

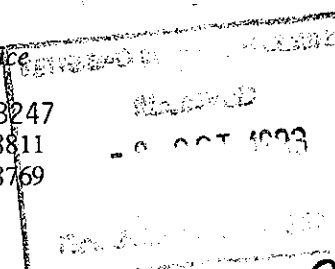


# The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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Mr M S Dowler  
Director  
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Deal House  
Wales Street  
ROTHWELL  
Northants  
NN14 2JL

Your reference  
KBC/GAD/AWM/618177  
Council reference  
EN.173  
Our reference  
T/APP/C/93/L2820/626485  
Date

17 OCT 93

*R*  
*Report to*  
*letter*  
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Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6  
PLANNING AND COMPENSATION ACT 1991  
APPEAL BY DOW-NELL CONSTRUCTION CO LTD  
LAND AND BUILDINGS AT 14 WALES STREET, ROTHWELL

1. I have been appointed by the Secretary of State for the Environment to determine this appeal. The appeal is against an enforcement notice issued by Kettering Borough Council in relation to the land and buildings referred to above. I have considered the written representations submitted by you and by the Council, and also those submitted by an interested person. I inspected the site on 17 August 1993.

2. a. The notice was issued on 8 December 1992.

b. The breach of planning control alleged in the notice is as follows:-

"The retention of a storage cabin on the affected land without the benefit of a grant of planning permission, previous grants of temporary planning permission having become time expired on 20th May 1992."

c. The requirement of the notice is as follows:-

"Remove from the affected land the store cabin and return the site to its condition before the breach took place."

d. The period for compliance with the notice is 28 days.

e. The appeal was made on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the 1990 Act as amended by the 1991 Act. These grounds are as follows:-

Ground (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.



Ground (c) that those matters (if they occurred) do not constitute a breach of planning control.

Ground (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

Ground (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

Ground (g) that the period specified for compliance with the notice falls short of what should reasonably be allowed.

f. Since the facts on which it was proposed to rely in support of ground (d) were not given within the prescribed time, ground (d) is not being considered and the appeal is proceeding on grounds (a), (c), (f) and (g) only.

#### **The site and its surroundings**

3. The storage cabin is situated on land at the rear of the appellant company's offices. It is rectangular and made of steel. Temporary planning permission was granted for the cabin in 1991 and it has been painted grey in accordance with a condition imposed upon that permission. The cabin is used for the storage of tools and equipment used in the company's business.

4. There are three houses with rear gardens immediately to the north of the company's offices. To the south are barns and a yard and there is open land to the east, beyond which is the town centre of Rothwell.

#### **The alleged breach of planning control**

5. The allegation in paragraph 3 of the notice is inaccurately described and contains an incorrect date. What should have been alleged is a failure to comply with condition 01 imposed upon planning permission KE/91/0241 granted on 21 May 1991. This permission was a renewal of temporary permission for the storage cabin and condition 01 required the cabin to be removed and the site restored to its former condition at or before 1 June 1992.

6. I do not consider that the company has been misled by the wording of the allegation. The company applied for the permission which was granted in 1991 and it is clear from the statement of facts accompanying the appeal form and the papers attached to it that the company were aware of the details of the alleged breach of planning control. No injustice would be caused to the company if I exercised the power to correct the allegation in the notice. The correction is contained in the formal decision recorded below.

### The appeal under ground (c)

7. The cabin is not capable of being moved about the site and I am satisfied that the works required to place it in its present position amount to a building operation requiring planning permission. The planning condition requiring its removal and the restoration of the site at the end of a specified period is one which the Council can reasonably impose and it has not been complied with. Permission is not granted by the Town and Country Planning General Development Order 1988 for storage cabins within the curtilage of an office or an industrial building. A breach of planning control has occurred and the appeal under ground (c) fails.

### The appeal under ground (a)

8. From what I have seen and read about the planning merits of the appeal I consider that the main issue in deciding whether to grant planning permission for the storage cabin is the effect which it has upon the character and appearance of the surrounding area. I note that when the Council granted planning permission in 1991 they indicated that the permission would not be made permanent in the interests of visual amenity and indicated that a further renewal was unlikely to be granted. I accept, however, that it is not unreasonable for the company to have an outbuilding for storage purposes and that the cabin, because of its design and location, provides particularly secure facilities for storing tools and equipment. I note also the company's offer to cover the cabin with timber cladding, form a pitched timber felt roof over it and put a window in the side.

9. Policy GEN.4 of the Northamptonshire Structure Plan states that proposals for development will normally be acceptable provided that they are of a type, scale and design in keeping with the locality and do not detract from its amenities. Policy 28 which is proposed to be included in the local plan for Kettering Borough states that proposals will be considered in relation to the impact of the proposal on the character of the area and the amenity of nearby property.

10. The storage cabin is not of an appearance which one would normally expect to find within the curtilage of office development or near to housing. It is of the type usually to be found in complexes providing warehousing and trans-shipment facilities. Although little can be seen of it from public vantage points, it is in my opinion damaging to the character of the company's offices and to the outlook from the nearby houses. I do not consider that painting it grey makes a sufficient improvement to its appearance. The retention of the storage cabin in its present state would be in conflict with the planning policies to which I have referred and I do not consider that permission, whether permanent or temporary, should be granted for it to be retained as it is.

11. If, however, the cabin were clad with timber, suitably stained and provided with a single pitched roof of timber covered with felt of a suitable colour, it would look much the same as many other outbuildings, whilst at the same time providing the security which the company requires. I see no advantage in having a window. I have come to the conclusion that planning permission should be granted on a permanent basis, for the

storage cabin subject to conditions which will require these works to be carried out, in accordance with details to be submitted to and approved by the Council within specified time limits. The appeal therefore succeeds under ground (a), the notice will be quashed and conditional planning permission granted. In reaching this conclusion I have taken into account all other matters which have been raised in the representations or were apparent at my site visit, but none of them is as important as the considerations which have led to my conclusion.

### **The appeal under grounds (f) and (g)**

12. As a result of my conclusion under ground (a) the consideration of these grounds is no longer relevant.

### **FORMAL DECISION**

13. For the above reasons, and in exercise of the powers transferred to me, I hereby determine this appeal as follows:-

I correct the allegation contained in the notice by the deletion of paragraph 3 and the substitution therefor of the following paragraph:-

#### **"3. THE BREACH OF PLANNING CONTROL ALLEGED**

On 21 May 1991 a renewal of temporary planning permission was granted (reference KE/91/0241) for a storage cabin on the land affected, subject to conditions. Condition 01 required the building to be removed and the site restored to its former condition at or before 1 June 1992. This condition has not been complied with, because the building has not been removed and the site has not been restored to its former condition."

Subject thereto, I allow the appeal, quash the notice and grant planning permission on the application deemed to have been made by section 177(5) of the 1990 Act for the retention of a storage cabin on land at the rear of No 14 Wales Street, Rothwell without compliance with condition 01 subject to which planning permission was granted on 21 May 1991 (reference No KE/91/0241) but otherwise subject to the conditions set out in that permission and subject to the following additional conditions:-

1. Within one month of the date of this letter there shall be submitted to the local planning authority for their approval a scheme for cladding the external faces of the four walls of the storage cabin with timber and for the construction over the storage cabin of a timber pitched roof covered with felt. The scheme shall include details of the design and external appearance of the cladding and the roof including details of the staining to be applied to the timber and the colour of the felt.

2. All work comprised in the approved scheme of cladding and roofing shall be carried out within the period of two months following the date of approval of the scheme.

3. If any of the requirements of conditions 1 and 2 above are not complied with the storage cabin shall be removed within one month of the date upon which there is a failure to comply.

14. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

15. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 57 of the Town and Country Planning Act 1990.

#### RIGHT OF APPEAL AGAINST DECISION

16. 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.

Yours faithfully



D A HAINSWORTH LLB(Hons) Solicitor  
Inspector

**APPEAL TO THE HIGH COURT AGAINST  
AN INSPECTOR'S DECISION ON AN ENFORCEMENT  
NOTICE APPEAL OR ASSOCIATED PLANNING APPEAL**

An Inspector's decision on an enforcement appeal is final, unless it is successfully challenged in the High Court. Neither the Inspector nor the Secretary of State can amend or interpret the decision. It may only be reviewed if it is remitted to the Secretary of State, by the Court, for re-determination or re-consideration.

Anyone thinking of challenging an Inspector's decision is strongly advised first to seek legal advice. The following notes are intended as general guidance only.

An appeal may be made to the High Court under either or both sections 288 and 289 of the Town and Country Planning Act 1990. Different time-limits, which are explained below, apply to each type of appeal.

**a) Appeals under section 288 of the 1990 Act**

Section 288 provides that a person who is aggrieved by any decision to grant planning permission on the deemed application in an enforcement notice appeal, or by the decision on an associated appeal under section 78 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

1. the decision is not within the powers of the Act;  
or
2. any of the "relevant requirements" has not been complied with.

A challenge on either of these grounds must be made within six weeks of the date of the accompanying decision letter. "Leave" of the High Court is not required for this type of appeal.

The "relevant requirements" are defined in section 288 of the 1990 Act and are the requirements of:

- a) the Town and Country Planning Act 1990
- b) the Tribunals and Inquiries Act 1971 (or any other enactment replaced thereby), and

the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts. These include:

- i) the Town and Country Planning (Inquiries Procedure) Rules 1988 (SI. 1988 No. 944);
- ii) the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987 (SI. 1987 No 701);
- iii) the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 (SI. 1992 No 1903); and
- iv) the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991 (SI. 1991 No 2804, as amended by SI 1992 No 1904).

Copies of these may be obtained from HMSO Bookshops.

**b) Appeals under section 289 of the 1990 Act**

Section 289 provides that the appellant, the local planning authority, or any other person having an interest in the land to which the enforcement notice relates, may appeal to the High Court "on a point of law" against the Inspector's determination of an enforcement notice appeal.

An appeal under section 289 may only proceed with the leave of the Court. An application for leave to appeal must be made to the Court within 28 days of the date of the Inspector's decision, (unless the period is extended by the Court).

The appeal procedure involves the submission of what is called a "Notice of Motion" to the Crown Office in the Royal Courts of Justice. You are strongly recommended to consult a qualified legal adviser about this procedure and its estimated cost to you.

**INSPECTION OF INQUIRY DOCUMENTS**

Any person entitled to be notified of the decision given in the accompanying letter may apply to the Secretary of State, in writing within 6 weeks of notification, for an opportunity to inspect any documents, photographs or plans appended to the decision. These will be listed at the end of the Inspector's decision letter. Your application should be sent to Room 1404. Tollgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference number and stating the date and time (in normal office hours) when you would wish to make the inspection. Please give at least 3 days' notice and include a daytime phone number, if possible.

Parties have a right to inspect the documents under the provisions of rule 17(3) of the Town and Country Planning (Inquiries Procedure) Rules 1988, and rule 20(3) of the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992.

**PLANNING INSPECTORATE AGENCY  
Department of the Environment**

**August 1992**