The Planning Inspectorate

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0117 - 987 8927
Switchboard 0117 - 987 8000
Fax No 0117 - 987 8139
GTN 1374 - 8927
E-mail ENQUIRIES.PINS@GTNET.GOV.UK

Faulkners
Land & Estate Agents
49 High Street
KINGS LANGLEY
Hertfordshire
WD4 9HU

Your Reference:
4/17273
Council Reference:
A/01988/97ENA
Our Reference:
T/APP/C/97/A1910/649720
Date:
- 3 SEP 1998

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY W F BUTTON & SON LIMITED
LAND AT PIX FARM LANE, BOURNE END, HEMEL HEMPSTEAD

1. I have been appointed by the Secretary of State for the Environment, Transport and the Regions to determine your clients' appeal against an enforcement notice issued by the Dacorum Borough Council concerning the above mentioned land. I have considered the written representations made by you and the Council. I inspected the site on 17 August 1998.

The Notice

2. a. The notice was issued on 30 October 1997.

b. The breach of planning control as alleged in the notice is, without planning permission, the construction of an earth bund along part of the north, all of the east, and part of the south boundaries of the site.

c. The requirements of the notice are to:

i. permanently remove the material used to construct the bund; and,

ii. level and restore the land to a grassed finish.

d. The period for compliance with these requirements is six months.

Grounds of Appeal

3. Your clients' appeal is proceeding on grounds (c), (f) and (g) as set out in Section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991. As the prescribed fees under the Town and Country Planning (Fees for Applications and Deemed Applications)

Regulations 1989-93 have not been paid to the Secretary of State and the Local Planning Authority within the period specified, the deemed application for planning permission under Section 177(5) does not fall to be considered.

The appeal on ground (c)

4. The appeal site comprises approximately 2.2ha of land on the southern side of Pix Farm Lane, north of the Grand Union Canal. It is used largely for your clients' plant hire and demolition contracting business. The eastern section of the site is used for the storage of plant and earthmoving equipment and is surfaced in either concrete, in its western part, or hardcore, in its eastern part. I understand that the bunding which is the subject of the notice was formed from material stripped from this hardstanding area, although at the time of my inspection only two sections of it remained; a 24m-long mound in the north-eastern corner of the site, and a 19.5m-long bund in the central southern part. Both mounds are between 8m and 9m in width; that in the north-east is about 2.5m in height, whilst that in the south is about 2m high.

5. The appeal on ground (c) is based on the contention that the bunds that were constructed, insofar as they did not exceed 2m in height, were a means of enclosure and, therefore, permitted development by virtue of the provisions of Class A or Part 2 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995 (GPDO). However, for the bunding to be considered as a means of enclosure under these provisions, it has, following the judgement in *Ewen Developments Ltd v Secretary of State for the Environment* [1980] JPL 404, to resemble a gate, fence or wall. The remains of the bunding that I saw at the site bore no such resemblance. Moreover, a significant part of the bunding exceeded the 2m tolerance contained in the definition of Class A development, thus the rights conferred would have been inapplicable in any event. Finally, it is debatable whether the bunds were actually a means of enclosure, as the northern, eastern and southern boundaries are already enclosed by a combination of fencing and substantial hedges. From what I saw on the site I consider it more likely that the bunds were simply constructed for storage purposes, as a convenient way of stacking the material moved from the hardstanding area, and formed to avoid the need to move this material from the site. Thus they were an engineering operation, constituting development under Section 55(1) of the Act, that requires planning permission by virtue of Section 57. As no such permission has been obtained the appeal on ground (c) fails.

The appeal on ground (f)

6. The appeal on this ground has two elements. Firstly, you contend that to the extent that the bunding exceeds 2m in height it should be reduced so that it complies with the permitted development rights conferred by Class A of Part 2 of Schedule 2 to the GPDO and, secondly, you contend that it is unreasonable for the area to be grassed as it forms part of a hardstanding area which is the subject of an extant planning permission.

7. On the first of these points, I have already concluded that the provisions of Class A of Part 2 of Schedule 2 to the GPDO are not applicable, irrespective of the height of the bunding. Thus a saving to permitted development tolerances is not justified in this case. On the second point, you have provided no firm evidence that the bunds have been constructed within the area that was granted planning permission for the construction of a hardstanding in 1972 but, in any event, the steps required by an enforcement notice cannot legitimately include the carrying out of

development, even if a planning permission for such development does exist. You do not dispute that the area beneath the bunding was originally grassed, thus the requirements of the notice, in this respect, are simply a means of ensuring that the land affected is returned to the condition it was in before the unauthorised development took place. I find this to be entirely reasonable. The appeal on ground (f) therefore fails.

The appeal on ground (g)

8. You say that the period specified for compliance with the requirements of the notice is unreasonable because the quantity of material that has to be removed would result in significant movement of heavy goods vehicles on narrow country roads, leading to highway danger and loss of amenity to local residents. Your clients would also suffer financial and working difficulties if this period were to be upheld. A period of twelve months should therefore be allowed.

9. I have already referred to the fact that the majority of the bunds have now been removed from the site and this seems to me to undermine to a considerable extent the arguments that have been put forward on this ground. I have no information on the quantity of material that was originally contained in the bunds but it seems to me that there is about 625m^3 of material in the mounds that remain. Removal of such a quantity of material would, in my estimation, require an average of only one lorry load per day over the six month compliance period. I do not consider this to be at all unreasonable and it would not result in any significant disturbance to local residents or cause a material decrease in highway safety. I cannot assess the effect upon your clients in either an operational or financial sense, but it seems to me that a firm which specialises in plant hire, demolition and earth-moving is unlikely to be severely handicapped in this respect. For these reasons, the appeal on ground (g) fails.

Other matters

10. In reaching my conclusions on the grounds of appeal I have taken into account all other matters raised in the representations but they do not outweigh the considerations that have lead to my decision.

FORMAL DECISION

11. For the above reasons, and in exercise of the powers transferred to me, I dismiss your clients' appeal and uphold the enforcement notice.

RIGHTS OF APPEAL AGAINST DECISION

12. This letter 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.

Yours faithfully

Martin Joyce

MARTIN JOYCE DipTP MRTPI
Inspector