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Your reference KP 75102 PJW/BB  
LPA Ref: CAF/VAB/S 618002  
Our reference  
APP/5326/C/75/3009 & 3020  
Date - 2 NOV 76

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 SECTION 88  
LAND ADJACENT TO 33 SYDNEY STREET, KETTERING  
APPEALS BY PRIMECUT FOODS LTD AND WARREN TERRACE PROPERTIES LTD

1. I am directed by the Secretary of State for the Environment to refer to the report of the Inspector, Mr J M Kisch CMG MA, who held a local inquiry into your clients' appeals against an enforcement notice served by the Kettering Borough Council, relating to a change of use of the above-named land to use for the purpose of the maintenance of motor vehicles.
2. The appeals against the enforcement notice were on the grounds set out in Section 88(1)(a)(b)(d) and (g) of the Town and Country Planning Act 1971.
3. A copy of the Inspector's report of the inquiry is annexed to this letter. His conclusions are set out in paragraphs 21 to 23 and his recommendation at paragraph 24 of the report. The report has been considered.

#### SUMMARY OF THE DECISION

4. The formal decision is set out in paragraph 9 below. The enforcement notice is considered to be defective and is quashed.

#### REASONS FOR THE DECISION

5. The evidence and facts found by the Inspector show that the site is almost entirely occupied by a single storey brick building with asbestos roof. From 1934 to 1965 the premises were occupied by an agricultural contractor and used for the storage, maintenance and repair of the agricultural vehicles and equipment which he hired out to farmers. In May 1965 temporary planning permission was granted for use of the premises for vehicle bodywork repairs and vehicle bodybuilding. This planning permission was granted subject to various conditions the first of which was:-

"The limited period for the use hereby permitted shall be until 31 May 1966, on or before the expiration of which period the use shall be discontinued and determined."

The company concerned left the premises in May 1969 when your clients began their occupation of the premises. Since 1969 the site has been used by your clients for the maintenance and repair of their fleet of vehicles.

6. It is noted that the enforcement notice alleges unauthorised use of the land for the maintenance of motor vehicles. However it appears from the evidence that the present use is substantially of the same character as the one authorised by the May 1965 planning permission which continued on the site until 1969 although the permission expired in 1966. When the present use began there was therefore no material change of use of the land. The view is taken that the notice should have been directed against a breach of the first condition of the May 1965 planning permission. The allegation is therefore incorrect. This error is considered to be a material defect which is beyond the Secretary of State's powers of correction under section 88(4) of the 1971 Act. The notice must therefore be quashed and there is no need to consider any other grounds of appeal.

#### INFORMAL COMMENTS

7. It may be of assistance to the parties to have the Secretary of State's informal comments on the planning merits of the case had the enforcement notice not been defective. On the planning merits of the appeal the Inspector reached the following conclusions:-

"As regards ground (a) of the appeal, if planning merits fall to be considered, it seems to me that the intensive use made by the appellants of the site for vehicle repairs is not, as was contended for the appellant, justified by the history of the site. I consider that the use has been damaging to the peace and quiet of the houses nearby and that the appeal on ground (a) fails."

He recommended that planning permission should not be granted.

8. These conclusions and recommendations would have been accepted. It is not considered that the present industrial use is acceptable in an area allocated for residential purposes. For this reason and for the reasons stated by the Inspector, the condition would not have been discharged nor planning permission granted for the continuation of the use.

#### FORMAL DECISION

9. For the reasons given in paragraphs 5 and 6 above the Secretary of State directs that the enforcement notice be quashed.

#### RIGHT OF APPEAL AGAINST THE DECISION

10. This letter is issued as the Secretary of State's determination of the appeal. Leaflet A enclosed for those concerned sets out the right of appeal to the High Court against the decision and the arrangements for the inspection of documents appended to the Inspector's report.

I am Gentlemen  
Your obedient Servant

MISS E TREANOR  
Authorised by the Secretary of State  
to sign in that behalf

ENC

2 Marsham Street

London SW 1

27 April 1975

To the Right Honourable Peter Shore MP  
Secretary of State for the Environment

Sir

I have the honour to report that on 20 March 1976 I held an inquiry at Kettering into appeals by Primecut Foods Ltd and Warren Terrace Properties Ltd under Section 88 of the Town and Country Planning Act 1971, against an enforcement notice served by the Kettering Borough Council.

The site is at 33 Sydney Street, Kettering.

1. a. The date of the notice is 30 July 1975.  
b. The breach of planning control alleged in the notice is the use of the land adjacent to 33 Sydney Street, Kettering for the maintenance of motor vehicles.  
c. The requirements of the notice are the discontinuance of the above use.  
d. The period for compliance with the notice is 56 days.  
e. The appeal against the notice was made on grounds 88(1)(a)(b)(d) and (g).
2. This report includes a description of the appeal site and surroundings, the gist of the representations made at the inquiry, my findings of fact, conclusions and recommendations. Lists of appearances, documents and plans are attached.
3. The evidence was taken on oath.

#### THE SITE AND SURROUNDINGS

4. The appeal site is a rectangular area about 90 ft deep with a frontage of about 40 ft onto the street. Apart from a narrow strip on the eastern side most of the area is occupied by a large rectangular single-storey brick shed with a pitched asbestos roof. Attached to the north-east corner of the shed is a small building normally used for storage.
5. About two thirds of the way down the building, there was a plastic curtain: I understand that it is drawn when paint-spraying is going on. There were 2 long inspection pits, covering the greater part of the depth of the building.
6. At the time of my visit no maintenance work was taking place and the whole building was being used only for miscellaneous storage. (It was made clear at the inquiry that this was a temporary arrangement for internal organisational reasons only.)

7. The area is residential. Most of the houses are of 2 storeys and of some age. They appear to be generally well maintained.

#### THE CASE FOR THE APPELLANTS

The material points were:-

8. From 1934 to 1965 the premises had been used by a Mr Harris to carry on his business of an agricultural engineer and contractor. He repaired, maintained and garaged a variety of agricultural machinery on the site (tractors, elevators and threshing machines); their repair and maintenance was carried out by Mr Harris, his son (in the latter's spare time) and employees who also operated the machines etc when they were out on contract to farmers.
9. From 1965 to 1966 temporary planning permission had been granted for use of the premises for vehicle body work repairs and body work building; this permission had not been extended although the company concerned had not vacated the premises until 22 May 1969; it was accepted that this interlude did not affect the established pre-1964 use of the site.
10. Since the purchase of the premises by Primecut Foods Ltd in May 1969, they had been used, as in the time of Mr Harris, for the maintenance, repair and storage of motor vehicles.
11. The council were relying on a statement by Mr Roberts, a planning assistant, of 23 April 1965 after a visit to the site, concluding that "any repairs carried out by Mr Harris were purely in connection with the garaging of his own agricultural machines and were incidental to the garage use". This statement was challenged in toto; it was made after Mr Harris' death on 9 January 1965, when the business was no longer being carried on. Mr Roberts was not present at the inquiry to be questioned; it was hearsay evidence which should be given no weight.
12. The council admitted that from 1934 to 1965 the servicing and maintenance of vehicles had been carried on on the site, but argued that such maintenance was only incidental to a storage or warehousing use; this was not accepted; the company were continuing an inherited use for vehicle repairs and storage. It was the existing use prior to 1 July 1948 and had therefore at no time required planning permission; it was likewise the existing use before the beginning of 1964.
13. It was accepted that the appellants had installed inspection pits and that they did some spraying; but this did not reveal any different usage; only that more modern techniques of repair and maintenance were being applied.
14. As regards ground (g) of the appeal a period of 56 days was insufficient, firstly because it did not allow enough time for an application to be made under Section 53 of the Act to ascertain whether or not the use of the premises was a material development; secondly a longer period was required to enable, if so desired, an appeal on a point of law to be lodged within the statutory period permitted to the High Court.
15. In any case, the history of the use of the premises over the past 40 years was in itself a reason why planning permission should be granted.
16. It was a bad notice because the maintenance of vehicles had always gone on and could not be described as a material change of use.

## THE CASE FOR THE COUNCIL

The material points were:-

17. From 1934 to 1965 Mr Harris had carried on the normal business of an agricultural machinery contractor, letting out vehicles, equipment and machines for use on farms; when they were not in use on farms he stored them at his premises, where they were maintained by himself and his employees, who likewise operated the equipment. By contrast, the present use was essentially a use as a repair garage, in fact the repair garage, for the whole Primecut fleet of vehicles, about 50 in all from minivans to large articulated lorries; the storage use had virtually disappeared; vehicles normally stayed only for a few days while they were serviced or repaired by a staff of 3-5 mechanics.

18. As regards the wording of the notice, it was possible for the Secretary of State, if he felt it desirable, to alter the words "maintenance of motor vehicles" to "maintenance, repair and servicing of motor vehicles".

19. As regards ground (a) the change of use had resulted in complaints by people in the neighbourhood. The evidence of witnesses living nearby and of interested persons who had appeared at the enquiry was that their amenities had been substantially and adversely affected by the resulting increase of traffic; by the lengthy manoeuvring needed to get long vehicles into the shed, owing to the narrowness of the road, by noise, fumes and the obstruction caused by large vehicles. It was an unsuitable use in an area allocated for residential purposes in the approved Town Map.

## FINDINGS OF FACT

20. I find the following facts:-

- a. from 1934 to 1965 the appeal premises were used by an agricultural contractor for the garaging of agricultural vehicles and equipment which he hired out on contract to farmers.
- b. He and his staff also used the premises for maintaining the above vehicles and equipment.
- c. From 1965 to 1966 temporary planning permission was given for use of the premises for vehicle body work repairs and body work building. The company concerned vacated the building on 22 May 1969.
- d. In May 1969 Primecut Foods Ltd purchased the premises and has used them for the repair and maintenance of a fleet of about 50 vehicles, the largest being articulated lorries.
- e. The above vehicles when not undergoing such repair and maintenance are normally garaged or parked elsewhere.
- f. The area is residential and is so allocated in the Town Map.

## CONCLUSIONS

21. The legal implications of the above facts are matters for consideration by the Secretary of State and his legal advisers. It seems to me that in the period 1934-1965 the premises were used by Mr Harris to store or garage the vehicles and machinery which he was letting out for use by others; the equipment was maintained in the premises and running repairs carried out, but such maintenance and repairs

were incidental and ancillary to the storing or garaging. The premises have since been used by the appellants as a maintenance and repair garage for a large fleet of vehicles, great and small; the vehicles come to the premises for maintenance and repair only and are not (save in exceptional circumstances) garaged or stored on the premises. It therefore appears to me that, as regards grounds (b) and (d), a material and unauthorised change of use has taken place since the beginning of 1964.

22. As regard the appeal under ground (g) I do not consider that the period for compliance requires to be extended. As regards the breach of planning control complained of in the notice, it appears to me that it is correctly described therein.

23. As regards ground (a) of the appeal, if planning merits fall to be considered, it seems to me that the intensive use made by the appellants of the site for vehicle repairs is not, as was contended for the appellant, justified by the history of the site. I consider that the use has been damaging to the peace and quiet of the houses nearby and that the appeal on ground (a) fails.

#### RECOMMENDATION

24. I recommend that if it is decided that development requiring planning permission is involved, planning permission be not granted.

I am

Sir

Your obedient Servant



J M KISCH  
Inspector