The Planning Inspectorate

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0117 - 987 8927
Switchboard 0117 - 987 8000
Fax No 0117 - 987 8139
GTN 1374 - 8927
E-mail ENQUIRIES.PINS@GTNET.GOV.UK

R A Emery Esq MRTPI DipTP
2 Dormers
Flaunden Lane
Bovingdon
Hemel Hempstead
Herts
HP3 0QA

Your Reference: 100/166/97
Council Reference: 4/1523/96EN
Our Reference: T/APP/C/96/A1910/645209
Date: 30 OCT 1997

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY MR R LAMBDEN
LAND AND BUILDINGS AT POUND FARM, TROWLEY HILL ROAD, FLAMSTEAD, 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 an interested person. I inspected the site on 21 October 1997.

THE NOTICE

2. (1) The notice was issued on 8 November 1996.

(2) The breach of planning control as alleged in the notice is the erection of a dwelling and triple garage.

(3) The requirements of the notice are -

(i) Remove all fixtures and fittings which comprise the bathroom and kitchen.

(ii) Alter internal layout to fully conform to that granted planning permission on 11 November 1993 reference 4/1244/93FH.

(iii) Amend external elevations to fully conform with that granted planning permission on 11 November 1993 reference 4/1244/93FH.

(4) The period for compliance with these requirements is 6 months.

GROUNDS OF APPEAL

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

THE GROUND (B) AND (C) APPEALS

4. The background is that on 11 November 1993 the Council granted planning permission for the erection of a building. The approved plans showed the siting of the building, and the accommodation proposed for the ground and first floors. The ground floor plan indicated an L-shaped space to be used as a triple garage and a storage area, a lobby and staircase. The first floor plan indicated an open area marked "playroom" connected by a doorway to space, not annotated, immediately above the storage area shown on the ground floor plan. Conditions attached to that permission restricted use of the building to purposes incidental to the enjoyment of Pound Farm as a dwellinghouse, and prohibited alterations or additions to the building without express written permission of the Local Planning Authority.

5. In December 1994 planning application was made for approval of revised plans showing a ground floor kitchen in place of the storage area approved, and on the first floor 2 "games rooms" and a shower room. The Council say that this application was effectively for the retention of the development as constructed, which was to all intents and purposes a self-contained dwelling with a triple garage. Permission was refused on the ground that the development would conflict with Green Belt policy applicable in the village of Flamstead.

6. The building that now exists comprises on the ground floor a triple garage; a lobby connected to a fully fitted kitchen, and a staircase. On the first floor there are two rooms and a room fitted with a WC suite, pedestal basin, shower enclosure, and a wall mounted water heater. There are wall mounted electric heaters elsewhere in the rooms. Externally, there is a window lighting the kitchen, where none was indicated on the approved plans; and there is a television aerial mounted above the roof. The whole building is located some 2 metres to the west of the position indicated on the approved plans.

7. You say that the building is not, and is not intended to be, used as a dwelling; but it is used for purposes (for recreation, fitness and children's play) ancillary to the occupation of Pound Farm as a dwelling; therefore you say that the Council are incorrect in their allegation that a dwelling has been erected. The Council say that the building is not that for which planning permission was granted; it differs both internally and externally, and it is to all intents and purposes a dwellinghouse.

8. I consider that in this respect the arguments of the Council are the stronger. The building as it now exists has all the attributes of a dwelling; there are facilities for the preparation and cooking of food, for bathing, and there is available space that could be used as a living room and a bedroom. I am in no doubt that any reasonable person, viewing the premises as a whole, would come to the conclusion that the building constitutes a dwellinghouse and triple garage irrespective of how it is at present being used. Therefore I consider that, as a matter of fact, a dwelling has been erected as alleged by the Council. Whether its provision resulted in a breach of planning control falls to be considered on Ground (c), but the Ground (b) appeal fails.

9. Turning to the Ground (c) appeal, you say that the minor variations from approved plans insofar as they affect the external appearance of the building are not material, so did not require planning permission. The internal alterations, you claim, were carried out after the building was substantially completed; and did not constitute development by virtue of Section 55(2)(a). Therefore you say that the building is that which was approved by the Council, and accordingly is subject to the condition imposed concerning its use.

10. The Council say that the building as erected is not that for which planning permission was granted; it is an unauthorised building that includes a dwelling, and the development undertaken is not subject to the conditions imposed on that permission.

11. In my opinion the building which now exists is not that for which planning permission was granted. Its position is different from that which was approved, there is a window to the kitchen in a position where none was shown on the approved plans, and the works as a whole have resulted in a building which has all the characteristics of a dwellinghouse and triple garage. I consider the building as a whole is materially different from that which was approved, which was for garage, storage and playroom purposes.

12. As you know, in an enforcement appeal such as this, it is for the appellant to establish the facts upon which he relies. I do not consider that the evidence has established that, as a matter of historical fact, the building as approved was substantially completed before works were initiated to instal the kitchen and shower room together with water and drainage services. Your client's application for planning permission for a variation to the approved plans was made just over a year after the initial grant of planning permission, and no evidence has been given to refute the Council's statement that "the application was effectively for the retention of the development as constructed". I consider that on the balance of probabilities the building as it now exists resulted from a single set of building operations. My findings are that the erection of the building constituted development requiring planning permission; none has been granted, so there has been a breach of planning control as alleged, and accordingly the Ground (c) appeal also fails.

THE GROUND (A) APPEAL

13. As this appeal and the deemed application relate to the same matter I propose to deal with them together. I need to determine these matters in accordance with the provisions of the development plan, unless other material considerations indicate otherwise. In the adopted Dacorum Borough Local Plan the appeal premises are within a "selected small village" included in the Metropolitan Green Belt. The policies I consider to be of most relevance to the issues raised by this appeal are Policies 3 and 4 of the Local Plan. The former reflects national policy of a general presumption against inappropriate development in the Green Belt, and states that only within selected small villages will any further development be permitted. Policy 4 deals with such villages, and states that small-scale residential infilling will be permitted where the applicant can prove it meets a local need of the village or adjoining countryside. No claim has been made that the dwellinghouse erected is necessary to meet a local need. Therefore I consider that the main issue is whether there are very special circumstances sufficient to justify its retention as an exception to Green Belt policy.

14. You point out that the building is within the single planning unit of Pound Farm; it has not been used as a separate dwellinghouse, and there is no intention that it should be so used.

Your client would be willing to enter into an agreement to this effect, or a condition could be imposed requiring that the building may be used only for purposes incidental to the occupation of Pound Farm as a dwellinghouse. You say that the enforcement notice does not require the demolition of the building; so if the notice were to be upheld, it would be open to your client later to re-instal the kitchen and bathroom as this would not constitute development by virtue of Section 55 (2)(a).

15. The Council do not consider there to be any special circumstances sufficient to justify the setting aside of the presumption against the development. They do not consider the future use of the building could satisfactorily be controlled by either a legal agreement or a condition, because of the location within the site and its separateness from the principal house.

16. I do not consider it would be sensible to grant retrospective planning permission for the erection of a dwellinghouse subject to a condition or an agreement that it should not be used as such. Nor do I consider it would be sensible, or even likely, that if the notice were to be upheld your client would later go to the further expense of re-installing a kitchen and shower-room which would facilitate use of the building as an independent dwellinghouse when he has no intention of instituting such a use, and knowing that such a use would be unlawful. . Therefore, despite the meticulous arguments which you have advanced, I do not find there to be very special circumstances sufficient to justify retention of the dwellinghouse as an exception to Green Belt policy. In my judgement the development carried out conflicts with the provisions of the development plan, and there are no material considerations of such weight to indicate its approval. The Ground (a) appeal also fails, and I do not propose to grant planning permission on the deemed application.

THE GROUND (F) APPEAL

17. You say that the difference in the siting of the building and the external alterations from the details shown on the approved plans are not material matters. The Council say the requirements are reasonable and necessary to overcome the objections to the building.

18. It seems to me that, as you say, the alterations which have been made to the exterior of the building are not of any great importance. Variations from the details shown on the approved plans are that a rectangular velux-type window has been installed horizontally instead of vertically; the garage doors are slightly wider; a window has been installed in the eastern elevation, in a position where it is not visible from any vantage point outside your client's land; and the building has been re-sited some 2 metres westwards, but this has had no adverse effect on amenity. I consider that it was the installation of the kitchen and shower-room, and variations to the internal layout, which contributed most to the material change in the character of the building from that which was approved. In my judgement, it would be reasonable to regard the alterations to the exterior as non-material amendments which could reasonably be approved as minor variations from the approved plans. I therefore propose to vary the requirements of the notice to omit sub-paragraph (iii) of Paragraph 5, and to reflect the fact that a shower unit, and not a bath, has been installed in the first floor room. To this extent, your client's appeal succeeds. When the requirements of the notice have been complied with, permission for the variations from the approved plans to the exterior of the building will be treated as having been granted by virtue of Section 173(11).

THE GROUND (G) APPEAL

19. You say that the equipment installed would be difficult to remove and market, and that the time for compliance should be extended to at least one year. The Council consider that the works could reasonably be done in 6 months.

20. I consider that 6 months would be ample time for your client to arrange for the execution of the works to the interior of the building; and that I would not be justified in extending this period because of any difficulties in marketing the items which will need to be removed. This ground of appeal also fails.

GENERALLY

21. I have considered all the other matters raised in the written representations; however, I do not find any of them, either on their own or cumulatively, to be of sufficient weight to change the balance of my conclusions.

FORMAL DECISION

22. For the above reasons, and in exercise of the powers transferred to me, I direct that the enforcement notice be varied by the deletion in its entirety of Paragraph 5 and the substitution therefor of the following requirements -

5. WHAT YOU ARE REQUIRED TO DO

(i) Remove all fixtures and fittings which comprise the shower-room and kitchen.

(ii) Alter the internal layout to conform fully to that granted planning permission on 11 November 1993 reference 4/1244/93FH.

Time for compliance: 6 months after this notice takes effect.

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

23. 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

P J Roberts FRICS
Inspector

The Planning Inspectorate

An Executive Agency in the Department of the Environment, Transport and the Regions, and the Welsh Office

RIGHT TO CHALLENGE THE DECISION ON AN ENFORCEMENT APPEAL

The attached enforcement appeal decision is final unless it is successfully challenged in the Courts on a point of law. If a challenge is successful the case will be returned to the Secretary of State by the Court for redetermination. However, it does not necessarily follow that the original decision on the appeal will be reversed when it is redetermined.

You may seriously wish to consider taking legal advice before embarking on a challenge. The following notes are provided for guidance only.

Depending on the circumstances, an appeal may be made to the High Court under either or both sections 288 and 289 of the Town & Country Planning Act 1990. Section 289 enables the decision on any of the grounds of the enforcement appeal to be challenged. Section 288 enables only a decision to grant planning permission or discharge conditions or the decision on any associated S78 planning appeal to be challenged. Success under Section 288 would not alter the appeal decision on the enforcement notice itself. The notice would remain quashed or upheld unless successfully challenged under Section 289. There are other significant differences between the two sections, including **different time limits**, which may affect your choice of which to use. These are outlined below.

Section 289 only applies to the appellant, the local planning authority or anyone with an **interest**[1] in the appeal site. If Section 289 does not apply to you but you want to challenge an enforcement appeal decision on grounds (b) to (g), or the decision to quash the notice, you may make an application for judicial review. You should seek legal advice promptly if you wish to invoke this non-statutory procedure.

CHALLENGES UNDER SECTION 289 OF THE 1990 ACT

Section 289 provides that the appellant, the local planning authority or any person having an interest[2] 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 the enforcement notice appeal.

An appeal under Section 289 may only proceed with the leave (permission) 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.

CHALLENGES UNDER SECTION 288 OF THE 1990 ACT

Section 288 provides that a person who is aggrieved by the decision to grant planning permission or discharge conditions or by any 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:-

i) the decision is not within the powers of the Act; or

ii) any of the 'relevant requirements' have not been complied with ('relevant requirements' means any requirements of the 1990 Act or of the Planning & Tribunals Act 1992, or of any order, regulation or rule made under either Act).

1 To have an interest in the land means essentially to own, part own, lease and in some cases, occupy the site.

2 See 1

The two grounds noted above mean in effect that a decision cannot be challenged merely because someone does not agree with the Inspector's judgement. Those challenging a decision have to be able to show that a serious mistake was made by the Inspector when reaching his or her decision; or, for instance, that the inquiry, hearing or site visit was not handled correctly, or that the appeal procedures were not carried out properly. If a mistake has been made the Court has discretion not to quash the decision if it considers the interests of the person making the challenge have not been prejudiced.

It is important to note that under Section 288 an application to the High Court must be lodged with the Crown Office **within 6 weeks** of the date of the accompanying decision letter. This time limit cannot be extended. 'Leave' of the High Court is not required for this type of challenge.

If you require further advice on making a High Court challenge you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL. Telephone: 0171 936 6000.

INSPECTION OF DOCUMENTS

Any person entitled to be notified of the decision in an inquiry case has a statutory right to view the listed documents, photographs and plans within 6 weeks of the date of the decision letter. Other requests to see appeal documents will not normally be refused. All requests should be made to Room 11/01, Tollgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference and stating the day and time you wish to visit. Please give at least 3 days' notice and include a daytime telephone number, if possible.

COMPLAINTS TO THE INSPECTORATE

Any complaints about the Inspector's decision letter, or about the way in which the Inspector has conducted the case, or any procedural aspect of the appeal should be made in writing to the complaints officer in Room 14/04, Tollgate House, Houlton Street, Bristol, BS2 9DJ quoting the Inspectorate's appeal reference. You should normally receive a full reply within 15 days of our receipt of your letter. You should note however, that the Inspectorate cannot reconsider an appeal on which a decision letter has been issued. This can be done only following a successful High Court challenge as explained in this leaflet.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (THE OMBUDSMAN)

If you consider that you have been unfairly treated through maladministration on the part of the Inspectorate or the Inspector you can ask the Ombudsman to investigate. The Ombudsman cannot be approached direct; reference can be made to him only by an MP. While he or she does not have to be your local MP (whose name and address will be in the local library) in most cases this will be the easiest person to approach. Although the Ombudsman can recommend various forms of redress he cannot alter the Inspector's decision in any way.

COUNCIL ON TRIBUNALS

If you feel there was something wrong with the basic procedure used for the appeal, a complaint can be made to the 'Council on Tribunals', 22 Kingsway, London, WC2B 6LE. The Council will take the matter up if they think it comes within their scope. They are not concerned with the merits and cannot change the outcome of the appeal decision.