



# Department of the Environment and Department of Transport

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GTN 2074

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20 OCT 1987

File No.

Referred

927

Cleared

22371

Raymond C Tetlow  
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PLANNING DEPARTMENT					
DACORUM DISTRICT COUNCIL					
Ref	DP	DC	AC	Adm	Date
CPO	DP	DC	AC	Adm	
Received					20 OCT 1987
Comments					

Your reference

RGT/0548/1

Our reference

File T/APP/A1910/A/87/069259/P3

Date

16 OCT 87

*1/MB*  
*2/MB*  
*3/MB*

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9  
APPEAL BY MR AND MRS C H BURGESS  
APPLICATION NO: 4/1668/86

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against the decision of the Dacorum Borough Council to refuse planning permission for the continued use of a dwelling house without compliance with condition 3 of planning permission No 4/0544/74; 516/74D at Gatherley Potten End Hill, Water End, Hemel Hempstead. I have considered the written representations made by you and by the council and by the Great Gaddesden Parish Council. I inspected the site on 26 August 1987.

2. Outline planning permission was granted for a dwelling on 21 August 1973 following an inquiry into an appeal (T/APP/2142/A/71382/DS). This was subject to an agricultural occupancy condition. A subsequent planning permission was granted on 23 May 1974. This included three conditions and that in dispute is number 3 which states that:-

"The dwelling hereby permitted shall not be occupied otherwise than by persons employed, or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or forestry and the dependents of such persons".

3. From the written representations and what I saw on my visit to the site and surroundings I take the view that the main issue in this case is whether or not the requirements of agriculture in this area justify the removal of the conditions restricting the occupancy of this property which is located in the Metropolitan Green Belt.

4. 'Gatherley' is a two-storey property located within a small group of dwellings which stand just south of the Leighton Buzzard - Hemel Hempstead Road, the A4146, at Water End some 3 miles north of Hemel Hempstead. These dwellings stand in open countryside and there are a large number of trees in the immediate locality. Adjacent to the appeal site, to the north, are the Gade Water Nurseries. A caravan stands at the northern end of the nurseries.

5. The Hertfordshire Structure Plan and the adopted Dacorum District Plan include the appeal premises and the surrounding area within the Metropolitan Green Belt. Both plans indicate that permission will not be granted for new development in the Green Belt except for that associated with agriculture, forestry or similar activities except in very special circumstances.

6. In granting permission in 1973 the Inspector was of the view that there was a need for a dwelling directly associated with the Watercress Farm (Gade Water Nurseries) because of the requirement for specialist supervision. He also was of the opinion that a house would not detract from the local scene and that the water supply of the Watercress Farm made a valid contribution to a nearby ornamental fish business.

7. There is no disagreement that there have been changes in the circumstances of your clients business. I have read that none of the family were interested in the production of watercress and that a suitable partner for Mr Burgess could not be found. In 1971 parts of the holding which were not part of the main unit were sold. Trout farming largely took over from the original activity and in 1984, for health reasons Mr Burgess attempted to sell the house and trout farm. Ultimately the farm land was sold separately and your clients currently retain the house and about  $\frac{2}{3}$  of an acre of land. I have also read that both Mr and Mrs Burgess are unwell and medical advice indicates that their health might improve if they lived elsewhere in a drier location.

8. To justify the discharge of the condition I have to be convinced that there is no long term need for a dwelling for a person employed in agriculture or similar in this locality. The Council has adopted a rigorous policy in relation to agricultural dwellings in the Green Belt in that they will only be allowed if they cannot practically be located elsewhere. It has also been submitted that the appellants have not produced evidence that there has been adequate marketing of the property in order to ascertain whether there is a demand in the locality. You, on the other hand maintain that there is little point in doing so because the appeal premises could not be sold at an adequate price with the condition attached. You also argue that since the farm holding is now separated from the dwelling with which it was constructed there is now no long term need for them to be associated. It has been submitted, too, that the house would be too expensive and large, and the land remaining too restricted for any purchasers who might comply with the condition.

9. I agree that Gatherley is a large house in that it has 5 bedrooms, an office, sitting room, kitchen/breakfast room: a double garage together with other facilities with a total floor area of some 2650 square feet. I have noted that if the property were sold with the condition extant it might achieve £115,000, whereas without the condition it might achieve £170,000.

10. However in coming to my decision I have to take into account the fact that the adjoining Water Nurseries are still operational and that the surrounding area is primarily in agricultural use. I have also taken into account points made by the inspector in his decision letter quashing the enforcement notice relating to the residential caravan which stands within the nursery site. (CT/APP/A1910/C/85/956/P6) He recognised that it was necessary to accommodate a person to supervise the farm either on, or close to it and Gatherley was, occupied by a person retired from agriculture which was in accordance with the occupancy condition and was not available. It seemed to him that a residential caravan was the most practicable way of meeting the requirements of the nursery. He went on to say that at some future date permanent accommodation suitable for the owner of the nurseries or a successor might become available. Consequently in granting permission a restrictive condition was imposed which allows it to continue only as long as it is occupied by the person directly responsible for running the nursery. It seems to me that whilst the current owner of the nurseries has stated that Gatherley is too large and too expensive for himself and his family circumstances may change in the future.

11. I have also given careful consideration to the question of marketing and accept that there may be difficulties in selling a property subject to an agricultural occupancy condition. Whilst you have stated that the state of agricultural enterprise in the area is currently depressed it is clear to me that an adequate survey of possible demand has not been carried out and that I do not have specific evidence before me of the absence of a continuing need for an agricultural dwelling in the area. In all these circumstances I do not consider that it would be appropriate to remove the condition.

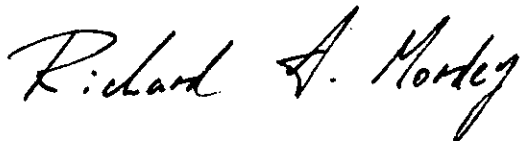
12. The original permission for a dwelling within the Metropolitan Green Belt was granted because of particular agricultural circumstances. It seems to me that the removal of the condition could lead to other similar applications in the area which the Council might find difficult to refuse. This would not only lead to a reduction in the rural housing stock but also erode the long standing Green Belt to which government policy is strongly committed and stated in Circular 16/87, the draft of which you have mentioned.

13. I do sympathise with the personal circumstances of your clients but have to conclude that the policy objections are too significant to justify discharging the condition.

14. I have taken all other matters into account including the possibility that the appeal premises might be bought by a purchaser who would not comply with the condition. This would initially be a matter for the Local Authority and does not override the objections. No other factors affect my conclusions on the considerations that have led to my decision.

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

I am Sir  
Your obedient Servant

A handwritten signature in cursive script, reading "Richard A. Mordey". The signature is written in dark ink and is positioned above the typed name and title.

RICHARD A MORDEY BA MCD MRTP  
Inspector

Department of the Environment  
2 Marsham Street  
LONDON SW1P 3EB

Under the provisions of Section 245 of the Town and Country Planning Act 1971 a person who is aggrieved by the decision given in the accompanying letter may challenge its validity by an application made to the High Court within 6 weeks from the date when the decision is given. (This procedure applies both to decisions of the Secretary of State and to decisions given by an Inspector to whom an appeal has been transferred under paragraph 1(1) of Schedule 9 to the Town and Country Planning Act 1971.)

The grounds upon which an application may be made to the Court are:-

1. that the decision is not within the powers of the Act (that is the Secretary of State or Inspector, as the case maybe, has exceeded his powers); or
2. that any of the relevant requirements have not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

"The relevant requirements" are defined in Section 245 of the Act: they are the requirements of that Act and the Tribunals and Inquiries Act 1971 or any enactment replaced thereby, and the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts. These include the Town and Country Planning (Inquiries Procedure) Rules 1974 (SI 1974 No. 419), which relate to the procedure on cases dealt with by the Secretary of State, and the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1974 (SI 1974 No. 420), which relate to the procedure on appeals transferred to Inspectors.

A person who thinks he may have grounds for challenging the decision should seek legal advice before taking any action.

DP

## TOWN &amp; COUNTRY PLANNING ACTS, 1971 and 1972



## DACORUM BOROUGH COUNCIL

To Mr C H & Mrs P E Burgess  
"Gatherley"  
Water End  
Hemel Hempstead

Mr Raymond C Tetlow  
112 High Street  
Newport Pagnell  
Bucks.

..... Continued use of dwellinghouse without compliance  
..... with Condition 3 of planning permission dated  
..... 11 July 1974 (Ref: 4/0544/74; 516/74D) .....  
at ..... "Gatherley", off Pottend End Hill, .....  
..... Water End. ....

Brief  
description  
and location  
of proposed  
development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated ..... 27.11.86 ..... and received with sufficient particulars on ..... 28.11.86 ..... and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:—

The site is within the Metropolitan Green Belt on the adopted Dacorum District Plan wherein permission will only be given for use of land, the construction of new buildings, changes of use of existing buildings for agricultural 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, insufficient justification have been advanced to warrant an exception being made to restrict the use of the dwellinghouse for the agricultural occupancy needs of the locality.

Dated ..... 26 ..... day of ..... February ..... 19 .. 87 ..

Signed.....

SEE NOTES OVERLEAF

P/D.15

Chief Planning Officer

#### NOTE

1. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
2. If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Borough Council in which the land is situated, a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
3. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in s.169 of the Town and Country Planning Act 1971.