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EN/90/0135

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Your reference

DCF/AJ/HOWE

Our reference

T/APP/C/90/L2820/2-3/P6

Date

16 MAY

BOROUGH OF KETTERING
HEAD OF PLANNING SERVICES

RECEIVED

21 MAY 1991

FILE

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
APPEALS BY MR D J HOWE
LAND AT TOLLBAR CAFE, HARBOROUGH ROAD, DESBOROUGH

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeals. These appeals are against 2 enforcement notices issued by the Administrative Council of the Borough of Kettering concerning the above mentioned land. I have considered the written representations made by you and by the Council and the Department of Transport and I inspected the sites and surroundings on 12 March 1991.

NOTICE A

2. a. The date of the notice is 3 May 1990.

b. The breach of planning control alleged in the notice is failure to comply with conditions Nos 2, 3 and 5, subject to which planning permission was granted.

c. The permission (No KE/85/817) was granted on 26 March 1986 and was for change of use to transport yard/depot with ancillary garage building.

d. The conditions which are alleged not to have been complied with are as follows:

"(2) The development hereby permitted shall not be carried out otherwise than in conformity with a scheme for landscaping treatment of the site which shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced. The scheme shall be implemented concurrently with the development and shall be completed not later than the first planting season following its substantial completion. Any features, trees, shrubs or hedges removed, dying, being severely damaged or becoming seriously diseased within five years of being formed or planted shall be replaced by similar features or planting to that originally agreed, or as may be subsequently agreed in writing by the Local Planning Authority.

(3) Before the development hereby permitted is brought into use a detailed layout plan showing lorry parking areas, access to the site, the site of any plant or equipment, including oil tanks etc, shall have been submitted to and approved in writing by the Local Planning Authority.



(5) Access to the site shall be from Brampton Wood Lane in accordance with details approved in accordance with condition (3). The existing access to the A6 trunk road shall be permanently closed in accordance with details which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any development."

e. The requirements of the notice are compliance with conditions 2, 3 and 5 of the planning permission dated 26 March 1986.

f. The period for compliance with the notice is 3 months.

g. The appeal was made on the grounds set out in Section 174(2)(a) and (g) of the 1990 Act.

NOTICE B

3. a. The date of the notice is 3 May 1990.

b. The breach of planning control alleged in the notice is the unauthorised carrying out of operational development on the premises, namely the making of a material change of use of the premises, by using the premises for the parking and/or storage of motor vehicles and trailers associated with the business of a haulage contractor carried out on the premises hatched red on the plan attached to the notice.

c. The requirements of the notice are the removal from the said land of all vehicles and/or trailers associated with the business of a haulage contractor.

d. The period for compliance with the notice is 3 months.

e. The appeal was made on the grounds set out in Section 174(2)(a) and (h) of the 1990 Act.

4. In Notice A the third line of condition No 3 as set out in the preamble includes the words "the sighting of equipment, including oil tanks.". The words in the condition imposed on the grant of planning permission are "the siting of any plant or equipment, including oil tanks etc.". I am satisfied that the error in the preamble could be corrected without causing injustice to your client or the Council, and I propose to exercise my powers of correction under Section 176(2) of the Act.

5. In Notice B the preamble alleges operational development. Such development relates to building, engineering, mining or other operations as referred to in Section 55(1) of the Act. The alleged breach of planning control set out in Schedule 2 to the notice is the making of a material change of use. The making of a material change of use is within the meaning of development as defined in Section 55, but is not operational development. I am satisfied that the error in the preamble could be corrected without causing injustice to your client or the Council, and I propose to exercise my powers of correction under Section 176(2) of the Act.

6. It appears to me from the representations and my inspection that the main issues are, in the Notice A appeal, the effects which non-compliance with the conditions, if continued, would have on the area's character and appearance and on the safe and free flow of traffic on adjacent roads and, in the Notice B appeal, the effect which the use, if continued, would have on the area's appearance and character.

7. The Notice A site, on the southern side of Brampton Wood Lane and with access from that road, contains an accessway, an open yard area and, at the south-western end of that area, a single storey building used for garaging and workshop purposes. The building has 2 entrance doors, one in its north-western elevation which opens onto land within the Notice B site, and the other in its north-eastern elevation. To the building's north-west is a bungalow with a restaurant and a hotel beyond, to the north-east of which is a garden centre with access from Brampton Wood Lane.
8. Immediately to the south-west of the Notice A site is the Notice B site, which consists of open land on the north-eastern side of Harborough Road, a section of road forming part of the A6 trunk road. An access from the A6 serving the bungalow and the other development to its north-west adjoins the north-western end of the Notice B site's frontage. To the south-east of the 2 sites, and across Harborough Road to the south-west is open farmland.
9. In the Council's statement of case planning permission No KE/85/817 is said to have been for the erection of a garage for garaging and repair of HGVs owned by the applicant. This is inaccurate, since the planning permission was for a change of use as set out in paragraph 2c above with an ancillary building. It seems apparent from the representations and my inspection that the permission was both for a change of use and for operational development, namely the erection of the building now existing on the Notice A site. The permission shows your client as the applicant, and there is no evidence of an appeal against any of the conditions imposed.
10. Although in your submission it is not correct to say that the area is predominantly open countryside, I am of the opinion that, notwithstanding the uses to which the Notice A site and the adjoining land to its north-west are put, the character of the area is predominantly rural. The Notice A site is clearly visible from Brampton Wood Lane, and the Notice B site and the building on the Notice A site are clearly visible from Harborough Road.
11. I take the view that both the sites, in their present conditions and as at present used, represent alien features which are damaging to the area's rural character and appearance. I am in no doubt that a suitable landscaping scheme carried out on the Notice A site would soften the impact of the development permitted on that site and reduce the damage to the rural scene. I consider that the imposition of condition No 2 on the planning permission dated 26 March 1986 was reasonable and justified, and that the condition should be complied with. I note the evidence that a landscaping scheme has been submitted but has not been approved.
12. With regard to condition No 3, I am of the opinion that control should be exercised over activities in the open at the site and items kept or stored in the open, and over the means of access to the site. Without such control harm to the local scene would be likely to be greater, and highway dangers resulting from large vehicles entering and leaving the site could be increased. I consider that the imposition of the condition was reasonable and justified, and that the condition should be complied with.
13. With regard to condition No 5, you have submitted in respect of the first part that the condition only requires access to the site to be from Brampton Wood Lane and does not require access from it to be also via Brampton Wood Lane. The Council have challenged your interpretation, and it seems to me that the words "access to the site" may reasonably be taken to mean both ingress into and egress from the site. As to the second part of the condition, whilst I accept that an access to the A6 within the Notice B site has now been closed, I note that no details of the closure have been received by the Council and no form of barrier has been provided

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to prevent lorries using the access adjoining the north-western end of the Notice B site's frontage. In your submission use of the latter access should not be prevented since the main doors to the garage building are on the north-western side, and if use of the access were denied access could not be gained to the building. I am not satisfied that your claim is a strong one; even if large vehicles could not gain access to the doors on the north-western side, there is an entrance on the north-eastern side which could probably be enlarged if necessary. The Council, on the advice of the County Council acting on behalf of the Department of Transport, consider it necessary that, in the interests of highway safety, access from the site onto the A6 should be closed and all access to and egress from the site should be by way of Brampton Wood Lane. Having regard to the representations now before me, I find insufficient grounds for taking a different view. It would, of course, have been open to your client to challenge the imposition and interpretation of the condition at the time when planning permission was granted.

14. On the available evidence I consider that, if condition No 5 were not complied with, dangers on the A6 and interferences with the free flow of traffic would be increased by turning movements of large vehicles on the carriageway of the trunk road. In my opinion the imposition of the condition was reasonable and justified and the condition should be complied with.

15. I find that continued non-compliance with the conditions to which Notice A relates would have harmful effects on the area's character and appearance and on the safe and free flow of traffic on Brampton Wood Lane and Harborough Road. I find no special circumstances to override the objection, and, after taking into account all the matters raised in connection with the appeal, I am of the opinion that the appeal fails on ground 174(2)(a). 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 Act.

16. Turning to Notice B, I have already expressed the view that the site, used as at present for the parking and/or storage of motor vehicles and trailers associated with the business of a haulage contractor, represents an alien feature which is damaging to the area's character and appearance. I do not doubt that, if the use were continued, harm would continue to be caused to the area's character and appearance. Furthermore, I find strength in the contention that the use would strengthen the argument to use the A6 for purposes of access at a point considered by the Highway Authority to be unsuitable for ingress to and egress from the combined Notice A and Notice B sites.

17. You have submitted and the Council have not disputed that the main entrance door to the garage building on the Notice A site opens onto the Notice B site and vehicles are necessarily going to travel over the latter site for purposes of access to and egress from the building. Whilst this passage of vehicles would appear to be inevitable if the entrance were to continue to be used, I am unable to accept that the site could be used for the parking and storage of vehicles and trailers without the use being seriously out of place and damaging to the area's rural appearance as seen from this part of the A6.

18. I am not satisfied that the Notice A site is insufficient, or could not be made sufficient, to allow for the parking and turning of vehicles and trailers associated with the haulage contractor's business carried on at the site. The Council have stated that your client was advised on 19 November 1987 that the submission of a planning application to enlarge the site area could meet with favourable consideration.

19. I am very mindful of the need to encourage business activity as much as possible, but, after giving careful consideration to that matter and all others raised in the representations, I am of the opinion that the objection to continued use of Notice B site for the purposes set out in Schedule 2 to the notice is overriding, and that the appeal fails on ground 174(2)(a). 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 Act.

20. Regarding the appeal against Notice A on ground 174(2)(g), and bearing in mind my findings on the planning merits set out above, I do not find the requirements of the notice excessive but consider that they need variation to take account of the implementation of the planning permission. In respect of condition No 2 I consider that a landscaping scheme should be submitted to the Local Planning Authority for approval within a period of 3 months from the date on which the enforcement notice takes effect, and that the approved scheme should be implemented and completed not later than the first planting season following its approval. In respect of condition No 3 I consider that a detailed layout plan should be submitted to the Local Planning Authority for approval within a period of one month from the date on which the notice takes effect, and that implementation of the approved plan should be completed within a further period of 2 months. In respect of condition No 5 I consider that the details of closure of the access to the A6 should be submitted to the Local Planning Authority for approval within a period of one month from the date on which the notice takes effect, and that the access should be permanently closed in accordance with the approved details within a further period of 2 months. I propose to vary the requirements accordingly.

21. With regard to the appeal against Notice B on ground 174(2)(h), you have submitted that if the notice were to be upheld a period substantially in excess of 12 months for compliance with the notice would be appropriate as the business would be unable to function without the storage/parking facilities. The Council say that the period could be extended to 12 months but that a period in excess of 12 months, would be unreasonable. After considering all the representations on this matter, and bearing in mind the desirability of causing as little disruption as possible to your client's business, I take the view that the period should be extended to 12 months but that it would not be reasonable for a longer period to be allowed. I propose to extend the period to 12 months, and to that extent the appeal succeeds on ground 174(2)(h).

FORMAL DECISIONS

The appeal against Notice A, reference T/APP/C/90/L2820/3

22. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that:

1. the enforcement notice be corrected in the third line of condition 3 as set out in the preamble to the enforcement notice by deleting the words "the sighting of equipment, including oil tanks.," and substituting therefor the words "the siting of any plant or equipment including oil tanks etc.,"

2. the enforcement notice be varied in Schedule 3 by deleting the steps shown as required to be taken and substituting therefor the following steps:

- i. Compliance with condition No 2 of the planning permission dated 26 March 1986 except insofar as the landscaping scheme referred to in the condition shall be submitted to the Local Planning Authority for approval within a period of 3 months from the date on which the notice takes effect, and the scheme as approved by the Local Planning

Authority, or in default as may be determined by the Secretary of State, shall be implemented and completed not later than the first planting season following its approval.

ii. Compliance with condition No 3 of the planning permission dated 26 March 1986 except insofar as the detailed layout plan referred to in the condition shall be submitted to the Local Planning Authority for approval within a period of one month from the date on which the notice takes effect, and implementation of the plan as approved by the Local Planning Authority, or in default as may be determined by the Secretary of State, shall be completed within a period of 2 months from the date on which the plan is approved.

iii. Compliance with condition No 5 of the planning permission dated 26 March 1986 except insofar as the details of closure of the access to the A6 referred to in the conditions shall be submitted to the Local Planning Authority for approval within a period of one month from the date on which the notice takes effect, and the access shall be permanently closed in accordance with the details as approved by the local Planning Authority, or in default as may be determined by the Secretary of State, within a period of 2 months from the date of approval.

23. Subject to this correction and this variation, I dismiss the appeal, uphold the notice and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the Act.

The appeal against Notice B, reference T/APP/C90/L2820/2

24. For the above reasons, and in exercise of the powers transferred to me, I hereby direct that:

1. the enforcement notice be corrected in the second line of paragraph (2) of the preamble by deleting the words "the carrying out of the operational development on" and substituting therefor the words "the making of a material change in the use of";

2. the enforcement notice be varied in the operative part by deleting the words "three months" and substituting therefor the words "twelve months" as the period for compliance with the notice.

25. Subject to this correction and this variation, I dismiss the appeal, and uphold the notice and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the Act.

RIGHT OF APPEAL AGAINST DECISIONS

26. This letter is issued as the determination of the appeals 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



J BROCK MA (Cantab)
Inspector

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