

TOWN AND COUNTRY PLANNING ACT 1990

DACORUM BOROUGH COUNCIL

Application Ref. No. 4/1568/91

Chesham Model Flying Club
12 St Leonards Road
Chesham Bois, Amersham
Bucks
HP6 6DT

Brian Tompkins
24 Old Dean
Bovingdon
Herts
HP3 0EU

DEVELOPMENT ADDRESS AND DESCRIPTION

=====

O.S Land Parcel 3439, Land Adj.Newground Rd, Aldbury

USE OF LAND FOR THE FLYING OF RADIO CONTROLLED MODEL AIRCRAFT AND ON ANCILLARY
CAR PARKING AREA

Your application for *full planning permission* dated 18.11.1991 and received on
20.11.1991 has been *GRANTED*, subject to any conditions set out on the attached
sheet(s).

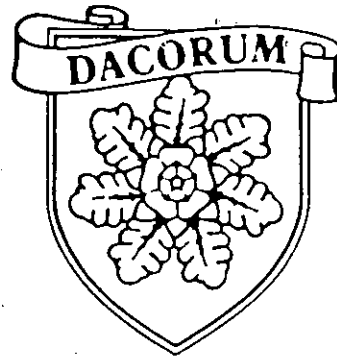
Director of Planning.

Date of Decision: 06.02.1992

(encs. - Conditions and Notes).

CONDITIONS APPLICABLE
TO APPLICATION: 4/1568/91

Date of Decision: 06.02.1992



1. This permission is granted for a limited period only expiring on 31 December 1992. At the expiration of this period the use shall be discontinued.
2. This permission shall not enure for the benefit of the land and the use hereby permitted shall cease when the Chesham Model Flying Club ceases to use the land for the flying of model aircraft or the expiration of this permission whichever is the earlier.
3. No model aircraft flying shall take place on the site before 9 am or after 7 pm on weekdays and Saturdays or before 10 am or after 6 pm on Sundays and Bank Holidays.
4. Only 3 model aircraft shall be flown at any one time.
5. The standards and requirements relating to noise emission from Model Aircraft contained in the Code of Practice on Noise from Model Aircraft 1982, or any Code revoking and replacing that Code, shall be complied with at all times.
6. The use shall not be commenced until sight lines of 2.4 m x 35 m shall have been provided on both sides of the access to Newground Road. The height of the hedge within these sight lines shall be reduced to a height of 1 m above carriageway level.
7. No surfacing of the car park area shall take place until details shall have been submitted to and approved by the local planning authority, and the surface treatment of the car park area shall accord with the details as approved.

REASONS:

1. In order to assess the effects of noise on the surrounding area.
2. To enable the local planning authority to retain control over the development which is permitted only to meet the specific circumstances of the applicant.
- 3-5 In the interests of amenity.
6. In the interests of highways safety.
7. To ensure a satisfactory appearance.



The Planning Inspectorate

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

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0272-218927
Switchboard 0272-218811
Fax No 0272-218769
GTN 1374

D J Humphrey Esq
Chesham Model Flying Club
Buckingham House
Mineral Lane
CHESHAM
Buckinghamshire HP5 1NL

Your reference

Our reference
T/APP/A1910/A/92/200771/P5

Date 1 JUL 1992

Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY CHESHAM MODEL FLYING CLUB
APPLICATION N°4/1568/91

1. As you know, I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal, which is against the decision of Dacorum Borough Council to grant, subject to conditions, planning permission for change of use from agricultural land to use for flying radio-controlled model aircraft and an ancillary parking area, on land extending to some 4.25ha at OS parcel 3439, adjoining Newground Road, Aldbury, near Tring, Hertfordshire. I held a hearing into the appeal at the Civic Centre, Hemel Hempstead, on 16 June 1992, followed by an inspection of the site and surroundings. At the hearing, an application was made by the appellants for an award of costs against the council. This is the subject of a separate letter.

2. The council granted planning permission on 6 February 1992. The condition in dispute is N°1, which reads:

This permission is granted for a limited period only expiring on 31 December 1992. At the expiration of this period the use shall be discontinued. Reason: In order to assess the effects of noise on the surrounding area.

3. The site is in the Metropolitan Green Belt. Under local policies, the council acknowledge that the proposed open-air recreational use is one appropriate within the green belt. As also agreed at the hearing, the site is within the Chilterns Area of Outstanding Natural Beauty. Policy 77 of the Dacorum Borough Local Plan Deposit Draft is not to accept noisy countryside sports unless the site occupies unused or damaged land outside the AONB etc. In my opinion the main issue in the appeal is whether an 11-month time limit was reasonable and necessary to protect important recreational and countryside interests in the AONB, and if not, whether some other time limit would be reasonable and necessary. The site adjoins a main railway line. Having regard to objections made by British Rail Property Board, a second issue is the effect of the development on railway safety.

4. You mainly submit that the use should be allowed without time limit, or at least for so long as the farmer allows your Club to use his set-aside land, the present agreement for which lasts until 1996. This is an area of high ambient noise level, with an unusually busy



railway line on one side and the busy A41 road not far away on the other. There are no nearby dwellings, other than at Newground Farm itself, some 300m distant. The 11-month limit was unreasonable; the trouble and expense of adapting the flying area, car park and access would not be economic for so short a period. Planning Officers twice recommended permission to 1996; there are no good reasons for departing from that advice. The development would comply with all recognised criteria for model aircraft flying, including the Department of the Environment's Code of Practice, 1982. The practical result was to frustrate the scheme, so there was no flying, and thus no opportunity for the council to monitor the noise effect.

5. The essence of the council's case is that this short period of permission was necessary and reasonable, so that the noise effects could be monitored, having regard to the location of the site in the AONB and close to the Grand Union Canal, used for quiet waterborne and waterside recreation. The development would be an allowable exception to Policy 77 only if it could be controlled in this way. Monitoring would be undertaken by Environmental Health Officers using the method explained at the hearing. If there are no serious objections in terms of noise nuisance during the period of monitoring, the council would favourably consider renewal of permission.

6. These are my conclusions. I find as a fact that the flying of radio-controlled model aircraft powered by internal combustion engines is a noisy countryside sport within the scope of Policy 77. In giving permission for this new development as an exception to Policy 77, it was reasonable and necessary for the council to allow for monitoring during a trial period. Powers under the Control of Pollution Act would not suffice. However, having regard to the needs of the club to prepare the central part of the site for take-offs and landings, and to lay out the car park with an improved access in accordance with condition N°6, the 11-month limit was so short as to make the project as a whole uneconomic. Para 85 of Circular 1/85 mentions capital expenditure as a material consideration in deciding whether a "trial run" condition is reasonable; and a trial period should be set that is sufficiently long for it to be clear at the end of the first permission whether permanent permission or refusal is the right answer. Condition N°1 set an unreasonably short limit.

7. I have taken into account British Rail's objections; but the council as planning authority do not support the view that the development would endanger the railway system. You say model aircraft flying is an unusually safe sport, as proved by the low insurance premium charged to each club member for £5m "third party" cover. There is not enough information before me to be able to say how safe or unsafe it is. Much must depend on club discipline of participants, another matter which the council would no doubt watch during any monitoring period. The limited evidence at the hearing was that a train would withstand the impact, for instance if a model were to crash out of control. BR's points about radio interference are not supported by convincing evidence. You assured the hearing that model aircraft use a dedicated frequency band (a legal requirement), preventing electronic accidents of this kind.

8. As to other objectors' points, the council's main concern is for users of the towpath and canal near the site; they do not support British Waterways in basing an objection on disturbance at the Cow Roast Marina, which is more than half a mile from the take-off and landing area. As a comparison, the DOE Code of Practice recommends a separation of at least 500m from noise-sensitive premises. With

FOR CHESHAM MODEL FLYING CLUB (CMFC)

Mr David J Humphrey	Chairman.
Mr Gordon Hancock	Committee Member.

FOR BRITISH MODEL FLYING ASSOCIATION (BMFA, supporting the appeal)

Mr Roger Bellingham	Flying Site Liaison Group.
Mr Roy Nudds	General Secretary.

FOR DACORUM BOROUGH COUNCIL

Miss Hilda Gibbons BA(Hons) MRTPI Planning Officer.

DOCUMENTS

1. List of persons present at the hearing.
2. Letter of notification of hearing, and circulation list.
3. Consultation replies from Aldbury and Wigginton Parish Councils.
4. Consultation reply from Hertfordshire County Council (Highways).
5. Consultation reply from British Rail Property Board.
6. Consultation reply from British Waterways.
7. Letter from Eastern Council for Sport & Recreation.
8. Letter from solicitors for site owner, Mr G B Hunter.
9. Bundle of letters from CMFC members and other club supporters.
10. Letters from BMFA, December 1991 to June 1992.
11. BMFA Members' Handbook, 1992 issue.
12. Letters from CMFC, January to April 1992; and BMFA News Release.
13. "Additional Information", a. with Application N°4/1568/91, and
b. with Application N°4/0213/92.
14. CMFC Constitution and Rules, revised 1991.
15. Grant of planning permission, N°4/1568/91.
16. Planning Officer's report on above application N°4/1568/91.
17. Notice of refusal N°4/0213/92 to vary Condition 1 of 4/1568/92.
18. Planning Officer's report on above application N°4/0213/92.
19. Policy extracts from Structure Plan Proposed Alterations, 1991.
20. Policy extracts from Dacorum District Plan, 1984.
21. Policy extracts from Dacorum Borough Local Plan Deposit Draft.
22. Code of Practice on Noise from Model Aircraft, DOE, 1982.

PLANS PRODUCED BY CMFC

- A. Submitted site plan, marked on 1/2500 scale Ordnance sheet.
- B. Revised site plan, including hedge to SW of vehicular access.
- C. Enlargement to 1/625 scale of proposed car parking area.

reference to Aldbury Parish Council's letter, this site is not on the edge of the village as they suggest.

9. Having taken into account all other matters raised, including certain safeguards imposed by other conditions (the terms of which you do not dispute), the decision will be to allow the appeal. The council suggest, in this event, that the permission should last until 31 December 1996, to reflect the period of the farm set-aside agreement. You suggest, instead, permission for as long as the landowner continues to allow the Club to make use of the land, which might be beyond 1996. The latter is, however, too vague, and could result in an unduly long period, for instance if the necessary monitoring shows excessive noise affecting quiet use of the canal and towpath. The same is true of the Eastern Council for Sport and Recreation's suggestion, that there should be no time limit.

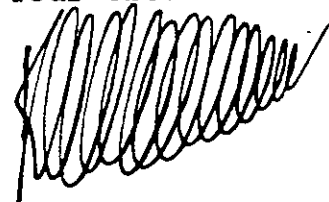
10. The decision will be to allow five years from the date of this letter. This strikes a reasonable balance between the needs of your Club, and the council's proper function in monitoring the noise. It will then be for the council to determine whether a longer period should be allowed (if asked for), in the light of up to five years' experience. Whilst Planning Policy Guidance Note N°17 recognises that set-aside land may meet certain criteria for noisy sports, the actual period of the land-owner's set-aside agreement, and the terms of any tenancy, are private matters outside the scope of planning control.

11. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and vary the planning permission N°4/1568/91 for use of land for the flying of radio-controlled model aircraft and ancillary car parking area on OS parcel 3439, adjoining Newground Road, Aldbury, granted on 6 February 1992 by Dacorum Borough Council, by deleting condition N°1 and substituting therefor the following condition:

1. The use hereby permitted shall be discontinued and the land restored to its former condition as agricultural land on or before the expiration of 5 years from the date of this letter, or such longer period as may be approved in writing by the Local Planning Authority.

12. Attention is drawn to the fact that an applicant for approval required by the above new condition has a statutory right of appeal to the Secretary of State if approval is refused, or granted conditionally, or if the authority fail to give notice of their decision within the prescribed period.

I am, Sir
Your obedient Servant



R M MAXTONE GRAHAM MA(Cantab), Advocate
Legal Assoc: Royal Town Planning Inst
Inspector



The Planning Inspectorate

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

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0272-218927
Switchboard 0272-218811
Fax No 0272-218769
GTN 1374

PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL

D J Humphrey Esq
Chesham Model Flying Club
Buckingham House
Mineral Lane
CHESHAM
Buckinghamshire HP5

Ack.					Your reference	
FORM	DP	DC	GC	Adm.	File	
received			3 JUL 1992		Our reference T/APP/A1910/A/92/200771/P5	
Comments					Date 1 JUL 1992	

Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPLICATION FOR COSTS BY CHESHAM MODEL FLYING CLUB

1. I refer to your application for an award of costs against Dacorum Borough Council, made at the hearing held at Hemel Hempstead on 16 June 1992. The hearing was in connection with an appeal by Chesham Model Flying Club against the grant of planning permission, subject a condition limiting the use to a period expiring on 31 December 1992, on an application for use of land for the flying of radio-controlled model aircraft and an ancillary car parking area on OS parcel 3439, adjoining Newground Road, Aldbury. A copy of my appeal decision letter is enclosed.

2. In support of your application, you said the 11-month time limit was unreasonable, because of the work and cost of getting the site ready for the proposed use. No proper consideration had been given to the planning merits of this particular site. The council showed no reason (at the application stage, or at this hearing) to depart from the professional advice of the Planning Officer, who had recommended permission until 1996.

3. In response, it was pointed out that councillors are not experts on the subject of model aircraft; they could not be expected to assess the noise effects. A short trial period was needed to allow Environmental Health Officers to assess the noise. Five years would be too long, if monitoring were to show that there is a noise nuisance. Councillors are not bound to accept the advice of the Planning Officer. Having regard to the sensitive position of the site in an Area of Outstanding Natural Beauty, this degree of caution was reasonable.

4. The application for costs falls to be determined in accordance with the advice contained in Circular 2/87 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably. The costs question relates to this appeal about application N°4/1568/91 only; no appeal was brought against refusal of application N°4/1568/92, to vary the condition.

5. In allowing planning permission for this noisy sport as an exception to Policy 77 of the emerging Local Plan, the council clearly did give consideration to the special merits of the site. In other respects, however, your claim is more soundly based. Para 7 of the Circular explains that, while planning authorities are not bound to follow advice from their officers, they will be expected to show that they had reasonable planning grounds, supported by evidence for a decision taken against



such advice. If they fail to do so, costs may be awarded. I find that the council have shown no reasons to depart from the sound professional advice given by the Planning Officer, to allow a trial period until 31 December 1996.

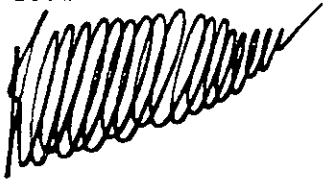
6. In the light of para 85 of Circular 1/85, the trial period of 11 months was so short as to have frustrated the project, having regard to the likely time and cost of work to prepare the surface of the central part of the site for take-offs and landings, to lay out the approved car park, and to improve the access as required by another condition of the permission. On the information available to them at the time, the council should have realised that the effect of this condition would be to make the planning permission virtually useless, resulting in there being no flying, and thus no monitoring. The condition would in that way be self-defeating. It was unreasonable to impose such a short limit. By persisting in saying that 11 months was reasonable, the council have caused the unnecessary expense of this hearing. At the hearing, the Planning Officer did her best to support the elected councillors' case, but had been provided by them with no evidence to show why her report had been wrong in recommending a trial period until the end of 1996. I therefore conclude that your application for an award of costs is justified.

FORMAL DECISION

6. 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 Dacorum Borough Council shall pay to Chesham Model Flying Club the costs of the proceedings of this hearing, such costs to be taxed in default of agreement as to the amount thereof. The subject of the proceedings was an appeal under Section 78 of the Act of 1990 by Chesham Model Flying Club against the grant of planning permission, subject a condition limiting the use to a period expiring on 31 December 1992, on an application for use of land for the flying of radio-controlled model aircraft and an ancillary car parking area on OS parcel 3439, adjoining Newground Road, Aldbury.

7. You are now invited to submit to Dacorum Borough Council, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement as to the amount thereof.

I am, Sir
Your obedient Servant



R M MAXTONE GRAHAM MA(Cantab), Advocate
Legal Assoc: Royal Town Planning Inst
Inspector