IDE/P

Department of the Environment
Room
Tollgate House Houlton Street Bristol BS2 9DJ
Telex 449321
Direct line 0272-218 610
Switchboard 0272-218811
GTN 2074

LPA Ref: RS/SCW PL/BF.25

Messrs Breeze and Wyles
Solicitors
37 Bullsmoor Lane
ENFIELD
Middlesex
EN3 6TF

Your reference GVH/ABS/PE.8
Our reference APP/5059/C/80/441
APP/5251/C/80/469
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4th March 1981

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTIONS 36 AND 88
LAND AT CHURCH LANE GRAVEL PIT, WORMLEY, HERTS
APPEALS BY C G EDWARD (GOFFS OAK) LIMITED

1. I am directed by the Secretary of State for the Environment to refer to the report of the Inspector, Mr T G Lawrence, BA, who held a local inquiry into your clients' appeals against:-

a. an enforcement notice (Notice A) served by the Hertfordshire County Council relating to the failure to comply with conditions subject to which planning permission was granted on 30 June 1949 for the extraction of sand and gravel from land at Church Lane Gravel Pit, Wormley, and also subject to which planning permission was granted on 2 January 1968 for the continued use of part of the land at Church Lane Gravel Pit, Wormley, for the preparation of soil for horticulture: the conditions of the 1949 planning permission required:-

"i. that excavation of sand and gravel be completed within the period of 30 years from the date of the first planning permission;

ii. that the excavation be completely refilled to the level of the surrounding ground, covered with a surface layer of soil not less than 12 ins deep capable of supporting plant life and the initial cultivation of the site to the satisfaction of the local planning authority, such restoration to be completed within a period of 30 years from the date of the first planning permission; and

iii. that on completion of the filling, the footpath coloured brown on the attached plan be restored and reinstated".

(Conditions 5, 6 and 8) and the condition of the 1968 planning permission required that the use then permitted be terminated on or before 30 June 1979;

b. an enforcement notice (Notice B) served by the Broxbourne Borough Council relating to the use of land at Church Lane Gravel Pit, Wormley, for storing/keeping thereon building materials, skips and scrap iron including motor vehicle bodies; and

c. the decision of the Broxbourne Borough Council to refuse planning permission for the continued use of land at Church Lane Gravel Pit, Wormley, for the preparation of soil for horticulture, together with landscaping of the site.

2. The appeal against Notice A was on the grounds set out in Section 88(1)(a) and (g) of the Town and Country Planning Act 1971 and the appeal against Notice B was on the grounds set out in Section 88(1)(a) and (b).

3. A copy of the Inspector's report of the Inquiry is annexed to this letter. His conclusions are set out in paragraphs 63 to 68 of the report and his recommendations in paragraph 69. The report has been considered.

SUMMARY OF THE DECISION

4. The formal decision is set out in paragraphs 10 to 12 below. The appeal against Notice A fails: the enforcement notice is upheld, subject to variation, and the conditions to which it relates are not discharged. The appeal against Notice B succeeds and the enforcement notice is quashed. The appeal under Section 36 of the 1971 Act is dismissed.

REASONS FOR THE DECISION

5. In support of the appeal on ground (b) against Notice B it was submitted on behalf of your clients that the articles referred to in the notice were on the land for purposes incidental to uses of the land which were authorised until the 1949 and 1968 planning permissions expired: it was maintained that their presence on the land did not involve a material change of use and that they could not be regarded as being on the land for a separate storage use. It was claimed that their presence on the land was immaterial in relation to the major issues affecting it, as the scale involved was so small.

6. The Inspector found as facts, which are accepted, that at the time the site was inspected by a borough council officer there were some heaps of granite sets, concrete blocks and kerb stones, an old lorry, a vehicle body, disused plant and 7 empty skips there: except for the skips these articles were still on the site when inspected by the Inspector. There was no evidence that any of the objects were brought to the site other than in connection with the reclamation of the pit or the use for soil processing.

7. With regard to the appeal on ground (b) against Notice B the Inspector concluded:-

> "It seems to me that Mr Edward's explanation, that the skips were on the the site for short periods only and were left there by tipping contractors in the course of their tipping operations, that the "scrap iron and motor vehicles" are vehicles and machinery which have been used previously in connection with the 1949 and 1968 planning permissions and are now used for spares for machines working on the site, and that the "building materials" were in fact materials recovered from the tipped fill for use for internal site roads or, in a few instances, for sale, is a credible and satisfactory answer to the allegation, particularly in view of the negligible amounts involved. However, when Notice B was served the planning permissions had expired and so, although in my view the uses referred to in the notice were merely incidental to the previously

permitted uses of the site, or in the case of the sale of kerb stones picked out from tipping material, could be regarded as de minimis, after 30 June 1979 they were in breach of planning control. But the breach was not, as alleged in the notice, a material change of use but in breach of the conditions requiring the permitted uses to cease on 30 June 1979 and thus I consider the notice incorrectly founded and invalid (Miller-Mead v MHLG (1963) 1 All ER 459)".

These conclusions are noted. On the evidence it is agreed with the Inspector that the storage use which is carried out at the appeal site is not a separate use in its own right, but is either incidental to the main uses of the land for the extraction of sand and gravel and for the preparation of soil for horticulture, or, in the case of articles stored for sale, is on so small a scale as to be insignificant for planning purposes. In the circumstances the view is taken that the storage use is not a use in respect of which an enforcement notice can be served: therefore, Notice B will be quashed.

8. On ground (a) and the planning merits of the appeals against Notice A and against the refusal of planning permission, the Inspector concluded:-

"The main issue is whether the appellant company should be permitted to continue soil processing on the site. This would involve discharging Conditions 5, 6 and 8 of the 1949 planning permission and the requirement of the 1968 decision letter that work should cease by 30 June 1979. It would mean that the central area of the pit, about $\frac{1}{3}$ of the total area, would remain unrestored and involve the use of part of the restored level for storage and composting of imported soil and other compost ingredients. The 1968 permission for soil processing use of part of the site seems to have been largely based on evidence that the scale of soil processing was so small that the additional use of the site for this purpose during the remainder of the pit's life would have no harmful effect on local amenities and generate negligible traffic. Whether or not this was a misunderstanding of the scale of soil processing actually going on in 1967 it is impossible now to determine but, whatever the 1967 scale of use may have been, the present pattern of use, which the appellants wish to continue, involves a much larger area of land, estimated at 5 acres, for soil composting and storage, retention of the central "pit" area, continued use of the large screening plant, and 40 or so lorry movements a week.

The site's situation in the Metropolitan Green Belt and an area of great landscape value raises an immediate presumpton on general policy grounds against a use of this nature, even though it is well screened from view, but in my opinion an equally strong objection arises from the fact that to permit a continuation of use will defer the complete reclamation of this site. The Structure Plan recognises that geological and economic considerations necessitate the exploitation of mineral deposits in the countryside at times but, although Policy 27 accepts in appropriate circumstances the after use of mineral pits for agriculture, leisure and refuse disposal, other uses of dry pits are only permissible in exceptional circumstances.

The appellant company's use for soil processing has close links with agriculture and horticulture and, indirectly through use of the processed soil for sports fields, with leisure. The product clearly supplies a need and, now an important consideration, some employment. Objections to the use by the local residents seem in most of their letters to be

inextricably mixed with their objections to the tipping required to restore the site and to the continuing gravel extraction and convincing evidence of real harm to local amenities other than from the use's contribution to the number of lorries using the inadequate approach by Church Lane was not forthcoming. Weighing up these considerations and other points made at the inquiry it is not my opinion that they suffice to justify deferring the restoration of the whole site after so many years of use in conflict with the character of the surrounding countryside and with the provisions of the Development Plan.

I was satisfied from my inspection and from the evidence that the pit is almost completely worked out and that there is no economic justification, after 30 years of use, to prolong the permitted period of exploitation. No reasons were given why the footpath should not be reinstated when the rest of the site is restored. I therefore consider, on ground 88(1)(a) of the appeal against Notice A that the conditions on which the notice is founded should not be discharged and that the appeal against the refusal of planning permission for continuation of the use of the site for the preparation of soil for horticulture should be dismissed".

These conclusions are accepted. For the reasons the Inspector gives it is not proposed to discharge the conditions to which Notice A relates or to grant planning permission for the continued use of the land for the preparation of soil for horticulture. The appeals on ground (a) against Notice A and under Section 36 of the 1971 Act fail.

9. On ground (g) of the appeal against Notice A the Inspector concluded:-

"Although the appellants would prefer to continue to scrape the pit for remnants of gravel and sand deposits in their present rather desultory fashion they did not put forward any telling reasons why the period given in requirement 1(a) of the notice should be extended. I consider the 28 days given in the notice is a reasonable period in which to cease excavations. The same period was given in requirement 1(b) to cease the preparation of soil for horticulture but, having seen the volume of soil already maturing on the site, taking into account the time required for composting and bearing in mind the evidence given about the severe difficulties of finding an alternative site for this use, I regard the 28 days given as unreasonably short. It is too brief to allow the appellants to run-down this aspect of their business and complete contracts without unnecessary loss and too brief to permit them to transfer the operations to another site, if one can be found. I consider that the period could be extended to at least 6 months without hindering restoration works on the site. Requirement 1(c) gives 2 years for the restoration required by the 1949 permission. Although there may still be some doubt about the amount of fill still needed to complete restoration it was not disputed that suitable fill could be attracted to the site within this period, although this would involve a heavy increase in lorry traffic on the inadequate approach to the site by Church Lane. In my opinion it would be preferable to complete the site restoration as quickly as possible rather than spread it over a longer period and I regard the 2 year period given as reasonable. If the recovery is to be completed in 2 years there is no reason why the footpath should not be reinstated in the same period (requirement 1(d)). None of the requirements of the notice are in my opinion excessive".

These conclusions are also accepted. For the reasons the Inspector gives the period for compliance in requirement 1(b) of the notice will be extended to 12 months under the provisions of Section 88(5) of the 1971 Act. Otherwise, however, the appeal against Notice A fails on ground (g).

FORMAL DECISION

10. For the reasons given above the Secretary of State hereby directs that Notice A be varied in requirement 1(b) by the deletion of the words "twenty-eight days" and the substitution therefor of the words "twelve months". Subject thereto the Secretary of State dismisses the appeal against Notice A: he upholds the notice and refuses to discharge the conditions to which it relates.

11. For the reasons given above the Secretary of State allows the appeal against Notice B and hereby directs that the notice be quashed.

12. For the reasons given above the Secretary of State hereby dismisses the appeal under Section 36 of the 1971 Act.

RIGHT OF APPEAL AGAINST DECISION

13. This letter is issued as the Secretary of State's determination of the appeals. Leaflet B 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

K W BEARE
Authorised by the Secretary of State
to sign in that behalf

ENC

LEAFLET B

DEPARTMENT OF THE ENVIRONMENT
TOLLGATE HOUSE
HOULTON STREET
BRISTOL
BS2 9DJ

Rights of Appeal

An appeal against the decision, given in the accompanying letter, on the enforcement notice appeal may be made to the High Court on a point of law under the provisions of Section 246 of the Town and Country Planning Act 1971. Any appeal must be made within 28 days of the date of this letter (unless the period is extended by the Court).

Section 245 of the Town and Country Planning Act 1971 provides that a person who is aggrieved by the decision given in the accompanying letter on the appeal made under Section 36 of the 1971 Act may challenge its validity by an application to the High Court within six weeks from the date when the decision is given. The grounds upon which an application may be made to the Court under Section 245 are that:-

1. the decision is not within the powers of the Act (that is, the Secretary of State has exceeded his powers); or

2. any of the relevant requirements has not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

"The relevant requirements" are defined in Section 245 of the Act: they are the requirements of that Act, 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. This includes the Town and Country Planning (Inquiries Procedure) Rules 1974 (SI 1974 No 419).

A person who thinks he may have grounds for challenging either decision should first seek legal advice.

Inspection of Documents

Under the provisions of rule 13(3) of the Town and Country Planning (Inquiries Procedure) Rules 1974 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 the notification to him of the decision, or the supply to him of the Inspector's report, whichever is the later, for an opportunity of inspecting any documents, photographs and plans appended to the report. Such documents etc are listed in an appendix to the report. Any application under this provision should be sent to the address on the decision letter, quoting the Department's reference number shown on the decision letter and stating the proposed date and time (in normal office hours) for the inspection. At least 3 days' notice should be given, if possible.

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