

REGISTER



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FENLAND DISTRICT COUNCIL
PLANNING DEPARTMENT

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- 1 OCT 1984

JJK / DDT RT

Messrs Fraser Woodgate & Beall
29 Old Market
WISBECH
Cambridgeshire
PE13 1NT

Your reference F/0684/83/F
DM/JJ

Our reference
T/APP/D0515/A/84/012759/P4

Date 28 SEP 1984

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
 APPEAL BY MR P J MALLETT
 APPLICATION NO: F/0684/83/F

1. As you know I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. The appeal is against the decision of the Fenland District Council to grant subject to a condition, planning permission for the retention of the bungalow known as The Downs, Workhouse Lane, Upwell, Cambridgeshire without complying with condition 1 of a planning permission F/0684/83F of 10 November 1983 which modified Condition 1 of planning permission F/0125/74/F dated 20 September 1974. I have considered the written representations made by you and by the council, I inspected the site on 30 July 1984.

2. The condition in dispute is:-

"1. The occupation of the dwelling shall be limited to persons employed in the adjoining business".

From my inspection of the site and surroundings and from the written representations it seems to me that the main issue is whether the continued imposition of the above mentioned condition is justified for the purpose of preventing development that is inappropriate to rural countryside outside settlements.

3. Upwell is a linear village to an extent built on either side of the old course of the River Nene. This appeal is complicated by the fact that the county boundary runs along the length of the village and thus part of the village is in Cambridgeshire and part in Norfolk. The appeal site lies in what would have formerly have been the grounds of Audley House a substantial dwelling built at the end of Workhouse Lane, a cul-de-sac of some 400 m leading onto School Road. The access to the bungalow passes along the drive of Audley House which drive lies between the front of the house and the river and then past the front of the workshops from which the business in which the appellant is involved is run. The houses on Workhouse Lane are in Cambridgeshire but School Road to which that cul-de-sac leads is in Norfolk. The land in Cambridgeshire to the south of the appeal site is agricultural land but there is ribbon development along School Road for about 1/2 mile in that direction.

4. When The Downs was granted planning permission in 1974 there was a builders and decorators business carried on in buildings within the curtilage of Audley House by your client's father. 'The Downs' was required for your client who was actively involved in that business and the condition limiting occupation of that dwelling to persons employed in the adjoining builders and decorators business

and the dependants of such persons was accordingly imposed by the council. The reason for imposing such a condition was that the appeal site was located outside the village development area of Upwell and will be considered as lying within the open countryside but that in view of the personal circumstances of your client and his family the development could be cited as a special case. This condition was varied by the council on your client's application that is the subject of this appeal to the extent that the bungalow was to be occupied by persons employed in the adjoining business the nature of this business having changed since the original planning permission was granted.

5. The council have referred to policies P5/11 and P7/5 in the Cambridgeshire Structure Plan which policies restrict development in the countryside unless inter alia such development is essential to the operation of local agriculture, horticulture or forestry. This policy is reinforced by the Upwell Village Plan which was adopted by the council as a policy document on 4 June 1981 and which designates Upwell as a "minor rural centre". Such a centre is to be allowed a limited amount of housing and small scale industrial development the residential development is to be within the "village development area". The appeal site is clearly outside this area in my opinion despite the ribbon development southwards along School Road and the development in Workhouse Lane which is referred to by you the appeal site lies outside the confines of the village. There is open countryside to the south and undeveloped land to the north development at this point being restricted to the strip of land lying between Workhouse Lane and the river and School Road which being in Norfolk is subject neither to the County Council Structure Plan nor to the Village Plan. For your client's application therefore to be for the erection of this bungalow there would be strong policy objections to what he proposed and it would be difficult for the council to resist applications for residential development in similar sites lying outside the village development area and particularly in the open area of land lying between Workhouse Lane and School Road.

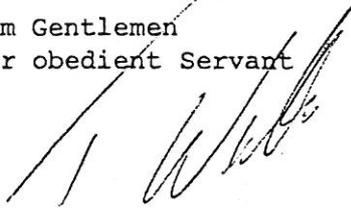
6. 'The Downs' was erected by your client for his family in accordance with the planning permission granted and whether or not the appeal is successful it will remain no doubt in occupation of your client. Indeed the reason behind your client seeking to remove the condition referred to in paragraph 2 is not because of a desire to dispose of the property free of such a condition but to enable him to raise a mortgage to carry out improvements to it. Circular 5/68 advises that a condition such as this limiting the occupation of a building to a particular person or group of persons can have awkward practical consequences and cites as an example the kind of situation in which your client now finds himself. Paragraph 23 of the same Circular states that occupancy conditions should "never tie the house to occupation by a worker on a particular farm or small holding".

7. In my opinion the situation of 'The Downs' is such that even without the continued imposition of the condition it is likely to remain occupied by someone involved in the adjoining business. It of course shares an access with Audley House and lies alongside the workshops within the curtilage of that building.

8. For the above reasons and in exercise of the powers transferred to me I hereby allow the appeal and discharge Condition 1 of the planning permission F/0684/83F dated 10 November 1983 on your clients' application dated 20 September 1983 and the plan submitted therewith.

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

I am Gentlemen
Your obedient Servant

A handwritten signature in dark ink, appearing to read 'T Walker', is written over the typed name 'T WALKER'.

T WALKER MA(Oxon) Solicitor
Inspector