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Your reference
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APP/5252/C/79/3847
Date
30 APR 1980

001152

- 2 MAY 1980

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 88
LAND AT DELLCOT, WATER END ROAD, POTTEN END
APPEAL BY MR J ANDREWS

1. I am directed by the Secretary of State for the Environment to refer to the report of the Inspector, Mr T G Lawrence, BA, who held a local inquiry into your client's appeal against an enforcement notice served by the Dacorum District Council relating to the partial erection of a dwellinghouse and works in connection therewith on land at Dellcot, Water End Road, Potten End.

2. The appeal against the enforcement notice was on the grounds set out in Section 88(1)(a), (b), (f) and (g) of the Town and Country Planning Act 1971.

3. A copy of the Inspector's report of the inquiry is annexed to this letter. His conclusions are set out in paragraphs 24 to 28 of the report and his recommendation in paragraph 29. The report has been considered.

SUMMARY OF THE DECISION

4. The formal decision is set out in paragraph 10 below. The appeal fails. The enforcement notice is varied but upheld and planning permission is not being granted for the development to which it relates.

REASONS FOR THE DECISION

5. In support of the appeal on ground (b) it was submitted on behalf of your client that the works proposed to be carried out to Dellcot had been variously described as "alterations and improvements", "renovations", "repairs and rehabilitation", "repairs and reinstatement" and that under the 1957 Housing Act works approved under Section 16 were referred to in the section heading as "reconstruction". It was contended that in view of the Sainty case judgment (/1964/ 15 P and CR 432) it would be difficult to maintain that the works were permitted by Article 3 and Schedule 1 Class I.1 of the General Development Order, but that because in this case the proposals for works were accepted and approved in advance by the Council as housing authority under the 1957 Housing Act, your client was entitled to carry them out. It was submitted that the Council had accepted them as works required to make Dellcot fit for habitation and could not now claim that they amounted in effect to the erection of a new dwelling, an operation requiring planning permission.

6. The Inspector found as facts, which are accepted, that a bungalow, Dellcot, stood on the appeal site until August 1979 when it was completely demolished. On the same site the exterior walls and roof of a new building were erected between August 1979 and the service of a stop notice. Notices under Section 16 of the Housing Act 1957 were served on the previous owner of the site and your client in February and July 1977 in respect of Dellcot and in March 1977 the previous owner was informed what repairs were considered necessary to make the property fit for habitation. On 2 November 1978 details of a "scheme for alterations and improvements" to Dellcot were submitted and on 3 November the environmental health officer agreed that the proposed work should render the property fit for habitation "subject to building regulations and planning approval if necessary". On 24 April 1979 an application for building regulation consent for "repairs and rehabilitation" at Dellcot was submitted and on 24 May notice that the Council had passed plans for "repairs and reinstatement" was given. On 3 August 1979 the builders, and on 9 August your client's agent, informed the Council that site work had begun. On 24 August an inspecting officer found that Dellcot had been completely demolished and new foundations were being dug. On 28 August work was proceeding on the foundations and the builder was informed verbally that all work should cease. On 6 September a letter was sent to your client informing him that an application for the new building was required under the building regulations, that planning permission was also required and that any work carried out before obtaining planning permission would be at his own risk. On 18 September an inspection revealed that the walls had reached the 6 ft level. The plan submitted with the details of the scheme of alterations and improvements and for building regulations approval showed new external walls of brick and new roof, damp proof course, ceilings, floors and other changes.

7. With regard to the appeal on ground (b) the Inspector concluded:

> "In my view once all the walls, the roof and the floors of the original bungalow were removed its identity as a dwelling ceased and permitted rights of alteration, improvement or enlargement under the General Development Order lapsed. I do not consider that the acceptance by the Council under Section 16 of the Housing Act of a scheme of works to make the original building habitable can possibly be held to imply that they approved the replacement of that dwelling by a new dwelling or to obviate the statutory requirement for planning permission under Section 23 of the 1971 Act. In my opinion the appeal on ground (b) fails."

These conclusions are accepted and, for the reasons the Inspector gives, the appeal fails on ground (b).

8. On ground (a) and the planning merits of the appeal the Inspector concluded:

> "There has been little change in planning considerations since the 1978 appeal was dismissed; since then part of the frontage tree screen has been cut down and the eventual official green belt status of the site has become more certain. The 1978 appeal was in respect of a larger dwelling but in my view the Inspector's conclusions that a dwelling on the site could not be considered physically as part of the village of Potten End or an extension to it and that its appearance spoils its setting apply equally to the new building of the same dimensions as the demolished Dellcot. The cutting of part of the frontage hedge has probably made it more conspicuous than Dellcot was in 1978. On policy grounds it is even less acceptable since the approval of the Structure Plan.

The unsuitability of the site for residential development was not contested at the inquiry, reliance instead was placed on the circumstances leading up to the development and equitable considerations. As the appellant had acted openly throughout and obtained approval for works under the Housing Act and building regulations, even though it must have been apparent that they involved rebuilding, his case was that it would be inequitable for the council in its capacity as local planning authority to refuse planning permission. It was suggested, too, that the council had a duty specifically to warn the appellant at the time his plans were passed under building regulations that planning permission was also necessary. I do not consider that these arguments justify granting planning permission for a development which is otherwise unacceptable on policy grounds and for other material considerations. The application for building regulation approval was stated to be for "repairs and rehabilitation" and the purpose was shown as for an "altered" building (Document 4(40)) and it seems to me to be wrong to expect the council nevertheless to infer from the drawings that what was really required was a new dwelling, a complete re-building. It might, perhaps, have been possible to execute the works shown on the plan in separate steps of "improvement", as contemplated by Lord Parker in the Sainty judgment, but this was not done or even attempted. I do not consider that the council are to blame for not giving the appellant a specific warning about the need for planning permission if the works were to be executed in one operation involving demolition, the letter approving works under Section 16 of the Housing Act (Document 4(37)) referred to the need for planning permission "if necessary" and the notice of passing of plans for building regulations (Document 4(41)) makes it clear that it operates only as approval under those regulations and some sections of the Public Health Act. Moreover the appellant was professionally represented.

The requirements of the notice to demolish the building and clear the site will involve the appellant in further financial loss and by demolishing Dellcot he has forfeited the opportunity he had to repair it and put it back in a habitable condition. His builder was warned on 28 August when the foundations were being laid that work should stop and in the council's letter of 6 September (Document 4(44)) he was personally warned that works carried out prior to obtaining the necessary permissions were at his own risk. Nevertheless he apparently carried on with the building so that on 18 September the walls were 6 ft high and by the time the Stop Notice was served they were completed and the roof was on. If work had stopped in late August or early September much of his loss could have been avoided. I do not consider that the Macclesfield decision /(1976) JPL 453/ is relevant to the circumstances of this development or that planning permission should be given for the erection of a dwelling on this site."

These conclusions are also accepted and, for the reasons the Inspector gives, it is not proposed to grant planning permission for the development enforced against on the application deemed to have been made under the provisions of Section 88(7) of the 1971 Act. The appeal accordingly fails on ground (a).

9. On grounds (f) and (g) the Inspector concluded:

"If it is decided to uphold the notice I recommend, as agreed by the parties, that the requirement to restore the land to its condition before the development took place be deleted as the demolition of the building and removal of materials are sufficient to remedy the breach of planning control. On ground (g) there was

a request for a year in which to comply with the notice, to enable the appellant to explore other ways of obtaining planning permission for the development with, as I understood it, a hint that these might involve a section 52 agreement relating to the caravan. I consider however that the 3 months given in the notice is a reasonable period in which both to attempt to take other action directed towards retaining the building and, if it fails, to remove the building and clear the site."

These conclusions are agreed. For the reasons the Inspector gives the requirements of the notice will be varied under the provisions of Section 88(5) of the 1971 Act by the deletion of that part of them requiring restoration of the land to its condition before the development enforced against took place. The appeal succeeds on ground (f) to this extent, but fails on ground (g).

FORMAL DECISION

10. For the reasons given above the Secretary of State hereby directs that the enforcement notice be varied by the deletion from paragraph 5(2) of the words "and restore the said land to its condition before the development took place". Subject thereto he dismisses the appeal: he upholds the enforcement notice and refuses to grant planning permission for the development to which it relates.

RIGHT OF APPEAL AGAINST DECISION

11. This letter is issued as the Secretary of State's determination of the appeal. Leaflet A enclosed for those concerned sets out the right of appeal to the High Court against the decision and the arrangements for the inspection of documents appended to the Inspector's report.

I am Gentlemen
Your obedient Servant

F C SINGLE
Authorised by the Secretary of State
to sign in that behalf