



Appeal Decision

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

inquiry held on Tuesday and Wednesday 18 and 19 April
2000

by **D Roger Dyer** BA Dip Arch RIBA FCIArch FASl
Barrister
an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

5 MAY 2000

Appeal 1: T/APP/A1910/C/99/1031198

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The appeal is brought by A P Power Limited against Dacorum Borough Council.
- The site is located at Manor Farm, Wilstone.
- The Council's reference is 4/1829/99ENA.
- The notice was issued on 3 September 1999.
- The breach of planning control as alleged in the notice is "without planning permission, the erection of buildings".
- The requirements of the notice are "demolish buildings A and B as annotated, and hatched in black, on the attached plan; permanently remove all building materials from the site, including foundations; restore the site to a grassed surface by importing top soil and seeding or turfing".
- The period for compliance with the requirements is 3 months.
- The appeal was made on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the 1990 Act.

Decision: I direct that the enforcement notice be corrected by the substitution of the plan annexed to this letter for the plan attached to the enforcement notice;

Subject thereto the appeal is allowed and I quash the enforcement notice. I hereby grant planning permission on the application deemed to have been made under S177(5) of the amended Act for the development already carried out, namely the erection of buildings on the land shown hatched black on the plan annexed to this letter subject to the following conditions:

- (i) The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
- (ii) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority save for the materials to be used in the construction of the plinth brickwork which are to match the works already built. Development shall be carried out in accordance with the approved details.
- (iii) No development shall take place until details of the surfacing materials for the new driveway have been submitted to and approved in writing by the local planning authority and the driveway shall be finished in the materials so approved.
- (iv) The buildings shall not be occupied until the proposed access has been constructed and the verge has been reinstated to the current specification of Hertfordshire County Council and to the local planning authority's satisfaction.
- (v) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent.

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to any variation, and for the purposes of this condition a planting season shall be deemed to commence in any one year on 1 October and to end on 31 March in the next following year.

- (vi) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), there shall be no extension or addition to the buildings hereby permitted without the express written permission of the local planning authority.
- (vii) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no garages shall be erected other than those expressly authorised by this permission.
- (viii) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of any dwelling without the express written permission of the local planning authority.

Procedural matters

2. At the inquiry an application for costs was made on behalf of the appellant against the Council. My decision on that application is the subject of a separate letter.
3. The plan attached to the enforcement notice reflects the area of the site at the time that planning permission and listed building consent were granted in 1996. Since that time, the vendors of the land and the appellant have made arrangements for part of the site to be retained by the owners of Manor Farm House. At the inquiry both parties agreed that the extent of the land has changed and, accordingly, I intend to substitute a plan showing the correct smaller area. I am satisfied that I can make this correction without causing injustice.

The site

4. The appeal site lies on the edge of the village of Wilstone, outside the village boundary defined in the local plan but within the Wilstone Conservation Area. Buildings on the site consist of two ranges of stables and barns (A and B) that originally formed part of the curtilage of Manor Farm, a Grade II listed building. The list description contains the phrase "included for group value". The stables and barns are not mentioned in the list description. Although the farm house is believed to date from the late 18th century or early 19th century, the stables and barns were probably erected at about the turn of the 20th century.
5. The single storey range of stables and barns had external walls of weather boarding stained black above a narrow brick plinth. Block A had a clay tile roof while Block B had a corrugated metal roof. The main feature of the roofs was a series of ridge ventilators with louvred sides. The buildings had some extensions formed in concrete blocks.

The enforcement notice

6. In 1996 planning permission and listed building consent were granted for the conversion of the stables and barns to residential use subject to conditions. Shortly after that time the appeal site was separated from the land in the ownership of the occupiers of the farm house. Building work started in about April 1999, but after initial site clearance, the work was stopped in order to resolve certain outstanding issues. Conditions attached to the permission required that approval of external materials and surfacing materials should have been granted before work commenced together with approval of a programme for archaeological investigation. Although applications for these matters were made in May 1999 and approved in July 1999, the Council remained concerned about the form of the

alterations that were pursued and was anxious about the physical condition of the buildings. These were described as being in a "poor and fragile condition". The Council warned the appellant that "any works beyond simple repairs may require separate approval". In September 1999 the enforcement notice was served. Later, the buildings collapsed, apparently as the result of high winds.

Inspector's reasons

THE APPEAL ON GROUND (b)

7. The alleged matters in the enforcement notice are "without planning permission, the erection of buildings". The appellant, though, says that the works are those of conversion pursuant to the 1996 planning permission and listed building consent and that there has, therefore, been no erection of buildings. Furthermore, in the light of Circular 14/97 Annex E and the House of Lords decision in *Shimizu v Westminster City Council*, the existing buildings have not been demolished and the works do not, therefore, amount to the erection of new buildings, but the alteration of the existing buildings.
8. The appellant submits that the operative word in the permission and the consent is "conversion" but says there is no definition of this word in the 1990 Act. The interpretation may range from "change of use" to substantial works of reconstruction. On the appellant's behalf attention is drawn to the phrase in paragraph 3.14 of PPG7, in dealing with re-use of redundant buildings in the countryside, which refers to "capable of conversion without major or complete reconstruction". Thus, it is submitted, "major or complete reconstruction" is not contrasted with "conversion", but is encompassed within it. The Council's witness had accepted that the word was capable of this range of meaning.
9. For my part, I accept that in such circumstances the work envisaged by the 1996 permission and consent may lie across a range of interpretations. Nevertheless by the time of service of the enforcement notice the scope of the works exceeded alterations or conversion. Such foundations as may have existed in 1996 had been grubbed up together with the floors of the buildings. The brick plinth walls had been taken down and had been rebuilt using some of the original bricks, but also incorporating a significant amount of new bricks, albeit restricted to the inner faces and below ground. The timber cladding had been removed in its entirety together with virtually all the windows and doors. The timber framing had been taken down and replaced by new framing while any division walls and partitions had also been removed. The roof coverings had been stripped of tiles and laths, and the corrugated metal sheeting had been removed. All that remained unaltered of the original buildings was the rafters, purlins and wall plates of the roof structure, which was supported, not on the load-bearing elements of the buildings, but by temporary acrow-props. As a matter of fact and degree, therefore I consider that the work being undertaken at that time was the erection of buildings as described in the enforcement notice. In order to achieve that state by that time there had been substantial demolition of the main parts of the existing buildings; only the roof framing had been left in situ but even that had been detached from its supporting structure. Accordingly I conclude that the appeal on ground (b) fails.

THE APPEAL ON GROUND (c)

10. Similar considerations arise in determining whether the alleged matters constitute a breach of planning control. The appellant relies upon similar arguments to those used in its submissions under ground (b) above concerning the definition of conversion. On its behalf it is said that the officer's report to committee on the planning application envisaged

“building operations” including new foundations to the stable buildings and that there was a requirement of an archaeological investigation condition, thus indicating excavation. Equally, the appellant says that condition 2 of the permission seeks approval of materials to be used externally and that the term “used” indicated some building operation. There had been no condition attached to the planning permission limiting the operational works to repairs, and the Council’s witness had accepted that such a condition could have been imposed. Similarly the approval of materials in discharge of the relevant condition related only to materials to be used externally. It is submitted for the appellant, therefore, that the condition is not confined to the erection of new garages and the areas where “modern” accretions were to be demolished; approval was, in fact given for roofing materials, weather boarding and existing bricks, all materials to be used externally on the main buildings.

11. It is also said on behalf of the appellant that the planning officer was wrong in her interpretation of the reconstruction of the plinth walls because she had not realised that the original walls were so high. Equally, she had been mistaken because she had not been aware of the use of original bricks in that reconstruction including replication of the brick bond. She had not made inquiries of the building control officer nor had she properly inspected her own photographs. The decision to serve enforcement proceedings had been taken under delegated powers by a senior officer on a written report that she was not prepared to make available.
12. Nevertheless, in my judgement the extent to which the works on site had departed from the permission and consent granted in 1996 amounted to a breach of planning control for the reasons set out under the ground (b) appeal and the description there of the work undertaken. It is clear to me that there had been extensive new works following substantial demolition, all of which amounted to a breach of planning control in the particular circumstances of this case. From the evidence and photographs it is clear that the works were not those envisaged in granting permission. Accordingly the appeal on ground (c) fails.

THE APPEAL ON GROUND (a)

Development plan policies

13. The development plan consists of the Hertfordshire County Structure Plan and the Dacorum Borough Local Plan. The Structure Plan Review 1991-2011 was adopted in April 1998. Although there are no site-specific policies in the plan, policy 1 seeks sustainable development while policy 18 encourages appropriate development to sustain the rural economy. The Council says that the key policies relevant to this appeal are found in the Local Plan. The main guideline is policy 5, which defines uses that are acceptable within rural areas and refers to re-use of redundant buildings. Similar importance has to be attached to policy 100 which deals specifically with redundant buildings in the countryside; policy 109 which sets out policies on the protection of listed buildings; and policy 110 which aims to preserve and enhance conservation areas. Policies 8 and 9, which refer to the quality of development and environmental guidelines, are also relevant. My attention has been drawn to the deposit draft of the Local Plan, which is currently under review. The deposit draft has similar policies although there are some differences in emphasis to which I shall refer below. In reaching my decision I have also taken account of advice in Planning Policy Guidance Notes 7 and 15 (PPGs 7 and 15).

14. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving a listed building or its setting or its features of special architectural or historic interest which it possesses. Equally Section 72 (1) of the same Act obliges me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

The main issues

15. The principal considerations under this ground of appeal are first, whether residential development should be permitted in this location having regard to the criteria against which development in the countryside should be judged, secondly, whether reinstatement of the stable buildings would be desirable in terms of their architectural or historic merit, and thirdly whether they contribute to the setting of the listed building and the conservation area.

Inspector's reasons

16. The Council draws attention to the main objective that is set out in policy 5 of the Local Plan, which does not permit proposals for building development in the countryside. While it says there are exceptions, there would be amenity value in the open space now created by the removal of these buildings. In the context of new building the Council says it would be wrong to develop the appeal site because any historical value of the previous buildings has gone. The fact that Manor Farm is only just outside the village amounts to a more important reason to adhere to the policy.
17. The Council concedes that in terms of policy 110 and preservation of the conservation area, the old buildings had merit, but that does not alter the overriding principle of policy 5. The fact that there have been buildings on the site is only one consideration but not a determining factor. The Council's view is that the works had been carried out in breach of the planning permission and the listed building consent; in that regard the appellant had brought the present situation upon himself. The works should have been an evolutionary process, but he had demolished the buildings and he had ignored the Council's recommendations. He had continued with the works relentlessly despite the Council's warnings. He had not been responsible for the winds that brought about the later collapse but he had been warned of the fragile condition of the buildings. On that basis the Council says it does not accept that new-build development should be allowed. The facts do not justify new-build development to replace the former buildings.
18. It is said on behalf of the appellant that it is a relevant material consideration that the site has been developed. While policy 5 aims to prevent new development in such locations, it includes the word "normally" and therefore permits exceptions. The appellant's case is that the buildings remain worthy of retention for their architectural and historic importance. Their existence forms part of the historic pattern of development in this area, and make a positive contribution to the setting of the farm house and to the character and appearance of the conservation area.
19. I accept the Council's submissions on the aims of policy 5 but in my judgement the reality is that there have been buildings on this site since the turn of the twentieth century until the last few months. Had it not been for the recent events, the scheme would have progressed to completion in accordance with the permission and listed building consent that was granted in 1996. While there may have been irregularities in the construction of the buildings, they would be completed in such a way, and of such materials, that they would be

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the same as, or very similar to, the permitted scheme. Effectively the result would replicate the scheme permitted. The Council has raised no objection to the plans on traffic generation, residential amenity or urbanisation due to domestic paraphernalia. Equally, in granting permission in 1996, the Council appears to have accepted that there is no overriding objection to residential development on this site.

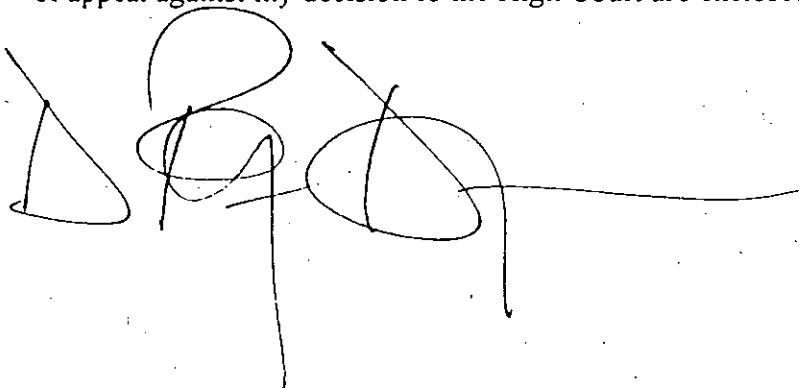
20. Although the site falls outside the Wilstone Village envelope as defined in the adopted Dacorum Borough Local Plan, in my view it is well related to, and gives the visual impression of forming part of, the village. The buildings themselves have sufficient merit to warrant replacement in accordance with the approved scheme. It has to be seen in the context of its setting alongside the listed building, Manor Farm, and preserves the character and appearance of the conservation area. In all these respects the scheme would create a favourable impression without harming the surrounding area. Accordingly, the appeal on ground (a) succeeds. In granting permission on this ground my intention is to ensure that the buildings conform to the plans and layouts permitted in 1996. The appellant accepts that such a permission will have to be subject to conditions not least because the reduction in the site area referred to in paragraph 1 above will affect the landscaping condition attached to that permission. Other conditions that I shall impose reflect the approvals granted in respect of materials which were the subject of conditions attached to that permission.
21. Having regard to the decision on the ground (a) appeal, I do not need to refer to the appeals on grounds (f) and (g).

Conclusions

22. Although the appeals on grounds (b) and (c) fail for the reasons set out above I have come to the conclusion that in all the distinct circumstances of this case permission should be granted subject to conditions for the erection of buildings on this site. The permission reflects the fact that buildings of a similar form and type have existed on the site for many years while the change to residential use is that which was permitted in 1996.
23. In reaching my decision I have taken account of all other matters addressed to me at the inquiry and, in writing but I have found nothing that outweighs the main planning considerations in this appeal.

Rights of appeal against decision

24. This notice is issued as the determination of the appeal before me. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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APPEARANCES

FOR THE APPELLANT:

Mr Michael Humphries

Of Counsel, instructed by Mr Richard Hanney of Matthew Arnold & Baldwin, solicitors.

He called

Mr Andrew Harris, BA MPhil AIFA

Of CgMs Limited.

Mr Paul Woods

Of CgMs Limited.

BA(Hons) DipUpi MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Kramen

Of Counsel, instructed by the Borough Solicitor, Dacorum Borough Council.

He called

Miss Anne Davies BA(Hons) MSc
DipTP MSc(Hist Cons) MRTPI

Head of Planning Enforcement, Planning Department, Dacorum Borough Council.

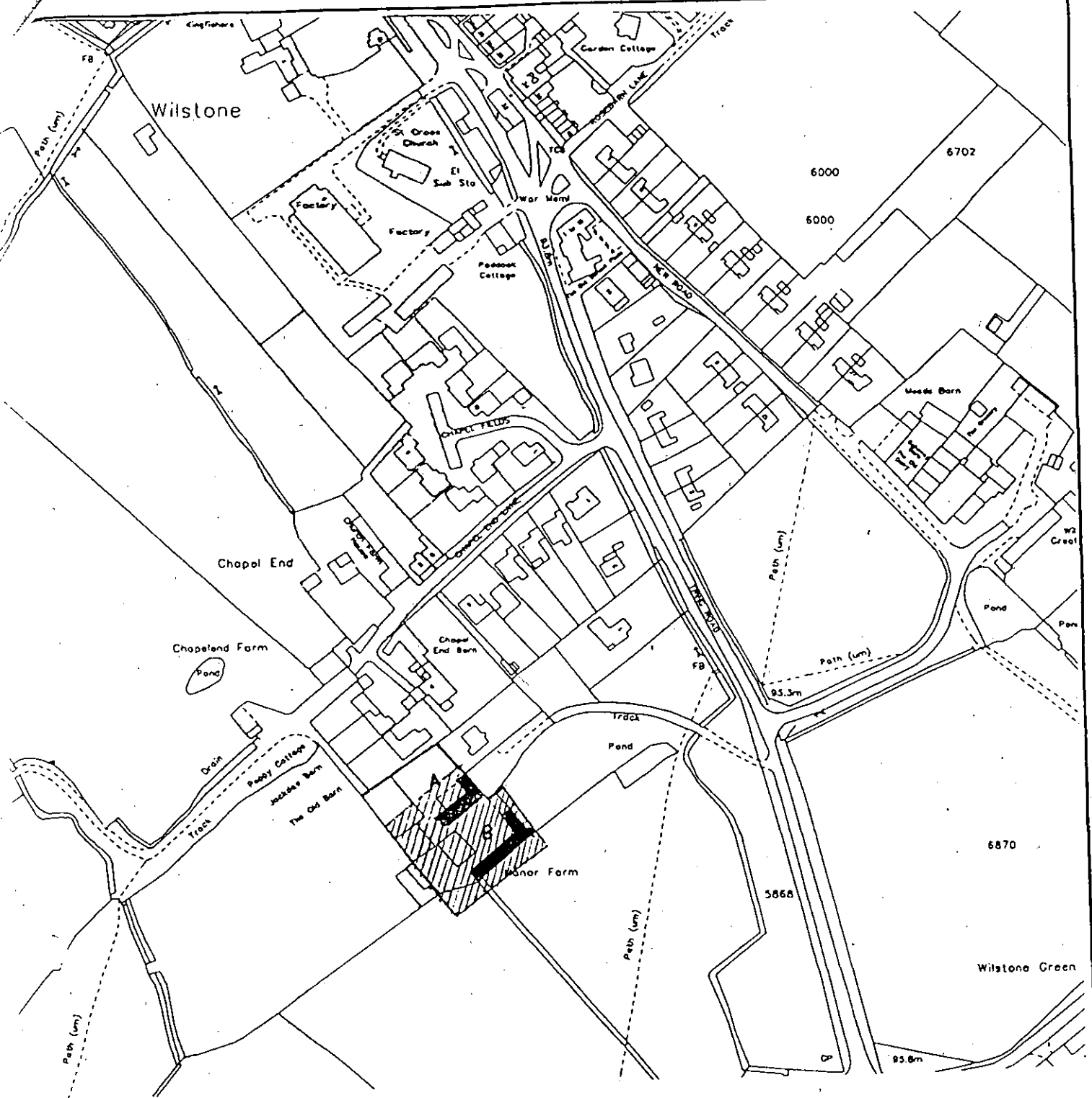
DOCUMENTS

- | | | |
|----------|----|---|
| Document | 1 | List of persons present at the inquiry. |
| Document | 2 | Notification of the inquiry and the distribution list. |
| Document | 3 | Appendices to the proof of evidence of Mr Harris. |
| Document | 4 | Appendices to the proof of evidence of Mr Woods. |
| Document | 5 | Appendices to the proof of evidence of Miss Davies. |
| Document | 6 | Letter from the Council to the appellant's agent dated 19 August 1999. |
| Document | 7 | Letter from the Council to the appellant dated 19 August 1999. |
| Document | 8 | Letter from the Council to the appellant's agent dated 1 September 1999. |
| Document | 9 | Letter from the appellant's agent to the Council dated 1 September 1999. |
| Document | 10 | Extract from the Encyclopedia of Planning Law and Practice put in by Mr Kramen. |

PLANS

Plan A Wilstone Conservation Area

MANOR FARM BARN, TRING ROAD, WILSTONE.



The Planning Inspectorate

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

This is the plan referred to in the Appeal Decision

(ref: T/APP/A1910/C/99/1031198)

dated:

5 MAY 2000



Costs Decision

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inquiry held on Tuesday and Wednesday 18 and 19 April
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by D Roger Dyer BA Dip Arch RIBA FCI Arb FASl
Barrister
an Inspector appointed by the Secretary of State for the
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5 MAY 2000

Application 1: T/APP/A1910/C/99/1031198

- The application is made under the Town and Country Planning Act 1990, Section 174 and the Local Government Act 1972, Section 250(5)
- The application is made for a full award of costs by A P Power Limited against Dacorum Borough Council.
- The site is located at Manor Farm, Wilstone.
- The inquiry was in connection with an appeal against an enforcement notice alleging "without planning permission, the erection of buildings".

Decision: The appellant's application for an award of costs is not justified.

The case for the appellant

1. All the costs of the appeal are sought in the event that the appeals on grounds (b) and (c) are upheld. In this case the authority had issued the enforcement notice before it knew the facts and the cross-examination of the Council's witness had demonstrated that; she had not been aware that existing bricks had been used in the plinths. Under section 172 of the Act an authority has to be satisfied that there was a breach. Furthermore, a meeting had been arranged at the beginning of September 1999 with the intention of discussing the situation but it had been cancelled because of the illness of one of the officers. The correspondence reveals that Mr Power was to be away until 13 September but the enforcement notice was issued on 3 September. In all the circumstances the appellant says the Council's behaviour was unreasonable having regard to the advice in paragraph 28 of Annex 3 to the Circular.

The case for the Council

2. Looked at in the round, the Council had expressed its concern at what was happening on the site and had held discussions with the appellant and its agent. The Council's letters of 19 August demonstrate at length the anxieties of the Council and the need for further discussions. The appellant's agent's letter of 1 September shows that an enforcement notice was anticipated and that he would assist his client to understand the authority's case. Besides, at no time since the service of the enforcement notice had the appellant sought to correct the statements by the Council's officer. The council's letters of 19 August and 1 September had set out the underlying nature of its case and sought a reply. If the officer was mistaken, the appellant was aware of what had been done and had it in its power to set the record straight.

Inspector's reasoning

3. The application for costs falls to be determined in accordance with the advice contained in DoE Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its

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outcome. Costs may only be awarded against a party who has behaved unreasonably, and thereby caused another party to incur or waste expense unnecessarily.

4. As may be seen from the enclosed appeal decision the appeals on grounds (b) and (c) fail for the reasons set out there. Nevertheless I have considered carefully whether there had been any unreasonable behaviour on the part of the Council. The correspondence demonstrates to me that at all times the Council had been careful to enquire into the facts and had visited the site on a number of recorded occasions to inspect the works. Although the officer who gave evidence to the inquiry had not been fully informed in respect of the plinth brickwork, that had been a minor element of the construction work that had taken place. The letters from the Council to the appellant and its agent show that there were a number of concerns that had to be addressed but the appellant had continued with the works. In my judgement the Council had behaved properly throughout. I therefore conclude that the appellant's application for an award of costs is not justified.

Conclusions

5. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by A P Power Limited for an award of costs against Dacorum Borough Council.

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