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24 FEB 1994
LAW AND ADMIN.
DEPT.

Director of Law and Administration
Dacorum Borough Council
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Hemel Hempstead
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Your ref
RH/2447/444/SR
Our ref
APP/C/93/A1910/628440 (COSTS)
APP/A1910/A/93/223978 (COSTS)

23 FEB 1994

Dear Sir

LOCAL GOVERNMENT ACT 1972 - SECTION 250 (5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78, 174 AND 322A
LAND AT 52 BOXTED ROAD, HEMEL HEMPSTEAD
APPEALS BY MRS B J PITCHER : APPLICATION FOR COSTS

1. I am directed by the Secretary of State for the Environment to refer to the appeals by Mrs B J Pitcher against:-

- (i) an enforcement notice, issued by Dacorum Borough Council on 22 March 1993, alleging a breach of planning control on land at 52 Boxted Road, Hemel Hempstead, by the conversion without planning permission of a maisonette to two self-contained flats, and
- (ii) the decision by Dacorum Borough Council, dated 11 March 1993, to refuse planning permission for the retention of development already carried out at 52 Boxted Road, Hemel Hempstead, namely the conversion of a maisonette to two flats.

The enforcement notice was withdrawn by the Council in their letter of 3 August 1993 to the Planning Inspectorate. The appeal against the Council's refusal of planning permission was withdrawn by Messrs Martin Ledger Associates, the appellant's agents, in their letter of 17 August 1993. The public inquiry into the appeals was accordingly cancelled.

2. This letter deals with the (counter) application for an award of costs against the appellant made in your letter of 7 September 1993. Submissions on behalf of the appellant were made by Messrs Martin Ledger Associates in their letters of 20 August and 15 September 1993. As the full text of these representations has been made available to the parties, it is not proposed to summarise them.

BASIS FOR DETERMINING COSTS APPLICATION

3. On 2 January 1992, section 322A of the 1990 Act came into force (inserted by section 30 of the Planning and Compensation Act 1991). These provisions enable costs to be awarded against any party whose "unreasonable" behaviour directly results in the late cancellation of an inquiry or hearing, so that expense incurred by any of the other parties is wasted. Since the appeals in this case were received on 27 April and 24 May 1993 respectively, and were proceeding to an inquiry



when they were withdrawn, section 322A of the 1990 Act is applicable. The application for costs has been considered in the light of the policy guidance in DOE Circular 8/93, the appeal papers, the parties' correspondence on costs and all relevant circumstances.

REASONS FOR DECISION

Appeal against enforcement notice

4. All the available evidence in this case has been carefully considered. Particular regard has been paid to paragraph 3 of Annex 2 to DOE Circular 8/93.

5. It is noted that your Council's costs application founded on the claim that the appellant's behaviour was unreasonable, in that the proceedings could have been concluded earlier had the information contained in her pre-inquiry statement been supplied at the outset. You suggested that sworn evidence could have been provided with the return of the second Planning Contravention Notice dated 11 November 1992, which was served on Mr Craddock, a registered mortgagee of the appeal premises.

6. The view is taken that the response made to the second Planning Contravention Notice was entirely a matter for Mr Craddock himself, via Messrs Martin Ledger Associates, his agents in that matter. Even assuming that the appellant was aware of the Notice, as seems likely, it is not accepted that any responsibility in that respect thereby devolved on her. It is considered that the appellant only became a formal party to the enforcement proceedings after the copy of the enforcement notice had been served on her and other persons. As to the appeal, it is noted that the enclosures supplied by the appellant included a copy of a letter dated 21 April 1993 from Alban Bridge Property Services, an accommodation agency. The agency confirmed that they had taken properties 52a and 52b Boxted Road onto their books on 1 January 1989, at which time both flats were finished and ready for occupation. This letter is considered to be of crucial significance since, unlike previous claims, it provided first-hand and detailed support for the appellant's contention that the operational development enforced against was "immune" from such action. Copies of the letter, the appeal form and other supporting documents were sent to the Council by the Planning Inspectorate on 30 April 1993. It is concluded that the substance of the appellant's case, including the key evidence on which she would rely, was thus made known to the Council from the outset of the appeal proceedings. It is further concluded that the appellant's behaviour was not therefore "unreasonable" within the scope of paragraph 3 of Annex 2 to DOE Circular 8/93; nor is it considered to have led to the late cancellation of the inquiry.

Appeal against refusal of planning permission

7. All the available evidence in this case has been carefully considered. Particular regard has been paid to paragraph 9 of Annex 2 to DOE Circular 8/93.

8. Although the Council's submissions on their application for costs appear applicable to the enforcement notice appeal only, the application was not expressly confined to that matter. Consideration has therefore been given to the reasonableness of the appellant's behaviour in respect of her appeal against the refusal of planning permission for the retention of development already carried out at 52 Boxted Road. In that context, it is noted that the appeal was withdrawn after the appellant had received, via her agents, formal notification of the arrangements for an inquiry. It is considered that the Council's acknowledgement that the development was "immune" from enforcement action constituted a material change in circumstances relevant to the planning issues arising on the appeal. It is concluded, therefore, that the appellant's behaviour was not "unreasonable" within the scope of paragraph 9 of Annex 2 to DOE Circular 8/93.

FORMAL DECISION

9. Accordingly, for these reasons, the Secretary of State has decided that an award of costs against the appellant on grounds of "unreasonable" behaviour is not justified in these particular circumstances. Your application is therefore refused.

10. A copy of this letter has been sent to Messrs Martin Ledger Associates.

Yours faithfully

DN Donaldson

D N DONALDSON
Authorised by the Secretary of State
to sign in that behalf