



The Planning Inspectorate

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Received

26 MAY 1993

Comments

Ack.

Admin.

File

Your Reference

dk/cas/298w

Our References

T/APP/F/92/A1910/625698

T/APP/A1910/A/92/214210

Council Reference

4/1479/92EN & 4/1024/92

Date 24 MAY 93

Gentlemen

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990: SECTION 39 AND SCHEDULE 3

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6

PLANNING AND COMPENSATION ACT 1991

APPEALS BY MRS B GREEN AND MR R PHILBEY

BUILDING AND LAND AT THE GREEN DRAGON PUBLIC HOUSE FLAUNDEN HERTS

1. I have been appointed by the Secretary of State for the Environment to determine your clients' appeals against a listed building enforcement notice issued by the Dacorum Borough Council, and a refusal of planning permission by that Council, concerning the above building. I have considered the written representations made by you, by the council, and by other interested persons. I made an accompanied visit to the building on 11 May 1993.

2. a. The enforcement notice was issued on 4 November 1992.

b. The contravention of listed building control alleged in the notice is the alteration of the building by the partial construction of a brick built conservatory, without the grant of listed building consent for those works.

c. The requirements of the notice are to remove the partly constructed building, together with any related materials.

d. The period for compliance with the notice is 2 months from the date on which the notice takes effect.

e. The appeal was made on the grounds set out in Section 39(1)(e)(g) and (h) of the 1990 Act.

3. Planning permission was refused for the construction of a conservatory, manifestly the same building as that partially constructed.

4. The Green Dragon is a much extended but nevertheless very pleasant building alongside the main road passing through the small settlement of Flaunden. The extensions so far have been executed in strictly traditional style, blending well with the original core of the building. Further substantial extensions have been granted planning permission, but not yet carried out. The placing of this conservatory overlaps part of the permitted,

but as yet unbuilt, extension, and there has been some correspondence between you and the Council, and shown to me, as to whether a new permission needs to be obtained for the design modifications that will be required to this proposed extension. I consider that I can deal with these appeals without needing to come to any conclusion on that matter, which I regard as being between your client and the Council.

5. That portion of conservatory now constructed consists of brick walls up to about eaves height, and including 5 windows not shown on the submitted plans. The bricks used do not exactly match those used in the rest of the building and its various extensions.

6. The appeal on ground (e) and the planning refusal. The difference between you and the Council concerns the aesthetic merits of the proposed structure relative to the listed building. I agree that this is the issue to be decided, bearing in mind the nature of the business carried out in the building, a public house. I accept as given that the accommodation is required for the business, although it appears to me that to call it a conservatory does not reflect its purpose, a children's playroom.

7. In my subjective opinion this proposed addition to the building does not have the same traditional character that the other extensions have retained. The exposed side and rear facades of the conservatory/playroom seem to me to be not well assimilated into the overall design of the public house by reason of their somewhat awkward connection to the rest of the building. In particular, the gable end sits very badly beside the adjoining single storey portion, and the canted front wall does not link well with the side of the main building. If a room of this size needs to be attached to the building, I consider that greater respect should be paid to the aesthetic merits of the listed structure and a more harmonious design produced. This may perhaps be in a form not necessarily of a conservatory. The appeal on ground (e) and the appeal against the refusal of planning permission both fail.

8. The appeal on ground (g). You say that the structure could be modified so as to avoid its complete removal, or at most the notice need only require the removal of the walls. The Council do not address this point, but I agree with you that an alternative structure could be placed on the foundations of the present building, and be more in keeping with the main building. I will amend the requirements of the notice accordingly, but otherwise I consider that the requirements are not excessive, bearing in mind the harm done to the character of the listed building. The appeal on this ground fails.

9. The appeal on ground (h). I do not accept that more than 2 months is needed for the removal of these short lengths of wall, even if your client wishes to negotiate an alternative scheme with the Council. The appeal on this ground fails.

10. I have taken account of all other matters put to me but do not find that they cause me to come to any different decision.

FORMAL DECISIONS

The listed building enforcement notice appeal. T/APP/F/92/A1910/625698

11. For the above reasons and in the exercise of the powers transferred to me, I hereby direct that the notice be varied by the deletion of Schedule 2 and the substitution therefor of the following Schedule 2:

Remove all of the partially constructed building with the exception of the foundations and oversite works only.

Subject to that variation, I uphold the notice, dismiss your client's appeal, and refuse to grant listed building consent for the retention of the works undertaken in contravention of Section 7 of the Act.

The appeal against the refusal of planning permission. T/APP/A1910/A/92/214210

12. For the above reasons and in the exercise of the powers transferred to me, I hereby dismiss your client's appeal.

RIGHT OF APPEAL AGAINST DECISIONS

13. 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

P W Robinson

P W ROBINSON Architect
Inspector

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**APPEAL TO THE HIGH COURT AGAINST
AN INSPECTOR'S DECISION ON AN ENFORCEMENT
NOTICE APPEAL OR ASSOCIATED PLANNING APPEAL**

An Inspector's decision on an enforcement appeal is final, unless it is successfully challenged in the High Court. Neither the Inspector nor the Secretary of State can amend or interpret the decision. It may only be reviewed if it is remitted to the Secretary of State, by the Court, for re-determination or re-consideration.

Anyone thinking of challenging an Inspector's decision is strongly advised first to seek legal advice. The following notes are intended as general guidance only.

An appeal may be made to the High Court under either or both sections 288 and 289 of the Town and Country Planning Act 1990. Different time-limits, which are explained below, apply to each type of appeal.

a) Appeals under section 288 of the 1990 Act

Section 288 provides that a person who is aggrieved by any decision to grant planning permission on the deemed application in an enforcement notice appeal, or by the decision on an associated appeal under section 78 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

1. the decision is not within the powers of the Act;
or
2. any of the "relevant requirements" has not been complied with.

A challenge on either of these grounds must be made within six weeks of the date of the accompanying decision letter. "Leave" of the High Court is not required for this type of appeal.

The "relevant requirements" are defined in section 288 of the 1990 Act and are the requirements of:

- a) the Town and Country Planning Act 1990
- b) 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. These include:

- i) the Town and Country Planning (Inquiries Procedure) Rules 1988 (SI. 1988 No. 944);
- ii) the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987 (SI. 1987 No 701);
- iii) the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 (SI. 1992 No 1903); and
- iv) the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991 (SI. 1991 No 2804, as amended by SI 1992 No 1904).

Copies of these may be obtained from HMSO Bookshops.

b) Appeals under section 289 of the 1990 Act

Section 289 provides that the appellant, the local planning authority, or any other person having an interest in the land to which the enforcement notice relates, may appeal to the High Court "on a point of law" against the Inspector's determination of an enforcement notice appeal.

An appeal under section 289 may only proceed with the leave of the Court. An application for leave to appeal must be made to the Court within 28 days of the date of the Inspector's decision, (unless the period is extended by the Court).

The appeal procedure involves the submission of what is called a "Notice of Motion" to the Crown Office in the Royal Courts of Justice. You are strongly recommended to consult a qualified legal adviser about this procedure and its estimated cost to you.

INSPECTION OF INQUIRY DOCUMENTS

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 notification, for an opportunity to inspect any documents, photographs or plans appended to the decision. These will be listed at the end of the Inspector's decision letter. Your application should be sent to Room 1404, Colligate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference number and stating the date and time (in normal office hours) when you would wish to make the inspection. Please give at least 3 days' notice and include a daytime phone number, if possible.

Parties have a right to inspect the documents under the provisions of rule 17(3) of the Town and Country Planning (Inquiries Procedure) Rules 1988, and rule 20(3) of the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992.

PLANNING INSPECTORATE AGENCY
Department of the Environment

August 1992