

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To Mr S Cumbo
80 Great North Road
Hendon
London

A W Dyer
27 Silver Street
Great Barford
Bedford MK44 3HZ

Application under S.32 to retain building for living
accommodation
at Rosa-Maria Farm, Little Heath Lane, Potten 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 Undated 22 December 1988 and received with sufficient particulars on 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. No such need has been proven and the proposed development is unacceptable in the terms of this policy.

Dated Sixth day of April 19 89

Signed [Signature]

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.



Planning Inspectorate
Department of the Environment
Room 1121 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct Line 0272-218915/36/38
Switchboard 0272-218811
GTN 1374

Messrs Penningtons
Solicitors
70 Richmond Hill
BOURNEMOUTH
Dorset
BH2 6JA.

Your reference:
JCP/PD/Cumbo
Council reference:
4/0446/90/EN/GPB/ED
Our reference:
T/APP/C/90/A1910/000002/P6
Date:

- 4 FEB 91

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
APPEAL BY MR S CUMBO
LAND AT ROSA MARIA FARM, LITTLE HEATH LANE, POTTEN END

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeal. This appeal is against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land. I held an inquiry into the appeal and inspected the site on 8 January 1991. The evidence was not taken on oath.
2.
 - a. The date of the notice is 10 January 1990.
 - b. The breach of planning control alleged in the notice is the erection of a building for a mixed use of residential purposes and agricultural purposes.
 - c. The requirements of the notice are:-
 - (i) cease using the residential part of the building for residential purposes and:-
 - (ii) remove all furnishing ancillary to the said residential use.
 - d. The period for compliance with the notice is three months.
 - e. The appeal was made on the grounds set out in Section 174(2)(a) of the 1990 Act, but at the inquiry ground (h) was added.

The Site and Surroundings

3. The appeal site is on the south and west sides of Little Heath Lane, a narrow country lane with a right angle bend adjoining the north-east corner of the site, to the south of the settlement of Potten End. The site consists of a rectangular area of land which slopes sharply downhill from north to south, most of which is grassland subdivided by wire fencing. There is a dense hawthorn hedge on both highway frontages, and a more sporadic hedge incorporating trees on the southern boundary of the site. The western boundary of the site is demarcated by a solid timber fence with conifers planted on its eastern side at its northern end, and by a post and wire fence further south. Access to the site is by means of a five bar gate on the south side of



Little Heath Lane, from which a gravel drive leads to an agricultural barn type building constructed towards the western boundary of the site in blockwork with a red brick plinth and a shallow gable-ended pitched roof. The greater part of the structure has the appearance of a general purpose farm building, but it is currently mainly used for the garaging of cars, although a tractor is also kept there, and the north-east corner of the building is used as a cage for the keeping of quail.

4. However, the southern third of the building is in residential use with a living room/kitchen area on the ground floor with a lavatory and a utility room off, and three bedrooms and a bathroom at first floor level. A lobby between the ground floor living accommodation and the agricultural portion of the building is used for farm administration purposes. A lean-to structure is attached to the west side of the main building. Three pens within this building are used for the keeping of Tamworth pigs, and a fourth for the keeping of goats which were overwintering at the time of the site visit. The area between the buildings, the access drive, the south side of the highway, and the western boundary of the site is set aside for rabbit breeding and the keeping of free range poultry. Otherwise the site is grassland, the south-eastern corner of which was being grazed by sheep at the time of the site visit.

5. The countryside around the appeal site is generally open in character, particularly to the south. However, there is an isolated house on the east side of Little Heath Lane immediately to the south of the bend adjoining appeal site. In addition there is a group of houses on both sides of the road to its west, including a terrace of houses on its north side, and barns which are or have been turned into residential accommodation to the north of a further right-angle bend in the road. Little Heath Lane links Potten End to the A41 London-Aylesbury trunk road at Bourne End to the south of the appeal site.

The Appeal on Ground (a) and the Deemed Application

6. From what I saw at the site and its surroundings, heard in evidence at the inquiry, and read in representations I consider that the main issue in this appeal is whether there is sufficient agricultural justification for the retention of residential accommodation on this site to overcome the general presumption against inappropriate development on land in the Metropolitan Green Belt, which also lies within the Chilterns Area of Outstanding Natural Beauty.

7. The site lies in attractive open countryside within the Metropolitan Green Belt, which has also been recently included within the Chilterns Area of Outstanding Natural Beauty. It was agreed by both the main parties at the inquiry that the only justification for residential accommodation on this site subject to policies precluding such a use is that it is necessary for the supervision of a viable agricultural enterprise, and I concur with their judgement on this matter. Paragraph 5 of the annex to Circular 24/73 makes it clear that need in this context means the requirements of the farming enterprise rather than that of the owner or occupier of the farm. It also states at paragraph 6 that a viable farm should for practical purposes provide an income above the level of the minimum agricultural wage, in view of the investment requirements of a farm business.

8. The farm enterprise on which retention of residential accommodation is based is the build-up of flocks of goats and sheep for milking. Some steps have already been undertaken towards these objectives, particularly the establishment of a breeding herd of goats. In view of the dominance of livestock on the holding, I am satisfied that were the numbers of sheep and goats built up to the totals set out in the Ministry of Agriculture, Fisheries, and Food May 1990 report on the future development of your client's holding, a person would be required to be resident on this land in the interests of stock husbandry and for security reasons.

9. However, I am not convinced that an enterprise based solely on liquid milk production would satisfy the viability test set out in paragraph 6 of the Annex to Circular 24/73. By disregarding costs arising from interest charges, fixed costs, rent and rates, and labour, to my mind the Ministry of Agriculture, Fisheries, and Food appraisal gives unduly optimistic profit margins for a farm where substantial capital expenditure on milking equipment will also be necessary, and this was borne out by the evidence of both agricultural expert witnesses at the inquiry. Bearing in mind the advice contained in paragraph 10 of the Annex to the circular that provision of farm dwellings in the green belt need particularly careful scrutiny, severe doubts about the viability of an enterprise based on the keeping of sheep and goats for milking lead me to the conclusion that retention of the residential accommodation on this site is not justified on agricultural grounds.

10. Nevertheless, it is clear from the evidence before me that, to create a commercially sounder operation on the site, most of the liquid milk production would need to be used in the manufacture of soft cheese. On the balance of probabilities, especially in view of your client's connections with his well-established food distribution business, I consider that an enterprise involving cheese making could satisfy the viability test of the annex to the circular.

11. However, I am satisfied that such an operation would be outside the realms of a wholly agricultural use, and would be in the nature of a mixed farming and manufacturing use for which planning permission would be necessary. In my opinion, it would be inappropriate to grant a planning permission to allow residential accommodation to remain on the site on the basis that a further planning permission would be automatically forthcoming for the introduction of a future manufacturing use on green belt land within an Area of Outstanding Natural Beauty, even if such an activity could be accommodated within the existing buildings on the site. I do not doubt that your client is sincere in his commitment to the establishment of a commercially viable sheep and goats' milk and cheese operation on this site, and that he has the financial power at his disposal to do so. However, I am firmly convinced that it would be wrong to permit residential use on this site, the justification for which could be said to prejudge the decision on a further planning application for manufacturing in an area subject to severe restraints on development. As a consequence, I conclude that there is insufficient justification solely on agricultural grounds for the continued presence of otherwise inappropriate residential accommodation on this green belt site within an Area of Outstanding Natural Beauty, and the appeal on ground (a) therefore fails. In these circumstances, I do not propose to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

The Appeal on Ground (h)

12. I appreciate that your client has an alternative house, so that there would be no personal hardship to him from the cessation of the residential use. However, there will need to be some time for a run-down of the livestock on the land, particularly the goats for which there is not a ready market. In these circumstances, I consider the period of compliance of three months to be inadequate, and I am extending this to six months to assist in the supervision of the disposal of the animals currently on the farm. Your client's appeal on ground (h) therefore succeeds.

13. In reaching my conclusions on this appeal I have taken careful account of all the matters raised, including the fact that the existing building would remain as a prominent feature in the landscape, the growing demands for organic food products, and the possibility of local schoolchildren visiting the farm to see the animals, but do not consider these to be of sufficient weight to alter my decision.

FORMAL DECISION

14. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that the notice be varied in paragraph 4 thereof by deleting the words "three months" and substituting the words "six months". Subject thereto I dismiss this appeal, uphold the notice and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

RIGHT OF APPEAL AGAINST DECISION

15. This letter is issued as the 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

I. Currie

I W CURRIE BA MPhil ARICS MRTPI
Inspector

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

In the matter of the Town and Country Planning Act 1990, s.288
and
In the matter of land at Rosa Maria Farm, Potten End, Hertfordshire
Between

Salvatore Cumbo

Appellant

and

The Secretary of State for the Environment

and

The Dacorum Borough Council


Respondents

AFFIDAVIT

I, **JULIA CARYLL PALMER**, Solicitor with Penningtons, 70 Richmond Hill, Bournemouth, BH2 6JA MAKE OATH AND SAY as follows:-

1. I acted for the Appellant herein in respect of his appeal to the First Respondent and was present during the whole of the hearing which is the subject of this appeal. I am duly authorised to make this Affidavit on his behalf.

2. There is now produced and shown to me a bundle marked "JCPI" containing true copies of the following documents:-

- JN.*
- (a) Enforcement Notice dated 10th January 1990:
 - (b) Notice of appeal to the First Respondent:
 - (c) Decision Letter dated 4th February 1991:
 - (d) Planning Policy Guidance Note No.2: 
Circular 24/73:
Extracts of the Dacorum Borough Council Draft Local Plan:
 - (e) ADAS Report:

3. The basic issue at the appeal was whether the Appellant should be precluded from living on his farming unit at Rosa Maria Farm. It was accepted that permission would only be forthcoming if the farming enterprise required it (Decision Letter paragraph 7). This issue was decided in the Appellant's favour (paragraph 8):

4. The next issue defined by the First Respondent's Inspector was whether the normal justification for accommodation was established, i.e., was the enterprise justifying the accommodation viable (Decision Letter paragraph 9: Annex to Circular 24/73 paragraph 6). The Inspector concluded (as he was entitled to do) that an enterprise based solely on milk production would be unlikely to be viable. He did not, and could not, have concluded that it would not be viable. The proper course in such a situation (particularly bearing in mind the enormous capital investment of the Appellant) was to consider whether it was appropriate to grant a temporary permission for a period at the end of which the viability question could be dealt with as a question of fact. Though this approach was suggested as an option by Counsel for the Appellant both in opening and in closing the Inspector fails even to consider it as a possibility. Furthermore the Inspector fails to consider whether viability is the only test to be derived from paragraph 6 of the Annex to Circular 24/73. That paragraph certainly suggests that "for example, the investment of capital in farm buildings is often a good indication of a developer's intentions".

5. Furthermore the Inspector did not consider at any stage the possibility of a temporary permission.

6. In paragraph 10 of his Decision the Inspector concluded that if the Appellant were to turn his milk into soft cheese the enterprise would on the balance of probabilities be viable. However he was unwilling to take this into account because, firstly he considered that this took the use outside a wholly agricultural use and secondly, because he thought that this would force the Second Respondent's hand in respect of an application for planning permission for the manufacturing use, namely, cheese production:

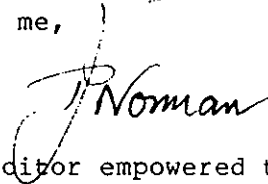
7. This latter point was never considered at the Appeal and thus the Appellant was never given a chance to deal with it. Furthermore, as must be obvious, it could not be said that a temporary permission could have forced the Second Respondent's hand in any way. With regard to the first point, it was only mentioned by the Inspector as an aside, and was never fully considered; the Appellant's case was put on the basis that the production of cheese from milk from his own sheep and goats was a traditional ancillary use to that of the agricultural use of land:

8. Accordingly I ask that his appeal be allowed:

SWORN by the said JULIA CARYLL PALMER
at Bournemouth in the County of Dorset
this 28 day of February 1991:



Before me,



A Solicitor empowered to administer Oaths

RENDALL LITCHFIELD & CO.
Old Library House
4 Dean Park Crescent
Bournemouth. BH1 1HW

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

In the matter of the Town and Country Planning Act 1990, s.288

and

In the matter of land at Rosa Maria Farm, Potten End, Hertfordshire

Between

Salvatore Cumbo

Appellant

and

The Secretary of State for the Environment

and

The Dacorum Borough Council

Respondents

This is the exhibit marked "JCPl" referered to in the Affidavit by JULIA CARYLL PALMER sworn before me,

This 28. day of February 1991:

..... J. Norman ..

RENDALL LITCHFIELD & CO.
Old Library House
4 Dean Park Crescent
Birmingham B11 1HW

(a)

Dacorum Borough

Council

**TOWN AND COUNTRY PLANNING ACT 1971
(as amended)**

**Enforcement Notice
Operational Development**

(b) Rosa Maria Farm, Little Heath Lane, Potten End, Hertfordshire

WHEREAS:

(1) It appears to the^(a) Dacorum Borough Council ("the Council"), being the local planning authority for the purposes of section 87 of the Town and Country Planning Act 1971 ("the Act") in this matter, that there has been a breach of planning control within the period of 4 years before the date of issue of this notice on the land or premises ("the land") described in Schedule 1 below.

(2) The breach of planning control which appears to have taken place consists in the carrying out of the building, engineering, mining or other operations described in Schedule 2 below, without the grant of planning permission required for that development.

(3) The Council consider it expedient, having regard to the provisions of the development plan and to all other material considerations, to issue this enforcement notice, in exercise of their powers contained in the said section 87, for the reasons set out in [the annex to] this notice.^(c)

NOTICE IS HEREBY GIVEN that the Council require that the steps specified in Schedule 3 below be taken [in order to remedy the breach] [^(d)

within [the period of 3 [days] [months] from the date on which this notice takes effect] [~~the period specified in respect of each step in the Schedule~~].^(e)

THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88(10) of the Act, on **15 FEBRUARY 1990**.^(f)

Issued 10 JANUARY 1990.

Council's address
CIVIC Centre
Marlowes
Hemel Hempstead
Herts HP1 1HH

(Signed) Keith Hunt

(Designation) Borough Secretary
(The officer appointed for this purpose)
Ref SB/2447/325

CONTINUED OVERLEAF — P.T.O.

NOTES TO THE LOCAL PLANNING AUTHORITY

- (a) Insert the name of the Council issuing the notice.
- (b) Insert the address or a description of the land to which the notice relates.
- (c) See paragraph 29 of DOE Circular 38/81 (Welsh Office Circular 57/81).
- (d) Or, as the case may be, having regard to section 87(7)(a) and (b) of the Act. Where steps are required to be taken for more than one of the purposes provided for in section 87, the purpose for which each step is required should be specified in Schedule 3. Steps may be required as alternatives.
- (e) If a single period is to be specified, by which all the required steps must be taken, insert it here. But if a series of steps is required to be taken, with a different compliance period for each step, the appropriate period should be clearly stated against each step (in columns if more suitable) in Schedule 3.
- (f) The date selected must be not less than 28 clear days after all the copies of the notice will have been served (see section 87(5) of the Act).

SCHEDULE 1

Land or premises to which this notice relates

(address or description)

Rosa Maria Farm, Little Heath Lane, Potten End, Hertfordshire

shown edged [red] [] on the attached plan.^(g)

SCHEDULE 2

Alleged breach of planning control

(description of operations carried out on the land) (h)

Erection of a building (shown edged blue on the attached plan) for a mixed use of residential purposes and agricultural purposes.

SCHEDULE 3

Steps required to be taken⁽ⁱ⁾

(i) Cease using the residential part of the building (shown coloured yellow on the attached plan) for residential purposes.

(ii) Remove all furnishing ancillary to the said residential use.

NOTES TO THE LOCAL PLANNING AUTHORITY

(g) See paragraph 31 of DOE Circular 38/81 (Welsh Office Circular 57/81).

(h) Where the works being enforced against are on only part of the land identified in Schedule 1, their position should be shown on the plan.

(i) Specify the actual steps to be taken with, if appropriate, the compliance period for each step. The requirements should be clear and precise. See also notes (d) and (e) overleaf.

Annexe to Enforcement Notice dated:

This information is given in pursuance of the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 and Circular 38/81.

The Council, as the Local Planning Authority, consider it expedient to serve this Notice upon you for the following reason (s):

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. No such need has been proven and the proposed development is unacceptable in the terms of this Policy.

**NOTES
DOCUMENT STAMPED
TO ENSURE DETECTION
BY SCANNER**

EXTRACTS from the TOWN AND COUNTRY PLANNING ACT 1971 (as amended)

Power to issue enforcement notice

87.—(1) Where it appears to the local planning authority that there has been a breach of planning control after the end of 1963, then subject to the following provisions of this section, the authority, if they consider it expedient to do so having regard to the provisions of the development plan and to any other material considerations, may issue a notice requiring the breach to be remedied and serve copies of the notice in accordance with subsection (5) of this section.

(2) A notice under this section is referred to in this Act as an "enforcement notice".

(3) There is a breach of planning control—

(a) if development has been carried out, whether before or after the commencement of this Act, without the grant of the planning permission required in that behalf in accordance with Part III of the Act of 1962 or Part III of this Act; or

(b) if any conditions or limitations subject to which planning permission was granted have not been complied with.

(4) An enforcement notice which relates to a breach of planning control consisting in—

(a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or

(b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or

(c) the making without planning permission of a change of use of any building to use as a single dwelling-house; or

(d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwelling-house.

may be issued only within the period of four years from the date of the breach.

(5) A copy of an enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in the notice as the date on which it is to take effect—

(a) on the owner and on the occupier of the land to which it relates; and

(b) on any other person having an interest in that land, being an interest which in the opinion of the authority is materially affected by the notice.

(6) An enforcement notice shall specify the matters alleged to constitute a breach of planning control.

(7) An enforcement notice shall also specify—

(a) any steps which are required by the authority to be taken in order to remedy the breach;

(b) any such steps as are referred to in subsection (10) of this section and are required by the authority to be taken.

(8) An enforcement notice shall specify the period within which any such step as is mentioned in subsection (7) of this section is to be taken and may specify different periods for the taking of different steps.

(9) In this section "steps to be taken in order to remedy the breach" means (according to the particular circumstances of the breach) steps for the purpose—

(a) of restoring the land to its condition before the development took place; or

(b) of securing compliance with the conditions or limitations subject to which planning permission was granted, including—

(i) the demolition or alteration of any buildings or works;

(ii) the discontinuance of any use of land; and

(iii) the carrying out on land of any building or other operations.

(10) The steps mentioned in subsection (7)(b) of this section are steps for the purpose—

(a) of making the development comply with the terms of any planning permission which has been granted in respect of the land; or

(b) of removing or alleviating any injury to amenity which has been caused by the development.

(11) Where the matters which an enforcement notice alleges to constitute a breach of planning control include development which has involved the making of a deposit of refuse or waste materials on land, the notice may require that the contour of the deposit shall be modified by altering the gradient or gradients of its sides in such manner as may be specified in the notice.

(12) The Secretary of State may by regulations direct—

(a) that enforcement notices shall specify matters additional to those which they are required to specify by this section; and

(b) that every copy of an enforcement notice served under this section shall be accompanied by an explanatory note giving such information as may be specified in the regulations with regard to the right of appeal conferred by section 88 of this Act.

(13) Subject to section 88 of this Act, an enforcement notice shall take effect on a date specified in it.

(14) The local planning authority may withdraw an enforcement notice (without prejudice to their power to issue another) at any time before it takes effect.

(15) If they do so, they shall forthwith give notice of the withdrawal to every person who was served with a copy of the notice.

(16) Where—

(a) an enforcement notice has been issued in respect of development consisting of the erection of a building or the carrying out of works without the grant of planning permission; and

(b) the notice has required the taking of steps for a purpose mentioned in subsection (10)(b) of this section; and

(c) the steps have been taken,

for the purposes of this Act planning permission for the retention of the building or works as they are as a result of compliance with the notice shall be deemed to have been granted on an application for such permission made to the local planning authority.

Appeal against enforcement notice

88.—(1) A person having an interest in the land to which an enforcement notice relates may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds—

(a) that planning permission ought to be granted for the development to which the notice relates or, as the case may be, that a condition or limitation alleged in the enforcement notice not to have been complied with ought to be discharged;

(b) that the matters alleged in the notice do not constitute a breach of planning control;

(c) that the breach of planning control alleged in the notice has not taken place;

(d) in the case of a notice which, by virtue of section 87(4) of this Act, may be issued within the period of four years from the date of the breach of planning control to which the notice relates, that that period had elapsed at the date when the notice was issued;

(e) in the case of a notice not falling within paragraph (d) of this subsection, that the breach of planning control alleged by the notice occurred before the beginning of 1964;

(f) that copies of the enforcement notice were not served as required by section 87(5) of this Act;

(g) that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or to achieve a purpose specified in section 87(10) of this Act;

(h) that the period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made by notice in writing to the Secretary of State.

(4) A person who gives notice under subsection (3) of this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed by regulations under subsection (5) of this section*, a statement in writing—

(a) specifying the grounds on which he is appealing against the enforcement notice; and

(b) giving such further information as the regulations may prescribe.

(5) The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under this section, and in particular, but without prejudice to the generality of this subsection—

* (a) may prescribe the time within which an appellant is to submit a statement under subsection (4) of this section and the matters on which information is to be given in such a statement;

*NOTE: The Secretary of State has specified that such a statement must be submitted to him either when the appellant is giving notice of appeal, or within 28 days from the date on which the Secretary of State sends the appellant a notice requiring such a statement to be submitted.

- (b) may require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
 - (c) may specify the matters to be included in such a statement;
 - (d) may require the authority or the appellant to give such notice of appeal under this section as may be prescribed, being notice which in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated;
 - (e) may require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.
- (6) The Secretary of State—
- (a) may dismiss an appeal if the appellant fails to comply with subsection (4) of this section within the time prescribed by regulations under subsection (5); and
 - (b) may allow an appeal and quash the enforcement notice if the local planning authority fail to comply with any requirement of regulations made by virtue of paragraph (b), (c) or (e) of subsection (5) of this section within the period prescribed by the regulations.

(7) Subject to subsection (8) below, the Secretary of State shall, if either the appellant or the local planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(8) The Secretary of State shall not be required to afford such an opportunity if he proposes to dismiss an appeal under paragraph (a) of subsection (6) of this section or to allow an appeal and quash the enforcement notice under paragraph (b) of that subsection.

(9) If—

- (a) a statement under subsection (4) of this section specifies more than one ground on which the appellant is appealing against an enforcement notice; but
 - (b) the appellant does not give information required under paragraph (b) of that subsection to each of the specified grounds within the time prescribed by regulations under subsection (5) of this section,
- the Secretary of State may determine the appeal without considering any of the specified grounds as to which the appellant has failed to give such information within that time.

(10) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(11) Schedule 9 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

88A.—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State shall give directions for giving effect to the determination, including, where appropriate, directions for quashing the enforcement notice or for varying its terms.

(2) On such an appeal the Secretary of State may correct any informality, defect or error in the enforcement notice, or give directions for varying its terms if he is satisfied that the correction or variation can be made without injustice to the appellant or to the local planning authority.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

88B.—(1) On the determination of an appeal under section 88 of this Act, the Secretary of State may—

- (a) grant planning permission for the development to which the enforcement notice relates or for part of that development or for the development of part of the land to which the enforcement notice relates;
- (b) discharge any condition or limitation subject to which planning permission was granted;
- (c) determine any purpose for which the land may, in the circumstances obtaining at the time of the determination, be lawfully used having regard to any past use of it and to any planning permission relating to it.

(2) In considering whether to grant planning permission under subsection (1) of this section, the Secretary of State shall have regard to the provisions of the development plan, so far as material to the subject matter of the enforcement notice; and to any other material considerations; and any planning permission granted by him under that subsection may—

- (a) include permission to detain or complete any buildings or works on the land, or to do so without complying with some condition attached to a previous planning permission;
- (b) be granted subject to such conditions as the Secretary of State thinks fit;

and where under that subsection he discharges a condition or limitation, he may substitute another condition or limitation for it, whether more or less onerous.

(3) Where an appeal against an enforcement notice is brought under section 88 of this Act, the appellant shall be deemed to have made an application for planning permission for the development to which the notice relates and, in relation to any exercise by the Secretary of State of his powers under subsection (1) of this section—

- (a) any planning permission granted under that subsection shall be treated as granted on that application;
- (b) in relation to a granted planning permission or a determination under that subsection, the Secretary of State's decision shall be final; and
- (c) for the purposes of section 34 of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for planning permission made to the local planning authority.

(4) On an appeal under section 88 of this Act against an enforcement notice relating to anything done in contravention of a condition to which section 71 of this Act applies, the Secretary of State shall not be required to entertain the appeal in so far as the appellant claims that planning permission free from that condition ought to be granted.

Penalties for non-compliance with enforcement notice

89.—(1) Subject to the provisions of this section, where a copy of an enforcement notice has been served on the person who, at the time when the copy was served on him, was the owner of the land to which the notice relates, then, if any steps required by the notice to be taken (other than the discontinuance of a use of land) have not been taken within the period allowed for compliance with the notice, that person shall be liable on summary conviction to a fine not exceeding £2,000 or on conviction on indictment to a fine.

(2) If a person against whom proceedings are brought under subsection (1) of this section has, at some time before the end of the period allowed for compliance with the notice, ceased to be the owner of the land, he shall, upon information duly laid by him, and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have the person who then became the owner of the land (in this section referred to as "the subsequent owner") brought before the court in the proceedings.

(3) If, after it has been proved that any steps required by the enforcement notice have not been taken within the period allowed for compliance with the notice, the original defendant proves that the failure to take those steps were attributable, in whole or in part, to the default of the subsequent owner—

- (a) the subsequent owner may be convicted of the offence; and
- (b) the original defendant, if he further proves that he took all reasonable steps to secure compliance with the enforcement notice, shall be acquitted of the offence.

(4) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable—

- (a) on summary conviction to a fine not exceeding £100 for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of the use of land) remain unfulfilled; or
- (b) on conviction on indictment to a fine.

(5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention of the notice, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £2,000, or on conviction on indictment to a fine; and if the use is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £100 for each day on which the use is so continued, or on conviction on indictment to a fine.

(6) Any reference to this section to the period allowed for compliance with an enforcement notice is a reference to the period specified in the notice for compliance therewith of such extended period as the local planning authority may allow for compliance with the notice.

Note.—Attention is also directed to section 91 relating to the execution and costs of works required by enforcement notice, section 110 which contains supplementary provisions as to appeals to the Secretary of State and section 243 relating to the validity of Enforcement Notices.

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To Mr S Cumbo
80 Great North Road
Hendon
London

A W Dyer
27 Silver Street
Great Barford
Bedford MK44 3HZ

Application under S.32 to retain building for living
accommodation
at Rosa-Maria Farm, Little Heath Lane, Potten 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 Undated and received with sufficient particulars on 22 December 1988 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. No such need has been proven and the proposed development is unacceptable in the terms of this policy.

Dated Sixth day of April 19 89

Signed [Signature]

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.



Planning Inspectorate

Department of the Environment

Room 1121 Tollgate House Houlton Street

Telex 449321

PLANNING DEPARTMENT							
DACORUM BOROUGH COUNCIL							
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- 5 FEB 1991							
Received							
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Council reference:							
4/0446/90/EN/GPB/ED							
Out reference:							
/APP/C/90/A1910/000002/P6							

CHIEF EXECUTIVE OFFICER

- 5 FEB 1991

File no.

Refer to *DP 5/2*

Cleared

Messrs Penningtons
Solicitors
70 Richmond Hill
BOURNEMOUTH
Dorset
BH2 6JA.

Date:

5 FEB 91

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
APPEAL BY MR S CUMBO
LAND AT ROSA MARIA FARM, LITTLE HEATH LANE, POTTEN END

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeal. This appeal is against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land. I held an inquiry into the appeal and inspected the site on 8 January 1991. The evidence was not taken on oath.
2.
 - a. The date of the notice is 10 January 1990.
 - b. The breach of planning control alleged in the notice is the erection of a building for a mixed use of residential purposes and agricultural purposes.
 - c. The requirements of the notice are:-
 - (i) cease using the residential part of the building for residential purposes and:-
 - (ii) remove all furnishing ancillary to the said residential use.
 - d. The period for compliance with the notice is three months.
 - e. The appeal was made on the grounds set out in Section 174(2)(a) of the 1990 Act, but at the inquiry ground (h) was added.

The Site and Surroundings

3. The appeal site is on the south and west sides of Little Heath Lane, a narrow country lane with a right angle bend adjoining the north-east corner of the site, to the south of the settlement of Potten End. The site consists of a rectangular area of land which slopes sharply downhill from north to south, most of which is grassland subdivided by wire fencing. There is a dense hawthorn hedge on both highway frontages, and a more sporadic hedge incorporating trees on the southern boundary of the site. The western boundary of the site is demarcated by a solid timber fence with conifers planted on its eastern side at its northern end, and by a post and wire fence further south. Access to the site is by means of a five bar gate on the south side of



Little Heath Lane, from which a gravel drive leads to an agricultural barn type building constructed towards the western boundary of the site in blockwork with a red brick plinth and a shallow gable-ended pitched roof. The greater part of the structure has the appearance of a general purpose farm building, but it is currently mainly used for the garaging of cars, although a tractor is also kept there, and the north-east corner of the building is used as a cage for the keeping of quail.

4. However, the southern third of the building is in residential use with a living room/kitchen area on the ground floor with a lavatory and a utility room off, and three bedrooms and a bathroom at first floor level. A lobby between the ground floor living accommodation and the agricultural portion of the building is used for farm administration purposes. A lean-to structure is attached to the west side of the main building. Three pens within this building are used for the keeping of Tamworth pigs, and a fourth for the keeping of goats which were overwintering at the time of the site visit. The area between the buildings, the access drive, the south side of the highway, and the western boundary of the site is set aside for rabbit breeding and the keeping of free range poultry. Otherwise the site is grassland, the south-eastern corner of which was being grazed by sheep at the time of the site visit.

5. The countryside around the appeal site is generally open in character, particularly to the south. However, there is an isolated house on the east side of Little Heath Lane immediately to the south of the bend adjoining appeal site. In addition there is a group of houses on both sides of the road to its west, including a terrace of houses on its north side, and barns which are or have been turned into residential accommodation to the north of a further right-angle bend in the road. Little Heath Lane links Potten End to the A41 London-Aylesbury trunk road at Bourne End to the south of the appeal site.

The Appeal on Ground (a) and the Deemed Application

6. From what I saw at the site and its surroundings, heard in evidence at the inquiry, and read in representations I consider that the main issue in this appeal is whether there is sufficient agricultural justification for the retention of residential accommodation on this site to overcome the general presumption against inappropriate development on land in the Metropolitan Green Belt, which also lies within the Chilterns Area of Outstanding Natural Beauty.

7. The site lies in attractive open countryside within the Metropolitan Green Belt, which has also been recently included within the Chilterns Area of Outstanding Natural Beauty. It was agreed by both the main parties at the inquiry that the only justification for residential accommodation on this site subject to policies precluding such a use is that it is necessary for the supervision of a viable agricultural enterprise, and I concur with their judgement on this matter. Paragraph 5 of the annex to Circular 24/73 makes it clear that need in this context means the requirements of the farming enterprise rather than that of the owner or occupier of the farm. It also states at paragraph 6 that a viable farm should for practical purposes provide an income above the level of the minimum agricultural wage, in view of the investment requirements of a farm business.

8. The farm enterprise on which retention of residential accommodation is based is the build-up of flocks of goats and sheep for milking. Some steps have already been undertaken towards these objectives, particularly the establishment of a breeding herd of goats. In view of the dominance of livestock on the holding, I am satisfied that were the numbers of sheep and goats built up to the totals set out in the Ministry of Agriculture, Fisheries, and Food May 1990 report on the future development of your client's holding, a person would be required to be resident on this land in the interests of stock husbandry and for security reasons.

9. However, I am not convinced that an enterprise based solely on liquid milk production would satisfy the viability test set out in paragraph 6 of the Annex to Circular 24/73. By disregarding costs arising from interest charges, fixed costs, rent and rates, and labour, to my mind the Ministry of Agriculture, Fisheries, and Food appraisal gives unduly optimistic profit margins for a farm where substantial capital expenditure on milking equipment will also be necessary, and this was borne out by the evidence of both agricultural expert witnesses at the inquiry. Bearing in mind the advice contained in paragraph 10 of the Annex to the circular that provision of farm dwellings in the green belt need particularly careful scrutiny, severe doubts about the viability of an enterprise based on the keeping of sheep and goats for milking lead me to the conclusion that retention of the residential accommodation on this site is not justified on agricultural grounds.

10. Nevertheless, it is clear from the evidence before me that, to create a commercially sounder operation on the site, most of the liquid milk production would need to be used in the manufacture of soft cheese. On the balance of probabilities, especially in view of your client's connections with his well-established food distribution business, I consider that an enterprise involving cheese making could satisfy the viability test of the annex to the circular.

11. However, I am satisfied that such an operation would be outside the realms of a wholly agricultural use, and would be in the nature of a mixed farming and manufacturing use for which planning permission would be necessary. In my opinion, it would be inappropriate to grant a planning permission to allow residential accommodation to remain on the site on the basis that a further planning permission would be automatically forthcoming for the introduction of a future manufacturing use on green belt land within an Area of Outstanding Natural Beauty, even if such an activity could be accommodated within the existing buildings on the site. I do not doubt that your client is sincere in his commitment to the establishment of a commercially viable sheep and goats' milk and cheese operation on this site, and that he has the financial power at his disposal to do so. However, I am firmly convinced that it would be wrong to permit residential use on this site, the justification for which could be said to prejudice the decision on a further planning application for manufacturing in an area subject to severe restraints on development. As a consequence, I conclude that there is insufficient justification solely on agricultural grounds for the continued presence of otherwise inappropriate residential accommodation on this green belt site within an Area of Outstanding Natural Beauty, and the appeal on ground (a) therefore fails. In these circumstances, I do not propose to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

The Appeal on Ground (h)

12. I appreciate that your client has an alternative house, so that there would be no personal hardship to him from the cessation of the residential use. However, there will need to be some time for a run-down of the livestock on the land, particularly the goats for which there is not a ready market. In these circumstances, I consider the period of compliance of three months to be inadequate, and I am extending this to six months to assist in the supervision of the disposal of the animals currently on the farm. Your client's appeal on ground (h) therefore succeeds.

13. In reaching my conclusions on this appeal I have taken careful account of all the matters raised, including the fact that the existing building would remain as a prominent feature in the landscape, the growing demands for organic food products, and the possibility of local schoolchildren visiting the farm to see the animals, but do not consider these to be of sufficient weight to alter my decision.

FORMAL DECISION

14. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that the notice be varied in paragraph 4 thereof by deleting the words "three months" and substituting the words "six months". Subject thereto I dismiss this appeal, uphold the notice and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

RIGHT OF APPEAL AGAINST DECISION

15. This letter is issued as the 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

I. Currie

I W CURRIE BA MPhil ARICS MRTPI
Inspector