



Planning Inspectorate

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CHIEF EXECUTIVE
OFFICER

17 SEP 1991

File ref.

Refer to 18/9.2DP

Cleared

Your Reference

2/12564

Our Reference

T/APP/C/90/A1910/5 & 6/P6

Council Reference DEPARTMENT
4/1529/90EN/GPB/SAH COUNCIL

Date

16 SEP 91

Ack.

B.C.

Admin.

File

18 SEP 1991

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6

APPEALS BY MR AND MRS R W EVANS

LAND AND BUILDINGS AT THE COTTAGE, HUDNALL COMMON, LITTLE GADDESSEN, HERTS

1. As you know I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeals which are against an enforcement notice issued by the Dacorum Borough Council, concerning the above mentioned land and buildings. I held an inquiry into the appeals on 6 August 1991.

2 a. The date of the notice is 13 August 1990.

b. The breach of planning control alleged in the notice is failure to comply with condition No (A)(1) subject to which planning permission was granted.

c. The permission (No 4/0234/84) was granted on 29 March 1984 and was for one dwelling on land at The Cottage, Hudnall Common.

d. The condition which is alleged not to have been complied with is as follows:-

The development hereby permitted shall be first occupied by Mr T J Killick and thereafter by a person solely, or mainly, employed, or last employed locally, in agriculture, as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry, and the dependants or widow or widower of such a person.

e. It is alleged that the condition has not been complied with in that the premises referred to are not being occupied by a person fulfilling the requirements of the condition.

f. The requirements of the notice are to take all necessary steps to ensure that the premises are occupied by a person fulfilling the requirements of the condition.

g. The period for compliance with the notice is 18 months.

h. The appeal was made on the grounds set out in Section 174(2)(a) and (g) of the 1990 Act.

100%



RECYCLED PAPER

THE APPEAL SITE AND SURROUNDINGS

3. The appeal site lies some 7 km north-west of Hemel Hempstead on a ridge of the Chiltern Hills. It consists of a modern detached 5-bedroomed house set in grounds of around 1.1 ha, about one third being landscaped gardens and the remainder in use as paddocks. The dwelling, which has a floor area of some 308 sq m is finished to a high standard throughout with 3 bedrooms, a separate study and a panelled dining room. It stands to the rear of similar large detached dwellings fronting the rutted and unmade lane between Hudnall Common and St Margarets. The access shares that of Pippins, passing close to the side of that dwelling, but due to tall boundary shrubs and trees, neither that nor any other nearby dwelling is visible from the appeal site. The surroundings consist generally of pasture and arable fields interspersed with substantial blocks and belts of woodland and are within the designated Chilterns Area of Outstanding Natural Beauty.

PLANNING HISTORY

4. In June 1983 the Council granted planning permission for a dwelling on this site to a Mr T J Killick, a quantity surveyor, who lived in a flat some 40 m from the land and raised birds of prey for release into the wild as a hobby. The grounds for requiring the new dwelling were the need for better security. However the condition, the same as that subject of the appeals, was only agreed some 5 weeks later after discussions between the officers and the appellant, and 2 separate Committee meetings. Construction of the dwelling, the plans for which showed a floor area of 172 sq m, commenced in July 1983. In January 1984, following a report that the dwelling had not been built in accordance with the approved plans, the Council considered a revised, retrospective application and refused to grant permission. However in March of that year permission was granted for what was in effect a re-submission of the January application, subject to the condition now at appeal. This permitted an increased floor area of about 308 sq m though there was no basement of 66 sq m contained in the originally approved plans.

5. In September 1984 Mr Killick appealed against the occupancy condition on the grounds that it was unreasonable and inappropriate in that the application had not been made on agricultural grounds, there was no agricultural holding on the land, and there had been no consultation with MAFF on the matter. In his view, which the Council did not dispute, the permission had been granted because of very special and purely personal circumstances. However in February 1985 the appeal was dismissed. Your clients bought the property from Mr Killick in August 1986 knowing of the condition, although neither has been employed locally in agriculture since their occupation of the dwelling.

THE CONDITION SUBJECT OF THE NOTICE

6. In cases where an enforcement notice alleges a breach of a planning condition, it is necessary to consider whether that condition was appropriately imposed in the first instance and is a valid condition. In this case the condition consists of 2 parts, the first being a personal permission relating to the original applicant, and the second part being a standard agricultural occupancy condition similar in form to that in Circular 1/85. However it is apparent from the evidence that permission for the dwelling was granted in the first place only because of the personal circumstances of the applicant, hence the first part of the permission. But such a personal permission can scarcely ever be justified for the erection of a

permanent dwelling and in this instance, bearing in mind the proximity of the applicant to the site and the strong policy presumption against new development in this area, I consider that no sound justification existed for a personal permission.

7. The second part of the condition appears to have been imposed as the best of several options devised by the officers to comply with the Council's wishes that the development should, so far as possible, be in conformity with its planning policies. But in my opinion the imposition of an agricultural occupancy condition, in the absence of a demonstrable need for a dwelling on the holding or in the area, does not make the development acceptable. Instead where such a need can reasonably be shown to exist then any harm caused by the dwelling may be considered to be outweighed by that need. Otherwise any number of dwellings could be permitted simply by imposing such a condition regardless of justification, thereby causing considerable harm to the appearance of the countryside.

8. In this case there was no claim by the applicant that there was any agricultural need for a dwelling on the land, or that he could comply with an agricultural occupancy condition. As to the wider needs for agricultural accommodation in this area at the time there is little evidence. However by the time the condition before me was imposed in March 1984, the dwelling was apparently very much as it is today, that is very large and well equipped by any standards. By late 1984 its value was apparently £200,000 so that it would be wholly unrealistic to expect that any agricultural worker could have afforded it, whether in terms of outright purchase or by paying a market rent. I also consider that it would not be realistic to expect a farmer to have bought a house of this size and specification to house an agricultural worker, nor would it have been likely that a retired farmer would have been willing to commit himself to the maintenance of such a large house at an advanced age. Thus the weight of evidence suggests that the dwelling was unlikely to have fulfilled any agricultural need in the area, and certainly fulfilled no such need in relation to the land, when it was imposed in 1984.

9. In reaching my conclusions I have carefully considered the views on the appropriateness of this condition expressed by the previous Inspector in the 1985 appeal. I agree with him that the permission should have been tied to a more general agricultural need rather than to the specific occupation by the applicant, or should have been refused. But in the absence of any investigation or consideration of whether the dwelling could satisfy such a need, and bearing in mind its form, size and price, I cannot agree that the condition was appropriately imposed. My conclusion is that it was unreasonable for the Council to have imposed the condition in the first place because its imposition did not make an otherwise unwarranted development acceptable. Given the advice of paragraphs 12-35 of Circular 1/85 it is thus an invalid condition.

10. Because I find that the condition the subject of the notice is invalid it follows that no breach of planning control can arise from any alleged contravention of it. The matters alleged in the notice do not therefore constitute a breach of planning control and any appeal which might have been made on ground (b) would have succeeded. Accordingly I am allowing these appeals and the arguments under grounds (a) and (g) do not fall to be considered.

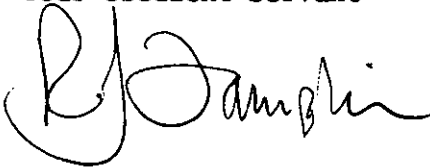
FORMAL DECISION

11. For the above reasons, and in exercise of the powers transferred to me, I hereby allow the appeals and direct that the enforcement notice be quashed.

RIGHT OF APPEAL AGAINST THE DECISION

12. This letter is issued with the determination of the appeals before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

A handwritten signature in cursive script, appearing to read 'R J Tamplin', written in dark ink.

R J TAMPLIN BA(Hons) MRTPI DipConsStudies
Inspector

ENC

IMPORTANT:- THIS COMMUNICATION AFFECTS YOUR PROPERTY

DACORUM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1971 (as amended)
ENFORCEMENT NOTICE

Breach of Planning Condition

THE COTTAGE, HUDNALL COMMON, LITTLE GADDESSEN,
HERTFORDSHIRE

W H E R E A S:

- (1) It appears to the Dacorum Borough Council ("the Council") being the local planning authority for the purposes of s.87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control [within the period of 4 years before the date of issue of this Notice] on the land or premises ("the Land") described in Schedule 1 below.
- (2) The breach of planning control which appears to have taken place consists in the failure to comply with a condition subject to which planning permission was granted on the date and for the development described in Schedule 2 below.
- (3) The condition of the said planning permission which does not appear to have been complied with is set out in Schedule 3 below and the respects in which it does not appear to have been complied with are set out in Schedule 4 below.
- (4) The Council considers it expedient, having regard to the provision of the development plan and to all other material considerations, to issue this Enforcement Notice, in exercise of its powers contained in the said section 87, for the reasons set out in the annex to this Notice.

NOTICE IS HEREBY GIVEN that the Council requires that the steps specified in Schedule 5 below be taken in order to remedy the breach within the period of eighteen months from the day on which this Notice takes effect

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of s.88(10) of the Act, on *25th September 1990.*

SCHEDULE 1

Land or premises to which this Notice relates
The Cottage, Hudnall Common, Little Gaddesden, Hertfordshire
shown edged red on the attached plan

SCHEDULE 2

The Development - One dwelling at land at The Cottage, Hudnall Common, Little Gaddesden, Hertfordshire

Date of Planning Permission - 29 March 1984

SCHEDULE 3

The condition which does not appear to have been complied with

The development hereby permitted shall be first occupied by Mr T J Killick and thereafter by a person solely or mainly employed, or last employed locally, in agriculture, as defined in s.290(1) of the Town and Country Planning Act 1971, or in forestry, and the dependants or the widow or widower of such person

SCHEDULE 4

Alleged breach of planning control

Failure to comply with the condition cited in Schedule 3 above in that the premises referred to in Schedule 1 above are not

being occupied by a person solely, or mainly employed, or last employed locally in agriculture, as defined in s.290(1) of the Town and Country Planning Act 1971 or in forestry, and the dependants or widow or widower of such person

SCHEDULE 5

Steps required to be taken

To take all necessary steps to ensure that the premises referred to in Schedule 1 above are occupied by a person solely, or mainly employed, or last employed locally in agriculture, as defined in s.290(1) of the Town and Country Planning Act 1971 or in forestry, and the dependants or the widow or widower of such person

Issued

13th August 1990

Councils address:

Civic Centre
Marlowes
Hemel Hempstead
Herts HP1 1HH

(signed)

K. M. Pugh

(Designation)

Director of Law and Administration
(The Officer appointed for this purpose)

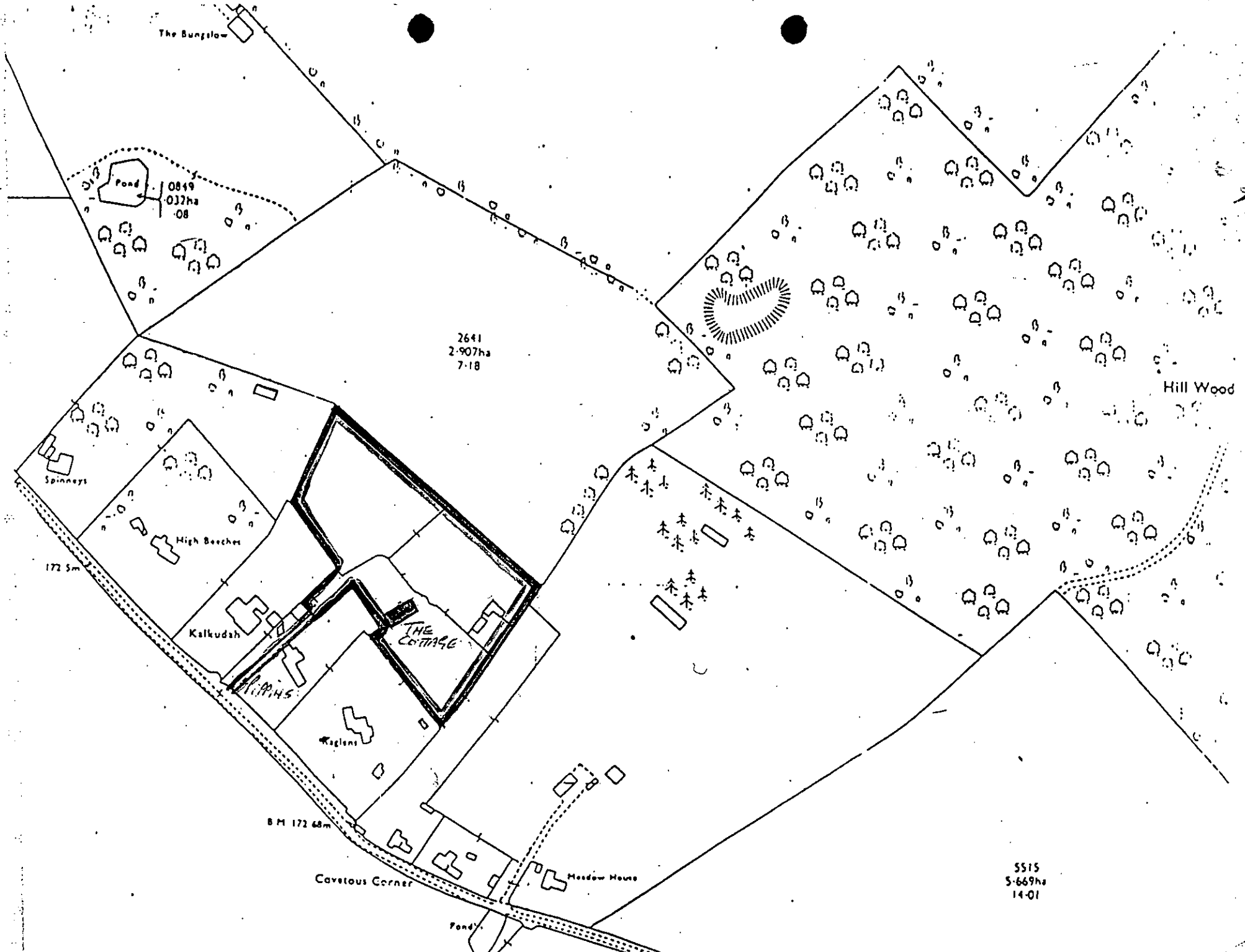
THE ANNEX

This information is given in pursuance of the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 and Circular 38/81.

The Council, as the local planning authority, considers it expedient to serve this Notice upon you for the following reasons:

The site is within a rural area beyond the Metropolitan Green Belt on the adopted Dacorum District Plan wherein it is the policy of the local planning authority to grant planning permission only for use of land, the construction of new buildings, changes of use of existing buildings for agriculture or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. In the opinion of the local planning authority exceptional circumstances have not been advanced which would justify an exception's being made where the use of the dwellinghouse is restricted in respect of the agricultural occupancy needs of the locality.

7.90/ENF.N/2447/319/NP/PEC/MB/BS.5



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