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Date: 28 APR 1998

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 & SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY W J AND M MASH LTD, J M CHISHOLM (DECEASED), AND J H CHISHOLM (AMBERS HAULAGE)
LAND AND BUILDINGS AT BOVINGDON AIRFIELD BOVINGDON

1. I have been appointed by the Secretary of State for the Environment Transport and the Regions to determine your clients' appeals against three enforcement notices, one issued by Dacorum Borough Council and two by Hertfordshire County Council, concerning the above mentioned land and buildings. I held an inquiry into the appeals between 20th January and 6th February 1998. At the inquiry mutual applications for costs were made by the appellants and Dacorum Borough Council. These will be the subject of separate letters.

The Enforcement Notices and the Grounds of Appeal

2. Details of the three enforcement notices are summarised in Appendix One to this letter. The appeals against Notices A and C are proceeding on Grounds (a), (c), and (g) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991. The appeals against Notice B are proceeding on Grounds (a) and (d). There is also a challenge to the validity of Notice B.

The Background to the Appeals

3. The former Bovingdon Airfield is an extensive flat area lying to the north-west of Bovingdon. It still retains a number of small buildings and its former control tower, in some cases in almost derelict condition, and there are three wide concrete runways as well as

subsidiary roadways. Much of the land between and around them is grassland but on the eastern side of the site are a number of banks and mounds, some with grass and small trees. Most of this eastern area is owned by W J and M Mash Ltd and contains both of the appeal sites. Beyond the airfield's eastern boundary are the numerous buildings and compounds of The Mount Prison. To the north and west of the airfield the land generally slopes downwards and is primarily rural in character. To the south it is bounded by Chesham Rd (B4505), and beyond that is fairly flat farmland. Vehicular access to the whole area is, or has been, available at three main points, two to Chesham Rd and one to Molyneaux Rd. A public footpath runs across the airfield from east to west and links to others on its boundary.

4. The site was in use during the war as an air base and continued to be used as an airfield until it was closed in 1968. At present various parts are put to a variety of uses, some authorised, others which are unauthorised, some whose status is in dispute, and some uses which operate for temporary periods under provisions of General Development Orders. These uses include a weekly market, go-kart and "banger" racing, an area from which clay has been extracted, various kinds of open storage and, of course, the uses involved in these appeals.

5. The appeal site relating to Notices A and C covers an area of about 0.5 Ha to the south-east of one of the major runways and to the north of an area from which clay has been extracted. Upon it are heaps of various materials rising to a height of several metres, and upon them are a concrete crusher, mobile soil screens and conveyor belts. Also on the site are two portacabins and an old railway carriage. The site relating to Notice B lies to the south-east of the first site, close to the boundary between the airfield and The Mount Prison. This is a flat, roughly surfaced area which was, at the time of my visit, mainly vacant. Some old buildings were at the north end of it.

6. The local development plan for this area has two formal components. The Hertfordshire County Structure Plan (SP) (incorporating Approved Alterations 1991) was approved by the SoSE in 1992. The Dacorum Borough Local Plan (DBLP), was adopted in April 1995. In addition there are five emerging plans (or reviews). An Examination in Public of the provisions of the Herts County Structure Plan Review 1991-2011 (SP Review) was held in March 1997 and the subsequent report of the panel was published in June 1997. The period on deposit of the Council's proposed modifications finished in January 1998. An inquiry into the County Waste Local Plan (WLP) has been held and the Inspector's report was received in August 1997, but no proposed modifications have, as yet, been published. The Herts Mineral Local Plan (MLP) has been subject to two inquiries, the final set of modifications proposed by the County Council were published in October 1997, and a draft text for adoption was placed on deposit in December 1997.

7. An Alterations Package (DBLPAP) to the DBLP, which includes a policy statement for Bovingdon Airfield, was initially approved as supplementary planning guidance, but was changed to form part of the local plan in August 1996. An inquiry into this document was held in spring 1997 and, following the Inspector's report, proposed modifications were published in September 1997 and were placed on formal deposit in January and February 1998. Finally, a consultation draft of the first review (to 2011) of the Local Plan was published in August 1996 but it has not yet progressed much further. I recognise that emerging plans do not carry the same weight as those which have been formally approved.

However, all except the last of those I have referred to have reached a late stage in their emergence, and I regard them as important material considerations in determining the present appeals.

The Appeals against Notices A and C on Ground (c)

8. These enforcement notices are served in the alternative and both the appellants and Hertfordshire C C agree that the planning and legal issues involved are virtually the same. Both invite me to quash one of the notices and determine these appeals on the basis of the surviving notice. I believe this to be the correct way of proceeding. Strictly speaking, the change of use alleged in the notice was authorised by the temporary permission granted so, if there is a breach of control, it arises from failure to comply with Condition 1 of that temporary permission. I shall quash notice C and determine only those appeals against Notice A.

9. The appellants do not dispute that recycling continued after 24th September 1996, but contend that the recycling facility was, and remains, ancillary to the operations authorised under the 1994 permission for "the extraction of clay for brickmaking with restoration using imported fill to grassland and tree planting". In general, the right to use land for some dominant purpose incorporates the right to use it for any purpose which is ancillary to that main use. This is so irrespective of whether reference is made to the ancillary use in either the original planning application or the permission granted, unless it is specifically excluded by the terms of either. In fact, in the present instance no reference was made to recycling except for the need to use a soil screener for up to 28 days in a year, and when the appellants decided to introduce a recycling facility they submitted a planning application to do so. That they did so does not imply that recycling cannot be an ancillary use, but it indicates that neither party regarded it at that time as having been a part of the application for clay extraction.

10. The appellants suggest that because Condition 3 of the permission does not require formal planning permission for the placing on site of portable plant, permission is not needed for the introduction of the plant used in recycling and hence for recycling itself. However, if this line of argument is correct it would imply permission for any process whatsoever, so long as it used portable plant. That seems to me to be stretching the interpretation of Condition 3 beyond reasonable bounds and I reject it. I conclude that recycling was not a part of the application for clay extraction, but I agree with the appellants that this is not of very great relevance in deciding whether, in this case, it is a use ancillary to such extraction.

11. It is, however, both relevant and necessary to decide whether the terms of the permission specifically exclude recycling. Dacorum B C's argument that it does is based upon the terms of Condition 2 which states, briefly, that the operations authorised by the permission should be carried out in accordance with the description in the statement and plans which accompanied the application. I do not agree with them on this point. That qualification applies only to the operations authorised by the permission, and seeks to regulate the manner in which those operations should be carried out. The closest the statement which accompanied the application came to recycling is in the section which dealt with the materials to be imported to fill the void and restore the site. That section was silent as to how (and where) such materials were to be processed. I am satisfied that recycling was not an

operation authorised by the permission, or implicit in the application. Condition 2 cannot, therefore, apply to recycling, and I know of no other terms of the permission which would specifically exclude it.

12. In consequence, whether recycling is an ancillary use in this case remains, as it usually does, a matter of fact and degree based upon the interpretation of the prevailing circumstances. I have looked at the matter in terms of what seem to me to be the three main processes involved in the development permitted, namely the extraction of the clay, the filling of the void created, and the subsequent restoration of the site, which in this case involves some landforming. I recognise, and have taken into account, that in terms of duration these processes have overlapped to a considerable extent.

13. No party has suggested that recycling is ancillary to the first process, i.e. the actual extraction of the clay, and I see no reason to take a different view. No such consensus applies to the second, the refilling of the void, but the appellants' description of the processes involved has not been seriously challenged by the Council. Two streams of material were involved in filling the void, both involving similar volumes of incoming material. In the first, suitable materials were brought to the site by lorry and deposited straight into the void without any on-site processing. In the second, materials were passed (where appropriate) through the concrete crusher and then through the soil screens. The residue, about 10% of the original volume of material, was deposited in the void. The remaining 90% of useable recycled materials was resold or otherwise distributed to other sites in the area.

14. These statistics can be looked at in different ways. The appellants point out that 55% of the materials coming into the site went into the void and that this includes the whole of the residue of the recycled material. I consider it more relevant to note that, of the materials involved in the recycling process, only 10% found a final home on the site, and even that 10% was residue, presumably difficult or uneconomic to sell elsewhere. To express it another way, only 5% of the materials coming onto the site were placed into the void after having passed through a recycling process on site. I note, too, that less than 10% of the material used to fill the void was produced by the on-site recycling facility. In my view the primary purpose of the facility at this stage was to produce recycled materials for sale or use elsewhere, and the contribution made to filling the void was minor and subsidiary to this primary purpose. The void is now filled and all inert materials emanating from the recycling facility are disposed of away from the site. The appellants accept that there is no further need for inert materials on the site.

15. Turning to the final restoration of the site, it is accepted by both parties that there is a need for both subsoil and topsoil. Nonetheless, for the past few years most of the topsoil produced from the soil screens has been disposed of away from the site and no significant amount is stored on the site at present. There are heaps of subsoil which the appellants estimate to represent about 10%-20% of the total volume needed for restoration works. However, much of subsoil produced over the last year or two has, again, been exported from the site. Had the recycling process been ancillary to the clay extraction I would have expected that, at this stage in the life of the development, the plant would have been predominantly devoted to producing materials to be used in restoration works. Instead almost the whole of the materials produced by the concrete crusher, and much of that produced from the soil screens is taken away.

16. The planning permission specifies that the restoration is to be with imported fill and in this regard the permission is typical of many, probably most, permissions for mineral extraction. However, it is by no means typical that the filling and restoration of such sites is achieved using recycled materials, still less materials recycled on the extraction site itself. Such a situation is not unknown, but where it occurs the fact is almost always either made explicit in the application submitted, or the development is subject to a separate planning permission, (as was the case here). I find no good reason to assume, as the appellants invite me to, that permission for mineral extraction carries with it a general assumption that materials for filling it can or will be recycled on site. Nor was I told of any case in which such an assumption had been made, or legally accepted.

17. In the present case I accept that the recycling takes place within the same site as the mineral extraction, that substantial volumes of materials have been used in filling the void and will be used in restoring the site, and that there are functional links between the recycling facility and the clay extraction. Nonetheless, these links are not particularly strong in terms of the uses involved, and taking into account all of the other circumstances I do not consider that it has been established that operation of the recycling facility is or has been ancillary to any part of the clay extraction or subsequent restoration of the site. In my view recycling has been, and remains, a use in its own right, separate from the mineral extraction. Planning permission was granted for it on that basis but it was a temporary permission and I am satisfied that the use has continued in contravention of conditions of that permission. It has not been demonstrated that what has occurred did not constitute a breach of planning control and the appeal on Ground (c) fails accordingly.

The Appeals against Notice A on Ground (a) and the Associated Deemed Application.

The Main Issues

18. From what I have seen, heard and read I consider that there are four main issues in determining these appeals.

a) Whether the development constitutes appropriate development in the Green Belt;

b) The extent to which recycling operations on this site causes harm in terms of visual impact, dust, and noise;

c) The effects of traffic generated by the development;

d) In the event that the development is found to be inappropriate and a source of harm, whether there is a need for waste recycling on this site, or any other matters relating to this case, which would constitute the very special circumstances needed to justify inappropriate development in the Green Belt.

Issue (a)

19. The appeal site is situated within the Metropolitan Green Belt. Policies 1 of the SP and 3 of the DBLP seek to resist development within the Green Belt except for specified types

of development thought suitable to a rural area. Neither policy refers specifically to inappropriate development as such, but their general effect is consistent with the advice in Planning Policy Guidance Note 2 (PPG2) as it was when these plans were adopted. Recycling is not one of the specific types of development listed in either policy as being acceptable within the Green Belt.

20. Since these plans were adopted a revised version of PPG2 has been issued and the SP Review reflects its more up-to-date advice. Policy 4 makes a presumption against inappropriate development and refers to PPG2 as the source of guidance as to what is inappropriate. The main parties at the inquiry agreed that guidance as to whether a recycling facility is inappropriate in this context comes from Paragraph 3.12 of the revised PPG2. I take the same view. This paragraph states that material changes in the use of land within Green Belts are inappropriate unless they maintain openness and do not conflict with the purposes of including land in the Green Belt.

21. It has been suggested to me that "openness" in this context means, simply, free from buildings. However, I know of no authoritative source for such an interpretation and it seems to me to be too limited. If it were true then all uses and operational development not involving buildings would automatically pass the "openness" test and the second sentence of Paragraph 3.12 would not make sense. I would also make it clear that I have borne in mind that the requirements of the enforcement notice do not include a specific requirement to remove the portacabins and railway carriage on the site. It is not for me to determine whether the wording of the other requirements would necessitate their removal or whether, in another interpretation, they would receive a "permission" under Section 173(11) of the Act should the notice be upheld. However, in assessing both Paragraph 3.12 tests, my conclusions allow for the possibility that these structures might remain on the site irrespective of the outcome of these appeals.

22. The concrete crusher, the soil screens, and associated equipment are large items of machinery and can be seen from a considerable distance. Even more prominent in the landscape are the extensive piles of material upon which these machines stand. I estimate that some of these piles are more than 5m higher than the predominantly flat adjoining runway and the average height is at least 3m. I recognise that mounds of comparable height occupy other parts of the former airfield but they are mainly grassy, rounded landforms which are rapidly becoming assimilated in the landscape. They are far less prominent and visually jarring than the piles of waste and reclaimed material upon the appeal site. The latter can be seen to a minor extent from beyond the airfield but they are in very prominent view from the well-used public footpath which crosses it from east to west.

23. I accept that the imminent restoration of the area used for clay extraction will improve the appearance of the site generally, and that the restoration details can be modified to reduce the visual impact of the recycling facility. I accept, too, that some forms of agricultural machinery can be sizeable and visually unattractive. Nonetheless, the proposed recycling facility would still be a large, prominent, and incongruous intrusion into the landscape and I have no doubt that it would significantly reduce the openness of the area in which it is situated.

24. In the context of the second test implied in Paragraph 3.12 it has been suggested that

Bovingdon Airfield is not part of the countryside. However, whilst it hosts some lawful uses not normally found in conventional countryside, these are mainly occasional or part time uses and most of the airfield is open and used for agricultural purposes, even though some of the latter are not very intensive. The appearance of much of the airfield is akin to open pastures and in my view it is correct to regard the whole area as being part of the countryside. A recycling facility such as that involved here reduces the area used, or available, for agricultural or other rural purposes and I have already set out my views upon its visual impact. I am satisfied that it constitutes encroachment into the countryside. As such it conflicts substantially with at least one of the purposes of the Green Belt and I therefore see no reason to examine its effect upon others.

25. I recognise that the text supporting Policy 4 of the SP Review suggests that uses such as recycling on the periphery of a town may be appropriate in the Green Belt where they improve the overall efficiency of the town in a sustainable way. However, it also states that this can only be evaluated in the context of a whole settlement strategy and implies that this is best done in local plans or their reviews. I do not consider that it has much direct relevance in the present circumstances. Taking into account all of the relevant factors I conclude that allowing this use to continue would fail both of the tests implied by Paragraph 3.12 of PPG2, and I conclude that the use of the present appeal site for recycling is inappropriate development within the Green Belt.

Issue (b)

26. The environmental effects of the development which have attracted most complaint fall into three main areas. The first is visual impact, the second dust, and the third noise from the operation of the machinery. There have also been complaints referring to similar environmental effects of lorries on roads leading to the site. I deal with such matters in the context of the third issue I have identified.

27. I have already discussed, in the context of issue (a), the appearance of the recycling machinery and the materials surrounding it. I explained my conclusion that the development affects the openness of the area and, for similar reasons, I consider that the appearance of the site is both unattractive and out of keeping with its surroundings. I accept that some improvements would result from the restoration of the area of clay extraction, and that a landscaping scheme associated with the present development would also help. However, it would take a number of years to achieve substantial improvements and even then the effect would be to soften rather than to conceal. The presence of lorries visiting the site would be almost impossible to effectively conceal or even partially mask. Moreover, the screening itself would be a somewhat incongruous feature in the flat grassland which comprises much of the airfield.

28. Taking all of these matters into consideration I consider that the retention of this development would significantly detract from the appearance of the site and its surroundings. The harm would be visible from roads and houses to the south and west, and from some parts of the developed area of Bovingdon. However, distance and in some cases intervening earth mounds would make the visual impact upon such areas relatively minor. Nonetheless, from the well-used footpath crossing the airfield the damage to the appearance of the area would be obvious and substantial. Many local residents have expressed such a view.

29. The extent to which recycling operations give rise to dust is less straightforward. A large number of Bovingdon people told me of problems they had been experiencing because of dust. They referred to the need to wash curtains and fabrics more often than normal, and sometimes having to wash clean clothes a second time because of dust settling upon them as they were drying on the line. Many told me of cars and window sills covered in dust, and of having to keep windows shut in summer. A substantial number are convinced that dust exacerbates, and sometimes initiates, asthma attacks, and relate how the problem is worse in Bovingdon than elsewhere. In the face of such evidence I have no reason to doubt that the Bovingdon area experiences levels of dust deposits substantially higher than normal. It is also necessary, however, to consider the source of that dust.

30. No local resident was able to say with absolute certainty that your clients' recycling activities were the sole, or even the main, source of that dust. However, several told me of seeing, in dry summer conditions, clouds of dust coming from the area where recycling was being carried out, and from the runway beside that area. I was impressed, too, with evidence from the owner of two Bovingdon properties who described how the closer of the two to the airfield was more thickly covered than that which was further away. A number considered that their problems, in terms of either breathing difficulties or dust deposits, either began or substantially worsened at about the time when the recycling operations began on site.

31. Not everyone could make such a link, and some people's recollection of the beginning of the problem did not coincide with the inception of recycling. I also received differing impressions as to the colour of the dust. Many described it as grey, but others referred to it in different terms, including yellow and brown. However, the strongest evidence against concluding that recycling was the main source of dust comes from the survey commissioned by Dacorum B C. That survey was consistent with an earlier one, and looked specifically at the recycling operations. It concluded that "there is little cause for concern in terms of dust contamination". Furthermore, chemical analysis provided no evidence of any link between dust detected on filters and dust generated by the concrete crushing plant operated by the appellants. I did not observe any undue amounts of dust in Bovingdon during my visits to the area, but I do not regard that as being very significant. It is scarcely likely that much dust would, in any event, be present in damp winter conditions.

32. Taking all of these matters into account I conclude that Bovingdon does suffer more than most villages from the effects of dust, and it seems likely that much of that dust comes from the airfield. However, I am not convinced that recycling is the main source of such problems. The airfield has other areas of bare, or only sparsely grassed, soil, and on the runways are several large piles of earth, lime and manure unconnected with recycling operations. I suspect that a number of airfield activities cause dust in dry, windy, conditions either directly, or by depositing it as dust or mud on the large areas of concrete runway. When these runways are used by large numbers of vehicles visiting the market or the race tracks any such dust will be stirred up and blown away, often by the prevailing west winds towards the village. Several people have described this happening. I accept that the recycling activities contribute towards the creation of dust, but I do not consider that the evidence before me allows me to safely conclude that it is a major contributor. Bearing in mind, too, that waste recycling would be subject to controls under the waste licensing system I do not consider that the possibility of dust generation adds, to more than a minor extent, to the arguments against the proposals.

33. Complaints of noise from the recycling machinery are not as plentiful as those regarding dust, but there have been a considerable number. No quantitative evidence has been submitted by either party. In this instance, however, I was able to make personal observations at various points on and around the airfield on a dry, clear day with very little wind. At the boundary between the prison and the airfield I could hear the recycling machinery in operation, but it was not very noticeable. At other points on the airfield's southern and western boundaries it was virtually inaudible. Most residential areas around the airfield are not particularly quiet, due to the presence of traffic on the roads and the general activity in such areas. I do not consider that noise from the appeal site is likely to significantly affect living conditions in any residential properties. The only effect of such noise would be to reduce the pleasure to be gained by using the apparently popular footpath across the airfield. I do not consider this to be negligible, but it is not major.

34. There have been very few complaints of other environmental effects such as vermin, smoke, vibration etc, at least in terms of the use of the site itself rather than vehicles emanating from it. Having inspected the area and observed the machinery in operation I would not expect such factors to be a significant source of such problems, particularly as the materials involved are almost entirely inorganic and largely inert. Nevertheless, taking into account the three main sources of environmental harm I have discussed, I conclude that the retention of a recycling facility on this site would lead to substantial visual damage and minor environmental harm. Planning conditions might reduce these effects but would not reduce them to negligible levels.

Issue (c)

35. The Council do not suggest that traffic generated by the development exceeds the capacity of the road network to safely accommodate it, or that the access to the site is technically unacceptable. Their case is, briefly, that the additional traffic would exacerbate environmental problems caused by traffic on the area's roads, particularly Chesham Rd as it passes through Bovingdon. The problems they identify are primarily noise, vibration, dust and intimidation by virtue of the size of the lorries. They are supported in this by most of the Bovingdon residents who wrote or spoke at the Inquiry, but many local residents go further. They feel that the increase in lorry traffic would unacceptably increase the risk of accidents involving either other vehicles or pedestrians, particularly children.

36. There was considerable debate at the inquiry as to how many additional trips would result from the use of the recycling centre. Since this would depend upon factors involving future supply and demand, it is impossible to say with certainty how many trips would be involved, even on the basis of a daily average. However, there was some agreement between the parties that the recycling (excluding clay extraction) had, in the past, given rise to an average figures in the order of 25 to 35 movements per day with a maximum in the fifties. The appellants are prepared to accept a condition limiting the combined number of HGV movements into and out of the site to a maximum of 60 per day. The Council's suggestion of a limit of 30 per day seems to me to be unreasonably low for a maximum, bearing in mind that average figures would no doubt be less than that. Assessment of many of the environmental effects of traffic is not very sensitive to the precise numbers involved, but it seems reasonable to me to assume, for these purposes, an average of about 30 movements per day with a maximum of 60.

37. The main parties have entered into a planning agreement, one of whose main provisions is to prevent operation of the recycling facility unless the appellants ensure that vehicles using the facility do so only via the B4505, and do not, in general, use Bovingdon High St. The B4505 is classified by the County as a rural secondary distributor. Breaches of the agreement, or a planning condition governing the number of lorry movements generated, would be relatively easy to detect and the Council could take action against them. Past history has shown that approximately the same number of vehicle trips proceed east and west from the site exit. Thus the recycling facility would generate, on average, in the order of 15 trips per day through Bovingdon with a maximum on any one day of 30 trips. The total traffic flow through Bovingdon in 1996 was about 9000 movements per day of which between 250 and 300 were HGVs. The figure in 1997 rose to about 12000 movements per day, and there is no evidence that the proportion of HGVs had significantly altered.

38. The road through Bovingdon is not particularly wide and I have no doubt that heavy lorries laden with soil or rubble will cause noise and vibration as they pass by. Some of the houses along the B4505 stand very close to the road and this noise and vibration may well cause disturbance to residents. I accept, too, that such lorries must be a cause of worry to parents of children who use this road to go to and from school, and other pedestrians using footpaths beside the road which are not very wide. I am less concerned with mud on the roads and dust from such lorries since effective sheeting and wheel washing can reduce such problems to acceptable levels, and there are powers available to the authority to ensure that such measures are taken. At the time of my site visit I saw no sign of mud on this road.

39. Even without any traffic from the appeal site the B4505 carries a relatively high level of traffic, including HGVs, and this has a substantial environmental impact. I was left in no doubt that this traffic, particularly the HGVs are a cause for serious concern by local residents and I sympathise with that concern. However, traffic generated by the continuation of the recycling facility represents only about 5-7% of that flow and would scarcely ever exceed 10%. This is not an insignificant proportion but I do not consider that this level of extra traffic would lead to more than a minor increase in the ensuing environmental effects. I conclude that traffic generated by the recycling facility adds to the existing harm to the environment but only to a minor extent, and the same applies to the risk of accident.

Issue (d)

40. Briefly recapitulating, I have concluded that the proposed recycling facility would be development inappropriate in the Green Belt, and that its continuation would cause harm, not only by virtue of that inappropriateness in itself, but also in visual and environmental terms. Local policies and national guidelines indicate that in such circumstances planning permission should be granted only if there are very special circumstances sufficient to outweigh such harm and justify inappropriate development within the Green Belt. There are four main factors cited by the appellants in this respect. The first of these, that the development causes insignificant harm, I have already found to be without substance.

41. The second is that there is a need for the development on this site. It is common ground between the main parties that there is a need for recycling facilities within Hertfordshire, and that national guidelines encourage recycling as a preferred means of dealing with waste materials. I agree with both propositions, and I have noted the numerous

letters from local people and companies who use the recycling facility and would wish to see it retained. Both factors were reflected in the pre-inquiry changes to the deposit version of the County Waste Local Plan (WLP), but virtually all of the policies which lend support to proposals for waste recycling accept, either implicitly or explicitly, that due regard must also be paid to the environmental implications of such proposals. It is clear, too, that the plan, and the Inspector who held an inquiry into objections to it, took fully into account the national support for the principles of sustainability and proximity.

42. In discussing policies of the emerging WLP the wording I shall take most account of is that recommended by the Inspector who held the inquiry into objections to the plan. I do not believe that the changes he has recommended would materially alter the aims and provisions of the WLP policies involved in the present appeals. On the basis of these assumptions Policy 12 of the WLP defines areas of search for permanent recycling facilities in a number of locations, four fairly close to Bovingdon, within which permission for such facilities will generally be supported. Policy 13 states that outside these areas of search recycling facilities will be required to comply with a number of additional criteria. The effect of Policy 16 is that recycling facilities in the Green Belt will not be allowed unless they pass the tests of appropriateness set out in PPG2. I note, too, that in dealing with objections to Policy 12 the Inspector states that "I am in no doubt that it would not be acceptable to treat the construction of waste transfer and recycling plants as appropriate development in the Green Belt."

43. As the Council have not yet published their response to the Inspector's recommendations it would not be safe to make firm assumptions as to the final wording of these parts of the plan. Nonetheless, I see no reason to doubt that the WLP, when it is published in its final form, will make adequate provisions to meet the need for recycling facilities. The appellants have casts doubts upon the suitability of most of the areas of search, but it is neither appropriate nor practicable for me to retrace a path already taken by the Inspector who held the inquiry into objections to the WLP. It is evident from his report that he considered such matters in detail and in depth, and considered that the areas of search were, in principle, capable of accommodating recycling facilities.

44. The appellants have also highlighted doubts expressed by the Inspector as to whether the existing proposals of the plan will enable the County's waste strategy to be realised, and referred to his comment that the areas of search defined by Policy 12 will be "in theory" adequate. However, he does not suggest any changes specifically because of these doubts and whilst I recognise their possible validity, I believe that the best way to approach them is to allow the plan to proceed for a few years and then, if necessary, to review the relevant provisions. It appears to me that the WLP Inspector took a similar view. As the WLP has not yet even been adopted it would be wrong at this stage, to assume that its provisions will be inadequate. The fact that the appellants regard a site on any of the areas of search as being too expensive does not mean that every company will take the same view. Again, it is too early to draw useful conclusions on such factors. Taking into account all of these matters I consider that whilst there is a need for recycling facilities in this area, the provisions made to meet that need in the WLP are likely to be adequate, and certainly should not be jettisoned before the WLP has even begun.

45. The third set of circumstances cited by the appellants in favour of the development is that it would not be in conflict with policies of the local development plan. I accept that

some policy areas, for instance those whose aim is to promote employment, would lend support for the development but, on the other hand, I have concluded that it would detract from the aims of policies designed to protect the Green Belt. In the existing development plan there is only one policy which is specifically aimed at waste recycling, namely Policy 23A of the SP. This states that recycling sites should normally be located within or close to urban areas but where, exceptionally, it is proposed within a rural area it should wherever practicable be sited on existing damaged land. Whereas the appeal site is damaged (in this sense) it is only temporarily so and planning conditions are in place to restore it within a relatively short time. In my view the present proposal is in contravention of this policy.

46. I have already discussed policies relating to waste recycling on the emerging WLP. In my view the most relevant policies are 13 and 16, and I believe that, taking the most up-to-date wording available, the present proposal would be contrary to 13 because it would fail to minimise the impact on local environment [Criterion (i)] and is not within any of the preferred areas listed in Criterion (v). It would be contrary to Policy 16 because, for reasons I have discussed earlier, it would fail to maintain openness in the Green Belt and would fail to safeguard the countryside from further encroachment. In summary, the proposals would be in conflict with present and emerging local policies relating to the Green Belt and to the provisions of recycling facilities, which in my view are the most pertinent and important policies relating to these appeals. Without analysing other, less relevant policies, I can reject with some confidence the claim by the appellants that this development does not conflict with relevant policies of the local development plan.

47. The fourth factor suggested by the appellants as very special circumstances stems from the history of the site. Put briefly they suggest that since the Council were happy to accept recycling on this site for a period of years there cannot be compelling grounds for rejecting it on a permanent basis. I reject this view. In my opinion there is a very great difference between tolerating a recycling facility on a site during the period when clay extraction works are being carried out on the same or adjacent land, and accepting it on a permanent basis once those works have been completed. Temporary permissions are unlikely to have a long-term effect on openness or Green Belt objectives or to conflict seriously with local or national policies; in my opinion permanent development in this case certainly would. It may be that reports to committee regarding the applications for temporary permission may sometimes have contained inaccuracies or inconsistencies, but none appeared serious. Even if they had been, I do not see why that should lead me to alter my own assessment of the policy situation. The same applies to other planning decisions made by the Council on this or on other sites.

48. Taking all of these matters into account I conclude that, even in combination, they do not amount to the very special circumstances required to justify the acceptance of harmful and inappropriate development within the Green Belt.

Other Matters

49. In addition to these main issues there are other factors which, whilst not major, have influenced my thinking to some extent. The first is my view that this is a particularly vulnerable part of the Green Belt. Its status as a former airfield and its proximity to Bovingdon make it, understandably, an area where various forms of development have taken place, some with the benefit of permission. Nonetheless, it remains an important part of the

Green Belt and local people have made it abundantly clear how much they value its role as an open area close to their village.

50. Bovingdon Airfield forms one of the three main elements of an alterations package to the DBLP and stresses the importance of retaining the area as Green Belt and opposing the presence of uses seen as being environmentally harmful. This seems to me to reinforce Green Belt policies in other plans and, given the late stage in the AP's emergence, I regard it as a material consideration in determining these appeals. I have not attached so much weight, in determining the present appeals, to its specific policy statement that concrete recycling is not acceptable as a permanent use. As concrete recycling is a waste disposal activity, and therefore all applications are to be determined by the Country Council, a local plan prepared by the Borough Council does not seem to me to be the best place for such a policy. Secondly, the policy is so tightly drawn that it would not extend to any other form of recycling and that seems to me to be inconsistent with nearly all of the other policy guidance before me.

51. Because the airfield is vulnerable to development pressure, I believe that the possibility of setting a precedent must be considered. I accept that all applications must be dealt with on their individual merits but, once the restoration of the clay extraction site has been completed, there will be little to distinguish this site from others on the former airfield and in the Green Belt generally. I consider that granting permission for recycling in this instance, in the absence of very special reasons for doing so, would make it harder for the Council to resist other development upon the former airfield in the future. The cumulative effect of such pressure could well devalue the area's valuable role as part of the Green Belt. I therefore consider that the possibility of setting a precedent adds, to a minor extent, to the arguments against the development. On the other hand, the possibility of the loss of about 5 jobs provides an argument of comparable weight in its favour.

Final Conclusion

52. Based mainly upon conclusions regarding the issues I have identified, but also taking into account all of the other matters raised, I am satisfied that permission to retain this recycling facility, either on a temporary or permanent basis, should not be granted. The appeal against Enforcement Notice A on Ground (a) therefore fails.

The Challenge to the Validity of Notice B

53. This challenge stems from the fact that the plan attached to this notice has two areas, one outlined in green and a much larger one outlined in red. The Council say that whilst the notice was aimed only at the green area, they did not want the appellants, should they lose their appeal, simply to move to an adjacent piece of land within the same overall site, thereby necessitating renewed and time-consuming enforcement action. They say that this was the only reason for including the red area on the plan and referring to it in the notice. At the inquiry their advocate accepted on the Council's behalf that the way they had sought to achieve this objective was incorrect, and invited me to correct the notice by removing all reference to the red area.

54. The appellants have not suggested that the notice is a nullity, and I am satisfied that it is not, in that it is not defective on its face and does not contain a defect so serious as to prevent it from taking effect. The next question, therefore, is whether it is invalid. An accepted test for validity, formulated in the well-known Miller-Mead case, is whether the notice tells the recipient fairly what he has done wrong and what he must do to remedy it. The appellants say that Notice B fails to meet this test in that it is unclear as to precisely which areas are involved in the allegation, and in the second of the Notice's requirements. I accept that in theory Requirement (ii) of the notice could apply to either the green or the red area. However, taking a practical approach, I cannot imagine that anyone with a reasonable knowledge of the site would be in doubt as to what the notice intends. On the basis of their grounds of appeal and statement of case, the appellants seem to have been in no doubt until well into the inquiry that the alleged change of use was in respect of the green area. In my view the notice does not fail the Miller-Mead test, and I consider that it is not invalid. It has defects but the Council's suggested correction would, in my opinion, remedy these.

55. Before the notice can be corrected it must be established that the correction falls within the powers conferred by Section 176 of the Act. This section allows for the correction or variation of any defect, error, or misdescription in an enforcement notice so long as the correction or variation does not cause injustice to the appellant or the local planning authority. I think that the correction suggested by DBC falls within the terms of this section and I am also satisfied that it does not constitute what amounts, in essence, to a change of mind by the Council. It is, rather, a recognition by them that they sought to extend the scope of the notice beyond permissible bounds. Its main purpose was not, in my view, in doubt. The sole remaining question is, therefore, whether the proposed correction would cause injustice.

56. The appellants claim that they would be seriously prejudiced because the reduction in area would preclude them from relying upon the larger area to establish immunity from enforcement action. In principle this claim can be valid but in the present case I do not find it persuasive because the appellants' case was argued on the basis both of the green and red areas. Whereas closing legal submissions on behalf of the appellants were mainly directed at the red area, both the original statement of case and Mr Kelly's evidence, upon which the appeal on Ground (d) is mainly based, were almost entirely focused on the green site. I have covered both possibilities in dealing with the appeal on Ground (d). Moreover, I cannot accept that anyone with knowledge of the airfield could possibly have believed that its sole use was as a contractor's yard as the notice alleges. The appellants knew with certainty, from their own occupation of another part of the red area, that at least part of it is and was in use for waste recycling. The reaction of Chisholm's to the notice indicates to me that they believed, until the inquiry, that the notice referred to their area of occupation, i.e. the green area.

57. The appellants also suggest that if the notice stands as it is, and is upheld, any use within the red area which is not required to cease, would receive deemed planning permission by virtue of Section 173(11). Thus, according to this argument, reducing the area would mean that such deemed planning permissions could not, under any circumstances, be claimed. This would cause injustice to other parties who might otherwise have benefitted from such permissions. I do not find this argument compelling for two main reasons. Firstly because Section 176 includes no requirement to avoid injustice to anyone other than the appellants or the LPA and, secondly, because it is based on the assumption that the notice was intended to

apply to the larger, red, area. For reasons I have explained above I am sure that the originally drafting of the notice does not provide grounds for making such an assumption.

58. I reject the claim that the notice as drafted was invalid and I conclude that correcting it as suggested by Dacorum B C would not cause injustice. I am satisfied that, as corrected, it would be consistent with both the intentions of the original notice and a reasonable interpretation of its terms. I shall therefore make such a correction and determine the appeals on Grounds (a) and (d) on the basis of the notice as corrected.

The Appeals against Notice B on Ground (d)

59. For an appeal in this case to succeed on Ground (d) it must be demonstrated, on the balance of probability, that the use enforced against in Notice B began on or before a date 10 years before enforcement action was taken, and has continued during that 10 years without significant break. In view of my decision to correct the notice the area concerned in such a test is that edged green in the plan accompanying Notice B.

60. In December 1990 a decision letter was issued regarding an appeal made jointly by WJ and M Mash Ltd and Hertz U K Ltd against an enforcement notice served by Dacorum B C. In that letter the Inspector found that a large area had been used for at least a year for the storage of about 800 cars prior to their disposal. The appellants did not dispute that this represented a material change of use, and an aerial photograph taken at that time shows that the car storage area included considerably more than half of the area shaded green in the current enforcement notice. It follows that for a substantial period of time the green area was either used solely for the storage of cars, or for a mixed or composite use of which a major element was the storage of cars, both of which are materially different from use as a contractor's yard. I have seen no evidence that the car storage use was intended only as a temporary expedient.

61. It follows that the use enforced against did not continue without significant break for the 10 years prior to the taking of enforcement action, and is therefore not immune from such action on that basis. There is no right to revert to a previous use because Section 57(4) of the Act states, in effect, that where an enforcement notice is served the use of the site may lawfully revert to the previous use provided that that use was lawful. In this case the previous use (i.e. that which comprised or included the storage of cars) was not lawful, as evidenced by the decision to dismiss the appeal against the earlier enforcement notice. You have failed to demonstrate that no enforcement action could be taken against the use alleged in Notice B at the time of service and the appeal against it on Ground (d) fails accordingly.

62. I would wish to make it plain that even if I had considered this matter in respect of the area edged red on the plan accompanying Notice B, I should have reached a similar conclusion following a precisely similar line of reasoning.

The Appeals against Notice B on Ground (a) and the Deemed Application

63. The appellants have not sought to pursue an appeal on Ground (a) and presented no evidence in support of it at the inquiry. Nonetheless, as an appropriate fee has been paid, I must determine the application deemed to have been made.

64. The appeal site lies within the Green Belt and the tests for whether the use enforced against constitutes inappropriate development are those implied by Paragraph 3.12 of PPG2 and discussed earlier in this letter in the context of the Ground (a) appeals against Notice A. In the present case use of the land as a contractors yard involves buildings, plant, equipment and stacked materials, and I have no doubt that these reduce the openness of the area. Equally, this use is not one normally found in rural areas and I am satisfied that its presence on this site conflicts with the stated purpose of Green Belts to assist in safeguarding the countryside from encroachment. I have explained earlier my view that Bovingdon Airfield remains part of the countryside. I conclude that the development involved in Notice B is inappropriate within the Green Belt.

65. Conflict with the purposes of the Green Belt constitutes harm in itself, but in addition the presence of a contractors yard on this site would appear both intrusive and incongruous in what remains, essentially, a rural area. It remains only to consider whether there are any very special circumstances surrounding this development which would justify the retention of harmful and inappropriate development within the Green Belt. The appellants have not suggested any such circumstances and I am unaware of any from what I know of this case. Nor am I aware of any benefits stemming from this development sufficient to outweigh the harm caused. It has not been suggested that any jobs would be irretrievably lost should this appeal fail. I conclude that permission to retain this use should not be granted, the appeal on Ground (a) fails and the application deemed to have been made will be refused.

The Appeals against Notice A on Ground (g)

66. At the inquiry, a senior employee of one of the appellant companies explained how contracts already entered into would be difficult to meet if the time periods attached to the notice were adhered to. The Council did not seek to dispute what was said on this point. The periods requested by the appellants allow only four more weeks of importation of materials, and six months rather than four for the completion of all requirements. I consider that such increases are relatively modest and I would wish to give the appellants every opportunity to retain jobs wherever possible. I shall therefore allow the appeal on Ground (g) and vary the notices in accordance with the suggestions made by the appellants.

Other Matters

67. Although no appeals on Ground (f) were pursued at the inquiry I have a duty to correct any apparent defects in enforcement notices if I can do so without injustice. In this context I consider that Requirement (iii) of Notice B is unsatisfactory in that no clear evidence has emerged as to what the former physical condition of the site was, prior to the commencement of the development enforced against. In my view this requirement does not tell the appellants with sufficient clarity what is required of them, and I shall vary Notice B to omit that requirement.

68. In determining these appeals I have taken into account, as well as those I have specifically referred to, all of the other matters raised, including those planning and legal decisions to which my attention has been drawn. I am aware of nothing sufficient to outweigh the considerations which led to my decisions

Formal Decisions

69. For the above reasons, and in exercise of the powers transferred to me, I hereby determine the appeals before me as follows :

Notice A **Department's Reference T/APP/C/97/M1900/648243, 648281, & 648282**

I direct that the notice be varied by altering the periods for compliance to the following :

Step i	:	Four weeks;
Step ii	:	Four months;
Step iii	:	Six months;
Step iv	:	Four months;
Step v	:	Six months.

Subject thereto I dismiss these appeals, uphold the notice as varied, and refuse to grant planning permission in respect of the applications deemed to have been made under Section 177(5) of the amended Act

Notice B **Department's Reference T/APP/C/96/A1910/644975 & 644602**

I direct that the notice be corrected by :

a) The deletion of Section 2 in its entirety and the substitution therefore of the following :

2. THE LAND AFFECTED

Land at Bovingdon Airfield, Chesham Road, Bovingdon shown cross-hatched on the attached plan.

b) The substitution of the plan attached as Appendix 2 to this letter in place of the plan originally attached to the notice.

I direct that the notice be varied by the deletion of Section 5 in its entirety and the substitution therefore of the following :

5. WHAT YOU ARE REQUIRED TO DO

i) Remove all plant, machinery, vehicles, materials and temporary office buildings from the area cross-hatched on the plan.

ii) Cease the use of the land as a contractor's yard comprising the storage of plant, machinery, equipment, vehicles, materials and temporary office buildings.

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

Subject thereto I dismiss these appeals, uphold the notice as corrected and varied, and refuse to grant planning permission in respect of the applications deemed to have been made under Section 177(5) of the amended Act

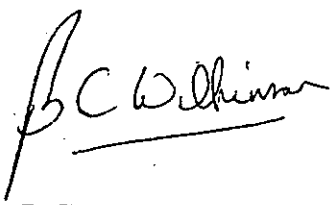
Notice C **Department's Reference T/APP/C/96/A1900/645960, 645978 & 645979**

I hereby quash this notice.

Rights of Appeal against Decisions

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

Yours faithfully



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Our Ref:
~~T/APP~~/C/96/A1910/644975
T/APP/C/96/A1910/644602

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 174 & SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATIONS FOR COSTS

1. I refer to your application for an award of costs against Dacorum Borough Council made at the Inquiry begun at Hemel Hempstead on 20th January 1998. The Inquiry was in connection with 8 appeals. The first six are against enforcement notices served by Herts C C and are not directly relevant to this application. The last two, which are relevant, are against an enforcement notice served by Dacorum B C alleging the unauthorised change of use of land to use as a contractors' yard. A copy of my decision letter regarding all of these appeals is enclosed. A further application for an award of costs against your clients was made at the inquiry. I enclose a copy of my decision on that application.

Summary of the Application and Response

2. In support of your application you point out that the Council accept that the Enforcement Notice was incorrectly drafted, despite this being their third attempt to serve such a notice. It is defective and incapable of correction without causing injustice. The Council had a duty to get the notice right before the inquiry and if, as the appellants contend it should be, the notice is quashed, they are plainly entitled to receive the whole of the costs they have incurred in contesting this notice at appeal. This case falls squarely within the circumstances described in Circular 8/93 - Annex 3 (Paragraphs 21-25).

3. Even if, despite the above, the notice is held to be capable of correction, the appellants are still entitled to an award of partial costs in respect of the time and expense incurred in dealing with such a faulty notice.

4. In response the Council suggest that the essence of the appellants' case is that costs should go with success on appeal, and that is not the true position. The legal points made by the appellants were only raised at the inquiry and could not have been dealt with earlier. Consequently the appellants' attendance at the inquiry could not have been avoided. The notice may have had flaws but its meaning was never seriously in doubt

and the appellants' statement of case is evidence that they understood it correctly. The notice is capable of correction without injustice. The Council have not behaved unreasonably and there is no justification for an award of costs against them.

5. The time spent at the inquiry debating whether the notice was capable of correction was minimal and there is no justification for a partial award of costs in respect of it.

Conclusions

6. The application for costs falls to be determined in accordance with the advice contained in DoE Circular 8/93, and all the relevant circumstances of the appeals, irrespective of their outcome. Costs may only be awarded against a party who has behaved unreasonably, and thereby caused another party to incur or waste expense unnecessarily.

7. I have no doubt that the notice as originally drafted was incorrect. I do not, however, consider that the error was a gross one, or amounted to a serious misunderstanding of clearly established principles of law. It arose in my view from a lack of clarity in thought when drafting the notice and, on the basis of the appellants' grounds of appeal and Pre-inquiry Statement, did not appear to mislead them as to the Council's intentions. So far as I am aware the error was not identified, either by the appellants or by Council officers, until the subject was raised at the inquiry. The Council then accepted immediately that an error had been made and invited me to make an appropriate correction. I felt able to do so without incurring a serious risk of injustice. Whilst the Council did make a mistake I do not consider that it, or their subsequent actions, amounted to behaviour so unreasonable as to justify an award of costs against them. I therefore conclude that an application for an award of either full or partial costs against them is not justified.

FORMAL DECISION

8. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application for an award of costs.

Yours faithfully

B C Wilkinson

B C WILKINSON BEng(Hons) DipTP MRTPI
Inspector

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Your Ref:
4/1339 & 1524/96EN

Our Ref:
T/APP/C/96/A1910/644975
T/APP/C/96/A1910/644602

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 174 & SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS BY DACORUM BOROUGH COUNCIL

1. I refer to your application for an award of costs against WJ & M Mash Ltd and the Executors of J M Chisholm (Deceased) which was made at the Inquiry begun at Hemel Hempstead on 20th January 1998. The Inquiry was in connection with 8 appeals. The first six are against enforcement notices served by Herts C C and are not directly relevant to this application. The last two, which are relevant, are against an enforcement notice served by Dacorum B C alleging the unauthorised change of use of land to use as a contractors' yard. A copy of my decision letter regarding all of these appeals is enclosed. A further application for an award of costs against Dacorum B C was made at that inquiry. I enclose a copy of my decision on that application.

Summary of the Application and Response

2. The Council's case is based upon two different lines. In the first place the appellants' decision to withdraw Ground (a) and submit no evidence on planning merits was taken so late that the Council had already prepared their case. As late as 12th December the appellants' statement of case indicated that they would be contesting Ground (a), and the Council lodged their evidence based on this information on 23rd December 1997. They learned of the appellants' decision not to contest Ground (a) only on 9th January 1998. It may well have been a reasonable decision to take but it was taken far too late, and whilst it may have saved some time at the inquiry it wasted time earlier in ways described below. The Council considers this action to be unreasonable conduct of a kind referred to in Circular 8/93 - Annex 2 Paragraph 3.

3. Because of this unreasonable conduct the Council have incurred expense in two ways. They had to prepare a full case defending their decision on planning merits, instead of being able to rely simply on the reasons for opposing the development set out on the Enforcement Notice. Secondly, had the appellants' subsequent position been reached at or prior to the Pre-inquiry Meeting, it is unlikely that the Inquiry would have taken the course it did. Without a Ground (a) appeal against the notice served by

Dacorum B C there were virtually no common features between the appeals against that notice and those against the notices served by Herts C C. In consequence two separate inquiries could have been held, and that involving Dacorum B C would only have lasted one day instead of the 10 taken by the joint inquiry. Furthermore, because of the nature of the proceedings the Council had to be represented on at least 7 of those days even though their contribution turned out to be minimal.

4. In addition to this the appellants failed to substantiate their appeal on Ground (d). They failed to call Mr Mash in evidence, despite the knowledge he must have of the site and its history, and failed to account for that failure. They did not adequately address the evidence from aerial photographs submitted by the Council, counter documentary evidence from other sources, or produce a witness able to deal with the legal implications of the matter. The sum total of the case they produced lacked substance to a degree which amounted to unreasonable behaviour. The Council are entitled to be awarded the costs they incurred in contesting the appeal on Ground (d).

5. In response the Appellants accept that the withdrawal was late, but draw attention to the turmoil in the business of one of the appellants, due to the death of the proprietor. When, eventually, professional advice was commissioned, the appeal on Ground (a) was withdrawn to save time at the inquiry. Even had the withdrawal been at an earlier date the Council would still have had to attend the inquiry and make a case for refusal of the deemed application. Moreover, they complain about having had to attend so much of the inquiry but that was their choice. They could easily have attended only those parts of the inquiry applicable to them, at most three days.

6. The appellants dispute that the appeal on Ground (d) was not substantiated. They had produced a witness, Mr Kelly who held a senior position with one of the appellant companies and had worked on the site for about 10 years. There was no need to duplicate that evidence by calling Mr Mash. Mr Kelly was able to produce information to interpret the aerial photographs, and to deal with other matters raised by the Council. The appellants have not acted unreasonably in respect of any of the alleged matters and there is no justification for awarding costs against them.

Conclusions

7. The application for costs falls to be determined in accordance with the advice contained in DoE Circular 8/93, and all the relevant circumstances of the appeals, irrespective of their outcome. Costs may only be awarded against a party who has behaved unreasonably, and thereby caused another party to incur or waste expense unnecessarily.

8. Dealing first with the application in respect of Ground (d), I do not consider that the appellants failed to substantiate their grounds of appeal. It was for them to decide who should appear as a witness, and they selected someone who held a senior position in one of the appellant companies and had been familiar with operations on the appeal site for almost 10 years. I see nothing unreasonable in their decision not to duplicate his experience with a further witness of similar background. Their witness was able to provide useful evidence and account for evidence by the Council. Although, in the final

analysis, I found for the Council in regard to this appeal, I do not consider that the appellants' case was insubstantial.

9. The second matter concerns the failure of the appellants to notify the Council of their decision not to contest Ground (a) until after the Council had prepared their case. I accept that the death of Mr Chisholm must have caused problems to at least one of the appellants but such problems should have been under control, at least by the time of the Pre-inquiry Meeting. At that meeting there was no suggestion that the appellants were having problems or that Ground (a) would be withdrawn, and the appellants' representative freely accepted the suggested timetable. They subsequently failed by a considerable margin to meet that timetable and compounded their failure by informing the Council of their decision to withdraw Ground (a) only 7 working days before the start of the inquiry. The Council largely met the assigned timetable and had, naturally, prepared a case to counter the Ground (a) appeal. The decision itself may have been justifiable on professional grounds but it was taken at far too late a stage. I conclude that the appellants's actions in this respect were such as to constitute unreasonable conduct.

10. Whilst the appeal on Ground (a) was withdrawn the deemed application was still to be determined and the Council had a duty to substantiate their case in terms of planning merits. However, the reasons for issue contained in the enforcement notice were reasonably detailed and made reference to local and national policies. In the absence of any arguments to the contrary by the appellants, and none of substance by anyone else, the Council would have had to do little except cite those reasons. This means that the case they actually prepared was, in the event, almost entirely unnecessary. I conclude that the Council are entitled to the costs incurred prior to the inquiry in preparing that case.

11. If the appellants had withdrawn their case prior to the Pre-inquiry meeting it is possible, but far from certain, that the cases could have been dealt via separate inquiries. Even if they had been, the overall time expended may not have been very different. The Council claim that they had to attend inquiry sessions where their contribution was minimal, but that was their choice, and could have been avoided by appropriate administrative arrangements. The inquiry was almost entirely conducted in their own offices and it should have been easy for them to have made arrangements to be called when their presence was necessary. No such arrangements were made through me, and nor was there any application for any re-scheduling of the inquiry to avoid the difficulties they complain of. Bearing in mind, too, that the withdrawal of the Ground (a) appeal must have saved considerable inquiry time, I do not consider that the costs incurred by the Council during the inquiry itself were directly attributable to the Appellants' unreasonable conduct. I do not, therefore, intend to award the Council any of those costs.

FORMAL DECISIONS

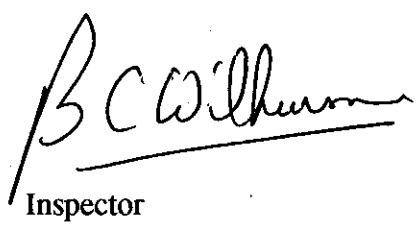
12. Accordingly, in exercise of my powers under Section 250(5) of the Local Government Act 1972 and paragraph 6(4) of Schedule 6 to the Town and Country Planning Act 1990, and all other enabling powers, I HEREBY ORDER that WJ & M Mash Ltd and the Executors of J M Chisholm (Deceased) shall pay to Dacorum Borough Council, the costs of the proceedings of this inquiry, limited to those costs incurred prior to the start of the inquiry in preparation to defend their decision against appeals on

Ground (a), such costs to be taxed in default of agreement as to the amount thereof. The subjects of the proceedings were 2 appeals under Section 174 of the Act of 1990 against an enforcement notice issued on 18th September 1996 alleging breaches of planning control as follows:

> The unauthorised change of use of land to a contractor's yard, comprising the storage of plant, vehicles, machinery, equipment, materials and temporary office buildings.

13. You are now invited to submit to WJ & M Mash Ltd and the Executors of J M Chisholm (Deceased), to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement on the amount. A copy of the guidance note on taxation procedure, referred to in Circular 8/93, is enclosed.

Yours faithfully



Inspector

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