date has obviously been passed since your client has exercised his right to appeal. I consider the two weeks to be insufficient time to organise the removal of the equipment, let alone find suitable alternative premises. Despite the continuing harm to residential amenity that will result from the continuation of the activity on the site, Mr Caterer, who employs two mechanics and a receptionist, will need time to find alternative premises, and I propose to increase the compliance period to six months.

FORMAL DECISION

15. For the above reasons, and in exercise of the powers transferred to me, I direct that the enforcement notice be varied by deleting the words "by 1 May 1996" from paragraph 5 and the substitution therefor of the words "six months".

Subject thereto I dismiss your client's appeal, uphold the notice as varied, and refuse to grant planning permission on the application deemed to have been made under S177(5) of the amended Act.

RIGHTS OF APPEAL AGAINST DECISION

16. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.

Yours faithfully

David Harrison

DAVID HARRISON BA DipTP MRTPI
Inspector

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