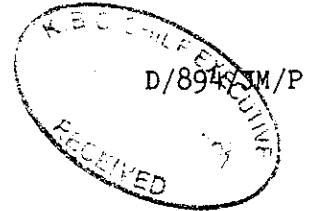




Planning Inspectorate
Department of the Environment
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Direct Line 0272-218
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Council's Ref: SW/618152



Messrs Wilson Browne
41 Meadow Road
KETTERING
Northants
NN16 8TN

Your reference

MJJ.JW.KW90103

Our reference

T/APP/C/90/L2820/4/P6

Date

5-4-91

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
APPEAL BY MR T D WRIGHT
LAND AND PREMISES AT NO 5 COGAN CRESCENT, ROTHWELL

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against an enforcement notice issued by the Administrative Council of the Borough of Kettering concerning the above mentioned land and premises. I have considered the written representations made by you and by the Council and also those made by interested persons, and I inspected the site and surroundings on 12 March 1991.
2.
 - a. The date of the notice is 30 April 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 a domestic property for business purposes.
 - c. The requirements of the notice are the cessation of the use of the premises for business purposes and the removal of all business related machinery tools and materials.
 - d. The period for compliance with the notice is one month.
 - e. The appeal was made on the ground set out in Section 174(2)(c) of the 1990 Act.
3. In the notice 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 you or the Council, and I propose to exercise my powers of correction under Section 176(2) of the Act.
4. The premises comprise a dwellinghouse in residential occupation, and there is no evidence to show that it has not been used for residential purposes in the past. I am of the opinion that the material change of use alleged in Schedule 2 to the notice should be to a use for partly residential and partly business purposes. I am satisfied that this error could be corrected without causing injustice to you or



the Council, and I propose to exercise my powers of correction under Section 176(2) of the Act.

5. Your client claims, and Council have not disputed, that the plan attached to the enforcement notice is incorrect in that it includes a small area of land belonging to the neighbouring property, No 7. I saw on my inspection the area referred to, and accept that it has been wrongly included in the site. I am attaching to this letter a corrected plan and shall direct that it be substituted for the plan attached to the notice.

6. With regard to the appeal on ground (c), your client has stated that an engineering repair business carried on by him elsewhere closed in October 1989, since when he has been unable to work due to ill health. He has further stated that since that time it has been necessary to keep certain items of tools and equipment in the garage at his house pending disposal or removal elsewhere, and removal has been difficult due to his state of health.

7. Whilst on the evidence it seems to me likely that your client has disposed of some of the items kept at his house by way of sale, I take the view that on the balance of probability any such sales have been on a "de minimus" scale not involving development. Although it might be that the storage of items associated with his former business has been on a scale involving development, the enforcement notice does not allege a storage use.

8. Having carefully considered all the evidence, I conclude that a material change of use of the premises to a use for partly residential and partly business purposes has not occurred, and that the breach of planning control alleged in the enforcement notice has not taken place. The appeal succeeds on ground (c), and the application for planning permission deemed to have been made under Section 177(5) of the Act does not fall to be considered.

FORMAL DECISION

9. 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 corrected in the second line of the alleged breach of planning control in Schedule 2 by inserting the words "partly residential and partly" between the words "for" and "business";

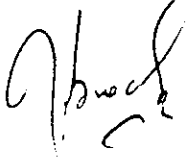
3. the enforcement notice be corrected by substituting the plan attached to this letter for the plan attached to and issued with the enforcement notice and by deleting in Schedule 1 the words "edged in red" and substituting therefor the words "hatched in black".

10. Subject to these corrections, I allow your appeal on ground (c) and direct that the notice be quashed. As the appeal succeeds on legal grounds, the application for planning permission deemed to have been made under Section 177(5) of the Act does not fall to be considered.

RIGHT OF APPEAL AGAINST DECISION

11. 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

A handwritten signature in dark ink, appearing to read 'J Brock', with a stylized flourish at the end.

J BROCK MA(Cantab)
Inspector

ENC