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Your reference

DPB/RRD/9/12584
Our reference
DACORUM BOROUGH COUNCIL

T/APP/C/88/A1910/000011/P6

Date 5 JUN 89

Received

-7 JUN 1989

Comments

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEAL BY MR I G MACLEAN
LAND AND BUILDING AT 36-38 LONDON ROAD, APSLEY

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land and building. I have considered the written representations made by you and by the Council. I inspected the site on 10 May 1989.
2. a. The date of the notice is 13 July 1988.
- b. The breach of planning control alleged in the notice is the carrying out of operations, namely the erection of a storage building, without the benefit of planning permission.
- c. The requirements of the notice are to demolish and remove all remains of the storage building.
- d. The period for compliance with the notice is 6 months.
- e. The appeal was made on the grounds set out in Section 88(2) (a), (b) and (h) of the 1971 Act as amended.
3. As to the Section 88(2)(b) appeal the initial statement of facts submitted by your clients appeared to imply that the building was possibly permitted development because it replaced in size the structure previously on the site. Your submissions of 2 December 1988 dealt further with this matter however at paragraph 2.8 where it was accepted that because the distance between the building and the boundary was less than 5 m the provisions of the General Development Order 1988 did not apply. I have assumed that this correct view is effectively a withdrawal of the Ground 88(2)(b) appeal and I shall take no further action in the circumstances.
4. From my inspection of the site and its surroundings it is my view that there are 3 issues. The first is whether it is necessary for the development to meet the Council's standards, the second is whether the building, of itself, is of an acceptable design standard and whether it is harmful to the character of the adjoining development. The third issue is whether the retention of the building would prejudice a proposed highway improvement scheme.

5. As to the issue of parking and servicing provisions I saw at the inspection the arrangements for staff and business parking and the loading and off-loading facilities. I have noted the views in paragraph 3.2 of your statement and the Council have not rejected your calculations. Conditions vis-à-vis parking and deliveries have not changed with the advent of the new building and bearing in mind the limited site available overall, the fact that your client has secured parking spaces adjoining the appeal site on the basis of a 5-year lease and viewing facilities at other premises in the neighbourhood, I consider that it is reasonable in all the circumstances to waive the requirements to provide on-site facilities in this instance. In support of their objections the Council have sited Policy 45 of the Adopted Local Plan which, as a matter of intent, is unquestionable but I believe that in the present case there are quite justifiable reasons for not requiring full compliance with the standards set out in Appendix 6 of the Council's statement. The overall floorspace of the business use is not increased and your client has access to parking facilities on a secure basis, for these reasons I do not accept the Council's arguments on this issue.

6. The case of the Council in respect of their second reason for the service of the notice is expressed in paragraph 4.2 of their statement. Having seen the building in situ, the architectural qualities of buildings round about and the appearance of the area generally it is my opinion that the objections of the Council cannot be sustained. I could discern no particular character in respect of the existing building, which I have taken to be the old part fronting London Road, that would be harmed by the flat roof on the appeal premises and neither, in relation to developments in the area, would I judge the building to be excessive in size.

7. In so far as the third reason of objection is concerned the Council have not submitted any evidence as to the programming or implementation of the proposed highway improvement. I am guided in this matter by the information contained in your statement as to the likelihood of the appeal premises being affected by the construction of the Apsley Relief Road. From the information available to me it would seem that the construction of the relief road is, in view of the advanced procedural stages that have been reached in the progress of the A41 bypass, may be in doubt. Nevertheless the relief road remains identified as a possible highway undertaking and until such time as it is abandoned the effect of development that would prejudice this implementation must be taken into account in reaching a decision as to whether planning permission can be granted.

8. Because of the situation over the likelihood of the relief road being built the Council have asked that a temporary planning permission be granted until such time as the future of the road is determined. You do not believe that this limitation is warranted. In view of the present positive intention to construct the relief road however it would, in my opinion, be inappropriate to permit a building of the size and permanent nature involved to be built on the line of the road. I have noted your comments on the costs factor but I deem these not be a land use consideration. In reaching my decision I have taken account of the advice contained in Development Control Policy Note No 6 and have concluded that although the opening sentence does not support the granting of planning permission in your client's case the advice thereafter does accept that on occasions a temporary planning permission may be appropriate. It is apparent from the Council's statement in my judgement that should the proposals for the relief road be set aside a permanent planning permission for the building would be forthcoming. I see no reason therefore for disagreeing with the Council's view that a temporary planning permission expiring in December 1991 would be reasonable and appropriate.

9. The Council have asked that the use of the building be restricted to that of storage purposes but have not advocated any reason for that view. Your response is to reject the proposal arguing that the use of the appeal site is that of the planning unit, namely for the retail sale of goods. I agree with your contention

that the building enforced against is used as a store and a timber workshop in an ancillary capacity to the primary use of the whole premises as a shop. I can find no basis whatsoever for conveying to the building enforced against a use for storage or as a distribution centre under the provisions of Class B8 of the Town and Country Planning (Use Classes) Order 1987.

10. I have considered all the matters that were raised in the representations but none outweigh the basis of my decision.

FORMAL DECISION

11. In exercise of the powers transferred to me and for the reasons given above, I hereby allow the appeal and direct that the enforcement notice be quashed. I grant planning permission for the retention of the single storey building at the rear of 36-38 London Road, Apsley and its continued use as a store and joinery workshop, both uses being ancillary to the use of the appeal premises as a shop, in accordance with the application deemed to have been made under Section 68B(3) of the 1971 Act as amended and subject to the following conditions:

1. the building hereby permitted shall be removed on or before the 31 December 1991.

12. This letter does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

RIGHT OF APPEAL AGAINST DECISION

13. This letter is issued as a determination of the appeal 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



J PEAKE DipTP(Lond) MRTPI
Inspector

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