



DEPARTMENT OF THE ENVIRONMENT

Room 905

Tollgate House Houlton Street Bristol BS2 9DU

Telex 449321

Direct line 0272-218 576
Switchboard 0272-21811
GTN 2074

Council's Ref: DKC/PC

Messrs Ward Bowie
Solicitors
70 Richmond Hill
BOURNEMOUTH
BH2 6JA

Your reference

LF/JF/G.46

Our reference APP/5186/C/83/611, 613

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13 JUL 84

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTIONS 36 AND 88
LAND AT THROOP HOUSE, THROOP ROAD, BOURNEMOUTH
APPEALS BY MR AND MRS M E GARDNER

1. I am directed by the Secretary of State for the Environment to refer the report of the Inspector, Mr J P Jackson, RIBA who held a local inquiry into your clients' appeals against:-

a. two enforcement notices served by the Bournemouth Borough Council, relating to land at Throop House, Throop Road, Bournemouth and alleging:-

(i) Change of use of that land from mixed use for residential purposes and the sale of eggs and poultry; (Appeal A)

(ii) the erection of structures on that land as shown marked in red on the plan attached to the notice; (Appeal B)

(b) the decision of the Bournemouth Borough Council to refuse permission for:

(i) the erection of a block of stables on land at the above site (Appeal C)

(ii) Use for agricultural purposes and the erection of a chicken house and grain silo on land at the above site (Appeal D)

2. The appeals against the enforcement notices were on the grounds set out in Section 88(2)(a), (b) and (h) of the Town and Country Planning Act 1971, as amended by the Local Government and Planning (Amendment) Act 1981. At the inquiry ground (c) was also argued.

3. An appeal against refusal of listed building consent was withdrawn at the inquiry and no further action will be taken on it.

4. A copy of the Inspector's report of the inquiry is annexed to this letter. His conclusions are set out in paragraphs 51 to 59 and his recommendation at paragraph 60 of the report. The report has been considered.

SUMMARY OF THE DECISION

5. The formal decision is set out in paragraphs 18 and 19 below. Appeals A and B fail; the notices are being varied but otherwise upheld. Appeal C succeeds and conditional planning permission is being granted; but Appeal D is being dismissed.

REASONS FOR THE DECISION

6. It is noted that with regard to Appeals A and B although the appeals were made formally on grounds (a), (b) and (h), ground (c) was also referred to. Ground (c) will therefore be considered by the Secretary of State.

7. On grounds (b) and (c) of Appeal A, the Inspector concluded:-

"there may be some substance in the appellants' submission in regard to grounds (b) and (c) that because the keeping of poultry on land including poultry kept for commercial purposes is a form of agricultural use of land which is not development, the present use of land at Throop House for poultry keeping did not require planning permission. However, I do not accept their opinion that the eggs and poultry produced at Throop House may be sold from this property without the need for planning permission. In my view the sale of eggs and poultry from a poultry unit of some 5,000 birds is a commercial activity which does require permission. Consequently I consider that the matters alleged in the notice do constitute a breach of planning control and that a breach of planning control has taken place."

These conclusions have been considered. It is agreed with the Inspector that the keeping of free range poultry for commercial purposes is an agricultural use which following Section 22(2)(e) of the 1971 Act would not amount to development. On the other hand the view is taken that the sale of eggs from land which are the produce of that land, no matter what the numbers involved, would be ancillary to the agricultural activity and does not amount to a breach of planning control. In the present case, it is considered that the area of 0.75 acres to the west of Throop House can reasonably be regarded as a definable area amounting to a separate planning unit with a use for agricultural purposes. Although the sale of eggs from that area of land might not be a breach of planning control, the eggs have in fact been sold from Throop House, outside the planning unit. The sale of eggs therefore amounts to a use for retail sales which represents a material change from the residential use of that land and one which requires planning permission. The Appeal A will therefore fail on ground (b) in respect of the sale of eggs, although the notice will be varied so as to exclude the 0.75 acre area. With regard to the sale of poultry, similar considerations apply except that poultry sold for eating is regarded as a processed item, and its sale could not be regarded as ancillary to the agricultural activity on the land but as an independent use for retail sales for which planning permission would be required. Appeal A therefore fails on ground (b) in respect of the sale of poultry on the whole site.

8. On ground (c) it is noted that sales had ceased at the time of the inquiry. However it was not disputed that the sale of eggs and poultry was being carried on at the time the notice was served, and the appeal must therefore fail on ground (c).

9. On the planning merits of the Appeal A, the Inspector concluded:-

"I am of the opinion that planning permission ought not be granted. Throop Road is a narrow country lane and in the vicinity of Throop House is without footpaths; and a considerable number of cars of people visiting the property to purchase eggs and poultry would be likely to be parked on this road near to a pedestrian access to the house, where they could cause congestion and a hazard to passing traffic."

These conclusions are accepted and for the reasons the Inspector gives the appeal fails on ground (a).

10. On ground (h) your clients sought an extension of the period for compliance to six months. However the notice only requires the cessation of the sale of eggs and poultry, which has already ceased on the appeal site. It is not therefore thought that any extension of time would be justified and the appeal fails on ground (h).

11. On ground (b) and (c) of Appeal B the Inspector concluded:-

"the appellants submit, in regard to grounds (b) and (c), that the keeping of poultry on a commercial basis is an agricultural use of land which does not require planning consent, and furthermore that subject to certain criteria, the erection of buildings on agricultural land having an area of more than 0.4 hectares is permitted development by virtue of Class VI.1 of Schedule 1 of the Town and Country Planning General Development Order and consequently the erection of the structures to which the enforcement notice relates did not require planning permission as claimed by the Council. However, I am not satisfied that the agricultural use of the land to which the notice relates has been satisfactorily established. The appellants say that the 0.5 acre area used for poultry keeping, together with the 0.66 acre paddock at the eastern end of the grounds of the property constitute an agricultural unit of more than 0.4 of a hectare. However, I am not satisfied that the paddock, which the evidence suggests has been used in recent years merely for the occasional grazing of the appellants' ponies and sheep, has an established use for agricultural purposes, and furthermore even if it had, this land together with the poultry area does not form a single planning unit of more than 0.4 hectares, being separated by over 2 acres of land which remain in use as the landscaped grounds or gardens of the house. Consequently I am of the opinion that the matters alleged in the notice do constitute a breach of planning control and that the breach of control alleged in the notice has taken place."

These conclusions have been considered. Notwithstanding that the keeping of free range poultry would not amount to development, the erection of the buildings/structures to which the notice relates would require planning permission unless it could be shown that they satisfied the conditions in Class VI of the General Development Order. One of these conditions is that the structures should have been erected on agricultural land having an area of more than one acre and comprised in an agricultural unit. The area where the structures have been erected has an area of only 0.75 acres, but it was submitted on behalf of your clients that that area should be taken with the area of 0.66 acres on the other side of Throop House. However the Secretary of State would not accept that the 0.66 acres could properly be described as agricultural land comprised in an agricultural unit. The evidence, to which the Inspector refers, shows that this 0.66 acres of land was used only for the occasional grazing of ponies and sheep. It is not considered that such occasional use would satisfy the definition of agricultural land, namely for the purposes of a trade or business, in Section 109 of the Agriculture Act 1947, which is the relevant definition for Class VI. Since therefore only the 0.75 acres could be said to be agricultural land for the purposes of Class VI, the structures erected thereon would not be permitted by Class VI. Planning permission have been required and the Appeal B must fail on ground (b). As it is clear that the structures have been erected as alleged the appeal will fail on ground (c) also.

12. It was submitted by your clients and admitted by the Council that one of the structures to which the notice in Appeal B related, namely a small lean to shed abutting the roadside boundary wall, existed when your clients purchased the property and had been incorrectly included on the enforcement notice plan. This is noted and the enforcement notice will therefore be amended so as not to apply to this building.

13. On the planning merits of Appeal B, the Inspector concluded:-

" I am of the opinion that planning permission should not be granted for the retention of the buildings to which the notice relates. These comprise several single-storey structures of varying sizes, designs, materials and colours and include a 20 ft high modern grain silo; most of these buildings are unattractive, particularly in the context of their setting in the grounds of an old country house, and most of them are very prominent in the open views over the grounds from the adjacent section of Throop Road. In my opinion these structures have very detrimental effects on the appearance and character of Throop House, a 'listed' building, and on its otherwise attractive setting, and are also detrimental to the appearance, character and setting of the adjacent Throop Mill which is also a 'listed' building. I consider that these detrimental effects constitute an overriding planning objection to the retention of the buildings to which the notice relates and therefore it would be most undesirable for planning permission to be granted for their retention".

These conclusions are accepted and for the reasons given by the Inspector, Appeal B fails on ground (a).

14. The Inspector went on to conclude on ground (h):-

"The appellants submit, in regard to ground (h) of the appeal, that in the event of the notice being upheld compliance with the requirement that the structures be demolished would necessitate either the transfer of the 5,000 birds which they house to accommodation elsewhere or the slaughter of these birds, and in these circumstances the period of one month for compliance with the requirements of the notice would be quite insufficient and should be extended to at least 6 months. It seems to me that there is some substance in this submission, and therefore I consider that it would be reasonable to extend the period for compliance to 6 months, as requested."

It is agreed that a longer period than one month should be allowed for your clients to make alternative arrangements for the birds on the site. The period for compliance will therefore be extended to six months as proposed by the Inspector, and the appeal succeeds on ground (h) to this extent.

PLANNING APPEALS

15. On Appeal C, the Inspector concluded:-

"the site of the proposed stables is in the area to the west of Throop House which is now occupied by the poultry runs and poultry houses. Although the stables, for the appellants' riding horses, would be a substantial single-storey building it would stand more than 130 ft from the rear face of the house, a 2-storey building, and so would be unlikely to be unduly dominant in relation to this listed building. Furthermore, the stables building would be of a classical, symmetrical design giving it a traditional character and would have a pitched roof covered with plain tiles, and walls faced with facing bricks. Consequently, I do consider that the proposed building would not necessarily look out of scale or out of place in its setting or would have any unacceptable effects on the appearance and character of the house and the adjacent mill, or on the surrounding attractive rural area. I can see no overriding planning objections to this proposal."

The Inspector subsequently went on:-

"The Council request that, in the event of the Secretary of State deciding to allow any of the appeals, conditions of the lines of those referred to in paragraph 45 above should be imposed on any planning consents granted. However, it seems to me that of the conditions relating to the appeal (c), Nos 1 and 4 are not necessary as they relate to buildings, a boundary wall, railings and a gate which are not in the immediate vicinity of the location of the proposed stables and therefore are likely to be affected by its construction."

He recommended that the other conditions be imposed.

16. These conclusions are accepted both with regard to the general principle of granting planning permission for the stables, and as to the conditions which should be attached to that permission, for the reasons the Inspector gives. Regarding Condition 1 suggested by the Council, the Secretary of State takes the view that it would also be inappropriate as listed buildings are subject in any event to separate planning control, and the condition incorporates an on-going maintenance requirement which is not regarded as reasonable. The condition that the stables should not be used for commercial purposes is thought to be reasonable in view of the highway problem that such a use would involve; the prior removal of chicken houses and silo is also reasonable given that the stables will occupy the area of the poultry runs and poultry houses. Finally the conditions numbered (5) and (6) in paragraph 45 of the Inspector's Report will give the Council some control over the appearance of the site when stables are built, in the interests of visual amenity. The landscaping proposed shall be implemented within nine months of approval of a scheme. Appeal C succeeds and planning permission will be granted subject to conditions.

17. Turning to Appeal D, it is noted that the application refers to the use of the land in question for agricultural purposes. Since such a use is not development by reason of Section 22(2)(e) of the 1971 Act, the appeal will be treated as relating solely to the erection of a chicken house and silo. The Inspector concluded:-

"The proposed poultry house would be a substantial building with a somewhat traditional character, and its walls and roofs would be of traditional materials. In the position proposed it would not be unduly prominent in the views from the surrounding area, being well screened from the west by trees and bushes in the garden of Throop House and partially screened from the north and east by trees and bushes along the northern and eastern sides of its site. Consequently I consider that the building itself would be unlikely to have any detrimental effects on the appearance and character of Throop House and the surrounding area generally. However, I am not satisfied that the use of the building and its .66 of an acre site as a poultry unit for some 5,000 birds operating on a combination of the deep litter/free-range systems would not have any undesirable effects on the 2 adjacent bungalows to the east, the boundary of the nearest of which is less than 50 ft from the eastern boundary of the paddock. It is possible, if not probable, that even though this intensive poultry unit were to be well run and maintained, it would on occasions be likely to cause noise, smells and flies which could be very detrimental to the residential amenities of the dwellings nearby and especially the 2 bungalows just to the east. Although the evidence shows that there are other poultry units in the district and a pig farm nearby which at times causes unpleasant smells, it seems to me that because of its proximity the effects of the proposed poultry unit on these 2 adjacent bungalows could be more severe than might be considered acceptable even in a primarily agricultural area. Consequently I think that this large and intensive poultry unit would be unacceptably close to dwellings and that this is an overriding planning objection to this proposal."

These conclusions are accepted for the reasons given by the Inspector. Appeal D will therefore be dismissed.

FORMAL DECISION

18. For the reasons given above the Secretary of State:-

(i) in the exercise of his powers under Section 88A(2) of the 1971 Act, as amended by the Act of 1981, directs that the enforcement notice to which Appeal A relates be varied as follows:-

(a) in paragraph 2 by the deletion of the words "for the sale of eggs and poultry" and the substitution in their place of the words "of all the land shown edged with a heavy black line on the attached plans for the sale of poultry and of the land shown hatched black in the same plan for the sale of eggs";

(b) in Schedule 1 by the deletion of the words "coloured pink" and the substitution in their place of the words "edged with a heavy black line";

(c) by the substitution of the plan attached to this letter for the plan attached to the enforcement notice.

Subject thereto the Secretary of State upholds the notice and dismisses the appeals. On the application for planning permission deemed to have been made under Section 88B(3) of the 1971 Act, as amended by the Act of 1981, he refuses to grant planning permission for the use to which the notice relates;

(ii) in the exercise of his powers under Section 88A(2) of the 1971 Act, as amended by the Act of 1981, directs that the enforcement notice to which Appeal B relates be varied as follows:-

(a) in paragraph 2 by the deletion of the words "one calendar month," and the substitution in their place of the words "six months";

(b) in paragraph 2 by the addition after the words "in Schedule 2 hereto", of the words "other than the small lean to shed abutting the roadside boundary wall";

(c) in Schedule 2 by the addition after the words "on the attached plan" of the words "other than the small lean to shed abutting the roadside boundary wall";

Subject thereto the Secretary of State upholds the notice and dismisses the appeals. On the application for planning permission deemed to have been made under Section 88B(3) of the 1971 Act, as amended by the Act of 1981, he refuses to grant planning permission for the development to which the notice relates.

19. For the reasons given above the Secretary of State:-

(i) allows Appeal C and hereby grants planning permission for the erection of a block of stables on land at Throop House, Throop Road, Bournemouth in accordance with the application submitted on 23 April 1982, subject to the following conditions:-

- (a) the unauthorised chicken houses and silo shall be demolished and removed from the site prior to building operations being commenced;
- (b) the stables shall be used for the incidental enjoyment of the occupants of the dwelling Throop House only and shall not be used for commercial purposes;
- (c) samples of the materials proposed to be used in the construction of the development shall be submitted to and approved by the local planning authority before building work is commenced;
- (d) the site shall be landscaped in accordance with proposals to be submitted to and approved by the local planning authority prior to building operations being commenced. These proposals shall be implemented within nine months of approval or determination as the case may be.

(ii) dismisses Appeal D.

20. This letter does not convey any approval or consent required under any enactment, byelaw, order or regulation other than section 23 of the Town and Country Planning Act 1971.

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

RIGHT OF APPEAL AGAINST DECISION

22. This letter is issued as the Secretary of State's determination of the appeals. The leaflet C enclosed for those concerned sets out the right of appeal to the High Court against the decision and also includes a note about the right to view the documents appended to the Inspector's report.

I am Gentlemen
Your obedient Servant

P. E. Stalder

P E STALDER
Authorised by the Secretary of State
to sign in that behalf