The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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PLANNING DEPARTMENT
DACORUM BOROUGH COUNCIL

Ack.					
DoP	T.C.P.M.	L.S.	L.R.	B.C.	Admin.

Received 12 MAR 1993

Comments

Date 11 MAR 93

Your reference
MDC/DEP/5/14623
Council reference
6/92EN & 6/92EN
Our reference
T/APP/C/92/A1910/625857 & 8/P6

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MR D DONALDSON
LAND AND BUILDINGS AT HATCHES CROFT, BRADDEN LANE, GADDESDEN ROW, HERTS

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeals against two enforcement notices issued by the Dacorum Borough Council concerning the above mentioned land and buildings. I have considered the written representations made by you, the Council, and by interested persons, and I inspected the site on 11 February 1993.

THE NOTICES

2. (1) The notices were issued on 15 October 1992.

(2) The breach of planning control as alleged in each of the notices is:

Notice A - the erection of a close-boarded fence;

Notice B - the erection of brick and stone walls and piers.

(3) The requirements of the notices are to remove the fence, walls and piers.

(4) The period for compliance with these requirements in each case is 1 month.

GROUNDS OF APPEAL

3. Both appeals are proceeding on grounds (a) and (c) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991, that is to say that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted; and that the matters stated in the notice do not constitute a breach

of planning control. The appeal in respect of Notice A is also proceeding on ground (g), that the period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

The Appeals Under Ground (c)

4. You claim that the fence is permitted development under Class A of Part 2 in Schedule 2 to the Town and Country Planning General Development Order; although it is over 1 metre high, its height is less than 2 m and it is not adjacent to a highway used by vehicular traffic. It does not delineate the site boundary, but is set back behind the boundary hedge. The hedge itself is separated from the road by an area of common land that you say is 13 metres wide. You point out that when the Section 78 appeal was determined in the other case referred to be the Council, the Inspector specifically stated that the question of whether it constituted permitted development was not a matter before him.

5. As to the walls and piers, you consider the Council are wrong in saying that they do not form an enclosure; they enclose the appellant's right of way from the road to the farm entrance. The walls are less than 1 m high, the piers have been reduced in height to 1 metre, and their erection also constituted permitted development under the same Class of the General Development Order.

6. The Council aver that the fence is not permitted development as it is over 1 metre high and it is adjacent to a highway used by vehicular traffic. They point out that a Section 78 appeal was determined in another case in which the line of a wall was separated from a metalled road by a Green, owned by the Parish Council. As to the walls and piers in this case, the Council say they do not form an enclosure, and so are not permitted development under the Class to which you refer.

7. Whether or not the fence lies adjacent to the highway needs to be determined as a matter of fact and degree according to the physical characteristics of its surroundings. As you say, the fence does not form the boundary to the land; the boundary is demarcated by the hawthorn hedge, and the fence is sited behind that hedge. Moreover, intervening between the hedge and the road is an area of open and overgrown land. It does not appear to be quite as wide as 13 metres as you claim, but it is an appreciable tract of land over which another, the freeholder, exercises proprietrary rights. In my judgement, the fence is so separated from the highway that I could not reasonably find it to be adjacent - or lying near - to the road.

8. As to the projecting dwarf walls, I agree with the Council that the walls do not form an enclosure. Judicial authority *(Prengate Properties v SSE [1973] JPL 313)* is that the erection of a wall that neither encloses *nor plays any part of the enclosure of anything* (my emphasis) would not constitute permitted development under the Class of the previous GDO that is equivalent to Class A of Part 2 in Schedule 2 to the current Order. Nevertheless, I consider that as you claim the walls play a part in the enclosure of your

client's right of way from the rest of the open land in another's ownership.

9. In these circumstances, I find the development enforced against in both notices constituted permitted development under Class A of Part 2 in Schedule 2 to the Town and Country Planning General Development Order 1988, and the Ground (c) appeals succeed. The other grounds of appeal, and the deemed applications, do not therefore fall to be considered.

10. I have considered all the other matters raised in the written representations but do not find them to be of such weight as to alter the balance of my conclusions. The mere submission of planning applications in respect of the development does not in itself denote an acceptance on behalf of your client that planning permission was indeed necessary. As to the Section 78 appeal decision referred to by the Council, it is clear from the face of the decision letter that the question of whether erection of the wall constituted permitted development was not considered by the Inspector. I am therefore unable to draw from that decision an inference that planning permission is required for the development involved in these appeals.

FORMAL DECISIONS

11. For the above reasons, and in exercise of the powers transferred to me, I hereby decide these appeals as follows.

Enforcement Notice A (Reference T/APP/C/92/A1910/625857)

I allow the appeal and direct that the Notice be quashed.

Enforcement Notice B (Reference T/APP/C/92/A1910/625858)

I allow the appeal and direct that the Notice be quashed.

RIGHTS OF APPEAL AGAINST DECISIONS

12. 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.

I am Gentlemen
Your obedient Servant

P J Roberts FRICS
Inspector

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

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

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

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

a) Appeals under section 288 of the 1990 Act

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

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

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

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

a) the Town and Country Planning Act 1990
b) the Tribunals and Inquiries Act 1971 (or any other enactment replaced thereby), and

the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts. These include:

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

Copies of these may be obtained from HMSO Bookshops.

b) Appeals under section 289 of the 1990 Act

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

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

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

INSPECTION OF INQUIRY DOCUMENTS

Any person entitled to be notified of the decision given in the accompanying letter may apply to the Secretary of State, in writing within 6 weeks of notification, for an opportunity to inspect any documents, photographs or plans appended to the decision. These will be listed at the end of the Inspector's decision letter. Your application should be sent to Room 1404. Tollgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference number and stating the date and time (in normal office hours) when you would wish to make the inspection. Please give at least 3 days' notice and include a daytime phone number, if possible.

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

PLANNING INSPECTORATE AGENCY
Department of the Environment

August 1992

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DoP	T.C.P.M.	D.P.	L.C.	B.C.	Admin.	File
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Comments						

Messrs Faulkners
49 High Street
Kings Langley
Herts
WD4 9HU

Your reference
MDC/DEP/5/14623
Council reference
4/1525 & [illegible]
Our reference
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(2) The breach of planning control as alleged in each of the notices is:

Notice A - the erection of a close-boarded fence;

Notice B - the erection of brick and stone walls and piers.

(3) The requirements of the notices are to remove the fence, walls and piers.

(4) The period for compliance with these requirements in each case is 1 month.

GROUNDS OF APPEAL

3. Both appeals are proceeding on grounds (a) and (c) as set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991, that is to say that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted; and that the matters stated in the notice do not constitute a breach

of planning control. The appeal in respect of Notice A is also proceeding on ground (g), that the period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

The Appeals Under Ground (c)

4. You claim that the fence is permitted development under Class A of Part 2 in Schedule 2 to the Town and Country Planning General Development Order; although it is over 1 metre high, its height is less than 2 m and it is not adjacent to a highway used by vehicular traffic. It does not delineate the site boundary, but is set back behind the boundary hedge. The hedge itself is separated from the road by an area of common land that you say is 13 metres wide. You point out that when the Section 78 appeal was determined in the other case referred to be the Council, the Inspector specifically stated that the question of whether it constituted permitted development was not a matter before him.

5. As to the walls and piers, you consider the Council are wrong in saying that they do not form an enclosure; they enclose the appellant's right of way from the road to the farm entrance. The walls are less than 1 m high, the piers have been reduced in height to 1 metre, and their erection also constituted permitted development under the same Class of the General Development Order.

6. The Council aver that the fence is not permitted development as it is over 1 metre high and it is adjacent to a highway used by vehicular traffic. They point out that a Section 78 appeal was determined in another case in which the line of a wall was separated from a metalled road by a Green, owned by the Parish Council. As to the walls and piers in this case, the Council say they do not form an enclosure, and so are not permitted development under the Class to which you refer.

7. Whether or not the fence lies adjacent to the highway needs to be determined as a matter of fact and degree according to the physical characteristics of its surroundings. As you say, the fence does not form the boundary to the land; the boundary is demarcated by the hawthorn hedge, and the fence is sited behind that hedge. Moreover, intervening between the hedge and the road is an area of open and overgrown land. It does not appear to be quite as wide as 13 metres as you claim, but it is an appreciable tract of land over which another, the freeholder, exercises proprietrary rights. In my judgement, the fence is so separated from the highway that I could not reasonably find it to be adjacent - or lying near - to the road.

8. As to the projecting dwarf walls, I agree with the Council that the walls do not form an enclosure. Judicial authority *(Prengate Properties v SSE [1973] JPL 313)* is that the erection of a wall that neither encloses *nor plays any part of the enclosure of anything* (my emphasis) would not constitute permitted development under the Class of the previous GDO that is equivalent to Class A of Part 2 in Schedule 2 to the current Order. Nevertheless, I consider that as you claim the walls play a part in the enclosure of your

client's right of way from the rest of the open land in another's ownership.

9. In these circumstances, I find the development enforced against in both notices constituted permitted development under Class A of Part 2 in Schedule 2 to the Town and Country Planning General Development Order 1988, and the Ground (c) appeals succeed. The other grounds of appeal, and the deemed applications, do not therefore fall to be considered.

10. I have considered all the other matters raised in the written representations but do not find them to be of such weight as to alter the balance of my conclusions. The mere submission of planning applications in respect of the development does not in itself denote an acceptance on behalf of your client that planning permission was indeed necessary. As to the Section 78 appeal decision referred to by the Council, it is clear from the face of the decision letter that the question of whether erection of the wall constituted permitted development was not considered by the Inspector. I am therefore unable to draw from that decision an inference that planning permission is required for the development involved in these appeals.

FORMAL DECISIONS

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I allow the appeal and direct that the Notice be quashed.

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Department of the Environment

August 1992