The Planning Inspectorate

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Our Ref: T/APP/A1910/A/97/284520/P2

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY MR A D BENJELLOUN
APPLICATION NO: 4/1639/96

1. I have been appointed by the Secretary of State for the Environment, Transport and the Regions to determine this appeal against the decision of the Dacorum Borough Council to refuse planning permission for the conversion of farm building "B" to staff accommodation and farm office; and the rebuilding of the demolished north-east elevation and new roofing at Gamnel Farm, Bulbourne Road, Tring. I conducted a hearing into the appeal on 24 March 1998. At the hearing, an application was made on behalf of Mr A D Benjelloun for an award of costs against the Dacorum Borough Council. This is the subject of a separate letter.

2. From the representations made at the hearing and in writing and from my inspection of the site and its surroundings, I consider the main issue in this case is whether the proposal would be appropriate in the Green Belt; and, if it is not, whether there are any very special circumstances sufficient to override the presumption against such development.

3. The development plan for the area comprises the Hertfordshire County Structure Plan incorporating Approved Alterations 1991, and the Dacorum Borough Local Plan, both of which include the site in the Metropolitan Green Belt and set out guidelines for development within it. In the latter, the main provisions are contained in Policy 3. Briefly, except in very special circumstances, most forms of development, other than for the purposes of agriculture, forestry or other rural activities, are not appropriate to the Green Belt. Under Policies 100 and 21 respectively of the Local Plan, appropriate re-use of some redundant buildings and the replacement of existing houses in the Green Belt is also acceptable. A deposit version of the Hertfordshire County Structure Plan Review 1991-2011, together with proposed modifications has also been published. In this emerging plan, policy on development has been worded to be consistent with national guidance contained in Planning Policy Guidance 2 *Green Belts* (PPG2). I attach to this plan weight appropriate to its status in accordance with paragraph 48 of Planning Policy Guidance 1 *General Policy and Principles* (PPG1). My attention has also been drawn to other advice in PPG1 and in PPG7 *The Countryside - Environmental Quality and Economic and Social Development*.

4. At the hearing you confirmed that, owing to the partial demolition of the appeal building, it was not possible to proceed with the development under the permission for its conversion, granted in 1992. For the same reason there is no dispute between the parties that the proposal cannot now be regarded as a conversion; and so Policy 100 of the Local Plan therefore does not apply. There is also no disagreement that neither Policies 20 nor 21 apply, as the proposal is not, respectively, for a house extension nor a replacement of an existing house. It was agreed that the key policy of the local plan against which the proposal should be judged is No 3. You accept that, with the exception of the office, which would be partly used in connection with your client's agricultural interests, the proposal does not fall within any of the 5 principal categories of use acceptable in the Green Belt listed in that policy. Similarly, with the same exception, you accept that it does not come within the ambit of the purposes listed in paragraph 3.4 of PPG2.

5. However, you contend that the proposal is acceptable under the terms of the unreferenced part of Policy 3 which relates to "Very small scale building which is necessary to sustain an acceptable use...provided it has no adverse impact on the character, function and appearance of the Green Belt". Although the Council have not explained in detail what is meant by "very small scale", I take the view that a development involving 2 self-contained living units, an office and storage, amounting to over 150 square metres of floorspace, should not be so regarded. I find no basis in the plan or elsewhere to support your argument that the phrase should be interpreted as "single storey". Even if I was to agree with you, I do not accept that the proposal is "necessary to sustain an acceptable use". You say that the house, by virtue of its very existence, must be acceptable, and so, by inference, must be development connected with it. However, under paragraph 3.4 of PPG2, residential use is not a purpose for which the construction of new buildings is appropriate. "Essential facilities for...other uses of land which preserve the openness of the Green Belt" are appropriate, but in my opinion, a house is not a use which preserves the openness of the Green Belt. While I understand that it would be convenient for your client's "mother's help" to have separate accommodation, and for him to have an office, I do not regard the additional accommodation as strictly necessary to sustain the use of Gamnel Farm as a house. In view of the foregoing, I do not consider it essential for the purposes of determining whether the proposal is appropriate to consider whether it would satisfy the final criterion of this part of Policy 3: that it should not have an adverse impact on the Green Belt.

6. You do not seek to justify the whole of the proposal on the basis of a connection with your client's farming interests. Nevertheless, I have considered whether the proposal may be regarded as appropriate because of its partial connection. However only a small proportion of the building would be used as an office, the need for which stems only partly from the agricultural business. The remainder is for staff and visitor accommodation, unconnected with the farm. In my opinion, the proposal cannot be justified on the basis of agricultural need.

7. Overall, I take the view that the proposal is for the construction of a new building which, when measured against the development plan and national guidance, is inappropriate in the Green Belt. PPG2 states that inappropriate development is, by definition, harmful to the Green Belt. It is for the appellant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm to

by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

8. At the hearing, you put forward the argument that if the roof level of the proposed building were to be lowered by 450mm, the proposal would be permitted development by virtue of Class E of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 (the GPDO). You say that if permission for the proposal were not to be granted as a result of this appeal, then your client could in any event carry out a similar development, but with a shallower pitch to the roof, without the need to obtain planning permission. In your view, this would be less in keeping with the vernacular style of the area, and would not enable the re-use of 2 existing roof supports. There would therefore be no benefit, and some disadvantage, compared to the appeal proposal.

9. Your argument is based on the premise that the appeal building lies within the curtilage of the dwelling house, which in your opinion extends some distance beyond building "A" and the appeal building. The Council identify a smaller area, including only the land immediately surrounding the house shown *outside* the application site on the submitted location plan. On my site inspection, I observed that land immediately to the rear of the house, and to the sides, including by the entrance, has been laid out with block paving, shrubs and grass. The paving also extends to the north east of building "A", where there is an ornamental pool. Whether this area, which is more extensive than the curtilage suggested by the Council, equates to the historical curtilage of the house I do not know, but in my view it presently functions as its garden. Lying between the appeal building and building "A", and separated from the paved entrance area by a row of potted conifers, is an area of roughly surfaced ground, seemingly part of the former farmyard, but presently disused. I note that this area is shown on the site plan which accompanied application No 4/0995/92 for the conversion of buildings A and B to living accommodation as a hard paved area with a central flower bed. I also note that the permission granted pursuant to that application includes the wording "change of use of agricultural land to residential garden". In the Council's opinion, the "agricultural land" includes that land, and the land on which the appeal building stands. I have no evidence that this interpretation was ever challenged. That permission has not been acted upon, and so any extension of the residential curtilage deriving from it has not taken place. The land between buildings "A" and "B" does not, to my mind, appear to possess the characteristics of a residential curtilage: it is not laid out as a garden nor is it an area suitable for other normal domestic activities to take place. Although adjoining, it does not, in my view, have an intimate association with the paved and grassed areas. Indeed, it appears to have more in common with the remainder of the former farmyard beyond.

10. The appeal building adjoins parts of both the pesent garden and the former farmyard. Though you consider that it should be regarded as an outbuilding of the house, and I understand that it was used as such for a time after its function as a milking parlour and dairy ceased, I note it is still described in the present application as a "farm building". Other than the planning application plans, you have not provided me with any evidence, in the form of historical plans, documents, photographs or personal testimony to substantiate the assertion that the land within which the appeal building lies is part of the residential curtilage. Moreover, nothing was pointed out to me on the site inspection in support of your case. However, there is no more evidence in favour of the Council's definition. Indeed, I am sure that it is not correct, not least because it excludes the main access to the house. In my

opinion, the evidence on the ground is inconclusive. Therefore, entirely without prejudice to your client's ability to submit an application for a certificate of lawful use or development, I consider it questionable whether the land on which the appeal building stands should be regarded as residential curtilage.

11. The Council further disputes your contention that the proposal should be regarded as "required for a purpose incidental to the enjoyment of the dwelling house as such" in the terms of the GPDO. I take the view that the proposed office is not incidental to the use of the house, but it is primarily related to your client's business interests. That element of the proposal does not, therefore, fall within the ambit of this class of the GPDO. Living accommodation would, in my opinion, normally be regarded as an integral part of the dwelling house rather than as incidental to it. In this case, the accommodation is self-contained, including separate entrances, bathrooms and kitchens. Notwithstanding that it is proposed to be occupied by either domestic staff or visitors, it represents, in most respects, new units of residential accommodation rather than as a building the purpose of which is incidental to the enjoyment of the main house. Again, I take the view that the relevant provisions of the GPDO do not apply. On this basis, I consider that there is little or no likelihood that the "fall-back position" you describe would actually happen, or that the limited benefits you outline would be realised.

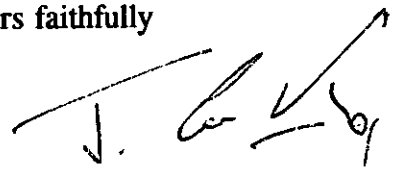
12. The harm to the Green Belt by reason of inappropriateness, to which the Secretary of State attaches substantial weight, is not in my opinion clearly outweighed by these considerations. In my judgment, the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist in this case.

13. Having considered all of the evidence before me, I conclude that the proposal would be inappropriate in the Green Belt; and that there are no very special circumstances sufficient to override the presumption against such development. The proposal is thereby unacceptable.

14 In reaching this conclusion I have had regard to all other matters raised, including your client's desire to provide accommodation for staff and visitors for whom there is inadequate space within the main house; but I note that permission exists for the conversion of building "A" to accommodation ancillary to the main dwelling, and this has not been implemented. I also note that the Council raise no specific objections to the proposal based on its visual impact. However, the lack of such impact is not itself a reason to allow inappropriate development in the Green Belt. None of these matters is sufficient to outweigh the conclusions on the main issue which has led to my decision.

15. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

Yours faithfully



JONATHAN G KING BA(Hons) DipTP MRTPI
Inspector

APPEARANCES

FOR THE APPELLANT

Mr A E King BA(Hons) B.Pl MRTPI	-	Principal, Andrew King and Associates.
Mrs J Benjelloun	-	Wife of the appellant.

FOR THE LOCAL PLANNING AUTHORITY

Miss F Moloney BA(Hons) DUPI MRTPI	-	Senior Planning Officer, Dacorum Borough Council.

DOCUMENTS

Doc 1	-	List of persons present at the hearing.
Doc 2	-	Planning permission, Ref 4/1638/96: conversion of barn A to living accommodation.
Doc 3	-	Letters dated 30.9.96 and 11.11.96 from the Council to the agent for the appellant.
Doc 4	-	Council committee report: application Nos 4/1638/96FL & 4/1639/FL.
Doc 5	-	Extract from the Dacorum Borough Local Plan: Policy 20.

PLANS

Plan A	-	The application plans, comprising (a) location plan; (b) block plan; (c) survey of outbuildings, No 999 2B; (d) plans and elevations, No 999 23B.
Plan B	-	Survey Plan: No 999 1A; and plans & elevations, conversion of building A, No 999 22.
Plan C	-	Plan and elevations: conversion of building A, No 999 2A.
Plan D	-	Site plan: conversion of buildings, No 999 24.

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Our Ref: T/APP/A1910/A/97/284520/P2

- 6 APR 1998

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEAL BY MR A D BENJELLOUN
APPLICATION FOR COSTS BY MR A D BENJELLOUN

1. I refer to your application for an award of costs against the Dacorum Borough Council which was made at the hearing held at Hemel Hempstead on 24 March 1998. The hearing was in connection with an appeal by Mr A D Benjelloun against a refusal of planning permission on an application for the conversion of farm building "B" to staff accommodation and farm office; and the rebuilding of the demolished north-east elevation and new roofing at Gamnel Farm, Bulbourne Road, Tring. A copy of my appeal decision letter is enclosed.

2. In support of your application, you do not refer me to any specific advice in Circular 8/93, *The Award of Costs Incurred in Planning and Other...Proceedings*, but you contest that the Council have acted unreasonably, in that the reasons for refusal were neither sound nor clear cut. You argue that your client was entitled to rely on the Council's knowledge of permitted development rights, and they should have regarded those rights as a material consideration in the determination of the application. Those rights apply equally within the Green Belt, and would allow a building only 450mm lower than the proposal to be built as "curtilage development" without the need for planning permission. In these circumstances it was unreasonable of the Council to refuse the application on Green Belt grounds. Permission for a building of identical appearance had been granted in 1992, albeit as a conversion, and in your view there is no reason for the matter to have come to a hearing.

3. In response, the Dacorum Borough Council do not accept that the building lies within the curtilage of the house, and therefore no permitted development rights apply. Even if the building were to be within the residential curtilage, the proposal falls outside the criteria of Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO). The proposal is not comparable with that which was granted permission in 1992, as that was for a conversion which was in accordance with the advice of Planning Policy Guidance 2, *Green Belts* (PPG2) and Policy 100 of the local plan. The present proposal is outside the ambit of these policies and so is inappropriate. In the

application of national and local policy the Council have acted reasonably.

4. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome. Costs may only be awarded against a party who has behaved unreasonably, and thereby caused another party to incur or waste expense unnecessarily.

5. Paragraph 7 of Annex 3 to the Circular says that reasons for refusal should be complete, precise, specific and relevant to the application. In any appeal proceedings, the authority will be expected to produce evidence to substantiate each reason for refusal, by reference to the development plan and all other material considerations. In my opinion, though the reason for refusal does not refer specifically to individual policies within the development plan, nevertheless it makes it clear that the proposal does not fall into one of the categories of development which, in terms of the policies of the Dacorum Borough Local Plan, are acceptable in the Green Belt. To my mind there is no uncertainty over the reason for the refusal. The committee report prepared for the Council in respect of the planning application made reference to PPG2 and to Policy 3 of the local plan, but did not explicitly consider their provisions. Nonetheless, at the hearing the Council produced more detailed evidence to support their case, sufficient in my view, to show that the decision had been in accordance with those policies and that advice.

6. It is clear that the question of permitted development rights was not considered by the Council in reaching its decision. In my view, it is reasonable to expect the local planning authority to have regard to the likely "fall-back position" when reaching a decision. However, I have seen nothing to show that the matter was raised by your client's then agents prior to the making of the application which could have suggested to the Council that your client was likely to consider the alternative of exercising permitted development rights. Furthermore, there is no evidence to suggest that the matter was raised subsequently by yourselves until the time of the hearing. Reference was made to the provisions of the Town and Country (General Development) Order 1988 in your pre-hearing statement, but, apart from that Order having been superseded in 1995, your argument with regard to "fall-back" was not stated clearly or fully. In any event, the Council do not agree with your interpretation, so that, had it considered the matter at an earlier stage, it would have made no difference to the decision taken. The appeal would not thereby have been avoided.

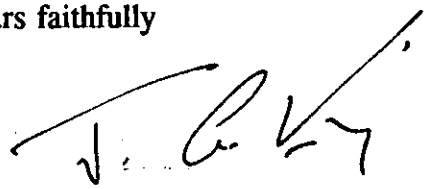
7. Finally, I agree with the Council that the proposal differs from that permitted in 1992, as that was for a conversion of an existing building, whereas the present proposal is for reconstruction. At the hearing it was established that you agreed that the proposal should be considered primarily in the light of Policy 3 of the local plan, and that Policy 100, relating to conversions, was not applicable. I am therefore satisfied that the Council properly took account of the differences between the proposals in its consideration of the application.

8. Overall, I am of the opinion that the Council has not behaved unreasonably in this case, and that it has not caused your client to incur or waste expense unnecessarily. I therefore conclude that your application for an award of costs is not justified.

FORMAL DECISION

9. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Mr A D Benjelloun for an award of costs against the Dacorum Borough Council.

Yours faithfully



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